

**DIVERSITY, GLOBAL UNITY, AND THE HOLY
TRINITY:
MAKING SENSE OF WORLD EVENTS THROUGH AN
INTEGRATIVE JURISPRUDENCE**[©]

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I. INTRODUCTION

Professor Harold Berman in his book, *FAITH AND ORDER: THE RECONCILIATION OF LAW AND RELIGION*,¹ stated that there are three main theories or schools of legal philosophy in a world of legal diversity. He identifies them as the positivist school, the natural law school, and the historical school. In the vast majority of scholarly legal circles, positivism and natural law are viewed as irreconcilable, while the historical school is usually completely ignored.² This note

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¹ *Faith and Order: The Reconciliation of Law and Religion* is a collection of writings and lectures by Professor Harold Berman that span across his distinguished career of over fifty years. He summarizes his work, "At the highest level, surely, the just and the holy are one, and our sense of each rests partly on our sense of the other." HAROLD J. BERMAN, *FAITH AND ORDER: THE RECONCILIATION OF LAW AND RELIGION*, at x (Scholars Press 1993).

² Berman states, "The Historical school has been almost universally disparaged and has virtually disappeared from almost all jurisprudential writings in the twentieth century, at least in England and the United States." HAROLD J. BERMAN, *Toward an Integrative Jurisprudence: Politics, Morality, History*, in *FAITH AND ORDER: THE RECONCILIATION OF LAW AND RELIGION* 289, 310 (Scholars Press 1993). In discussing the historical school Berman spends some time discussing what history is. History is not merely a retelling of the past, but includes a providential understanding. Berman states, "[History means] 'the times,' and especially 'our times,' including times which separate our past times from our future times. It inevitably contains a prophetic element." It is often said that we can learn from history, perhaps it should be said that history is part of God's general revelation to teach man, to warn him, to guide him. Many who believe in absolutes worry when they hear of an evolving historical ethos and changing social attitudes. However, the historical school is distinguishable from relativism.

will explore the notion of a shared foundation to build and sustain what Berman would call an “ecumenical Christian jurisprudence” – and for that matter domestic and world law – based upon the Holy Trinity.

The fundamental and abiding tension between these three schools has been due to their distinguishable treatment of the law. The positivist school views law mainly as the will of those in power. The positivist is primarily concerned with what the law is. Questions of what the law ought to be are separate and perhaps collateral. The natural law school, by contrast, is primarily concerned with what the law ought to be. Law ought not be a product of the mere will of the state, but rather of reason, conscience, and morality. Finally, the historical school distinguishes itself by asserting that law should primarily be a product of the developing culture of a people. The tension then lies in what each school ignores of the other. The positivist will tend to ignore or minimize the moral and cultural aspects of law. For the natural law school, the will of the state and the cultural development of the people cannot be the ultimate source of true law. For the historical school, the will of the state or an ethereal conscience must be subject to the cultural development of the people.³ Thus primacy is the issue. Each school seeks to be the prime authority over the others.⁴

In Berman’s view, these three schools, though often pitted against each other philosophically, in fact work together in practice. As evidence he cites the process by which American courts hand down

The idea here is that the absolutes must be applied at a specific period in time. An example of this is the advent of intellectual property, peer-to-peer networks, iPods, and MP3 files. Thus the eternal absolute that stealing is morally wrong must be applied to a new set of facts and new social or unique cultural phenomena.

³ Berman succinctly defines these schools by describing their differences. “The Positivist school treats law essentially as a particular type of political instrument, a body of rules laid down (“posited”) by a state, having its own independent self-contained character separate and distinct from both morality and history. The natural law school treats law essentially as the embodiment in legal rules and concepts of moral principles derived from reason and conscience. The historical school treats law as a manifestation of the historically developing ethos, the traditional social representations and attitudes, of a people or society.” *Id.* at 290.

⁴ See *Id.* at 292-293.

decisions. They begin with the posited law (positivist theory), then consider the facts of the specific case and take into account justice and consider any equities that may be involved (natural law theory), and finally the court considers any precedent it may be following or setting (historical school theory).⁵ Here, despite their supposed philosophical incompatibilities, the three schools are working together in everyday court decisions. Berman thus calls the three schools⁶ to move toward an integrative jurisprudence.⁷ This “move” would acknowledge the value and truth of each of the schools, letting the schools work together at the philosophical level as they do in practice.

Berman also makes a profound biblical connection to his theory of an integrative jurisprudence. He contends that the Godhead is reflected in the same three schools. Berman writes,

⁵ Berman notes, “American Courts...in deciding cases will turn a positivist eye to the applicable legal rules, a naturalist eye to the equities of the particular case in the light of moral principles underlying the rules, and a historicist eye to custom and to precedent, having in mind not only the precedents of the past, but also the significance of their decisions as precedents for the future.” Harold J. Berman, Epilogue: An Ecumenical Christian Jurisprudence, at 8, <http://www.argobooks.org/berman/pdf/ecumenical-christian-jurisprudence.pdf> (last visited Dec. 28, 2005).

⁶ Berman states that, “[Each School] has isolated a single important dimension of law to the exclusion of the others ...it is both possible and important to bring the several dimensions together into a common focus.” Berman, *supra* note 2, at 289.

⁷ Berman defines integrative jurisprudence as “a legal philosophy which combines the three classical schools: legal positivism, natural law theory, and the historical school.” *Id.* What we have here is a dysfunctional jurisprudential family. Unfortunately, it is an all too familiar tale of a messy divorce that leaves behind confused children seeking identity and primacy. Berman puts it like this, “The question of primacy only became critical in the eighteenth and nineteenth centuries when legal philosophy in the West was first divorced from theology. Prior to that time it was believed that ultimately it is God who is the author of Law...it was therefore possible to integrate in theological terms the political, the moral, and the historical dimensions of law. ...Aquinas, Grotius, Locke, and others who, despite their diversity, [were] natural law theorists [and] positivists and historicists-all three. ...They resolved the tensions...by finding their common source in the triune God, who himself is an all powerful lawmaker, a just and compassionate judge, and the inspirer of historical change in legal as in other social institutions. Prior to the eighteenth century positivists, naturalists, and historicists theories were not separate ‘schools’ but rather three complementary perspectives on law.” Berman, *supra* note 5, at 8. God is not only a God of laws, but also of reconciliation. That is exactly what an integrative jurisprudence seeks.

Will, reason, memory – these are three interlocking qualities, St. Augustine wrote, in the mind of the triune God, who implanted them in the human psyche when he made man and woman in his own image and likeness ...God the Father is the primary source of will, or purpose, God the son is the primary source of reason, or understanding, and God the Holy Spirit is the primary source of memory, or being in time. Yet the three are one.⁸

Thus, Berman lays out this foundation to build, what he calls, an ecumenical Christian jurisprudence.⁹

This principal of Ecumenical Christian jurisprudence is Berman's integrative theory, which combines the reconciliation of the three schools with the recognition of their ultimate source, which is the triune God. Berman states that an ecumenical Christian jurisprudence is necessary to meet the challenge of an emerging world law.¹⁰ He states that the bringing of all the worlds people into a global community is providential.¹¹ Berman encourages Christians to positively influence the development of world laws and courts¹² by developing laws that follow the principles of Christianity such as love your neighbor as yourself.¹³ He also advocates that Christians should seek common ground with other religions and seek any truths we all hold in common.¹⁴ Berman calls Christian leaders to embrace an integrative ecumenical Christian jurisprudence if they

⁸ *Id.*

⁹ See *Id.* "law is indeed a product of will, reason, and memory – of politics, morality, and history – all three; and the synthesis of the three is the foundation of an ecumenical Christian Jurisprudence." *Id.*

¹⁰ See *Id.* at 2-3.

¹¹ *Id.* at 11.

¹² Berman states, "As we enter the third millennium of the Christian Era, St. Augustine's triune God calls on His children, individually and collectively, to manifest their political will, their moral reason, and their historical memory, in the creation of a body of world law that will support and guide the gradual development of the emerging world society into a world community." *Id.* at 12.

¹³ "What they [the peoples of the world] have in common...[is] a global affirmation of the Golden Rule[.]" Harold J. Berman, *The Holy Spirit: The God of History*, THE LIVING PULPIT, Apr.-June 2004, at 32.

¹⁴ "Christians are called on to live in peace and harmony with adherents of other faiths, united with them by the Holy Spirit." *Id.*

are to make the most¹⁵ of this unique time in world history in which a global community has emerged for the first time.¹⁶

Berman's call to an integrative ecumenical jurisprudence demands a response because it offers a different starting point to the questions of what law is. Other legal philosophies such as positivism, natural-law, the historical approach, and their progeny of utilitarianism, economic theory of law, Christian reconstructionism, libertarianism, all of these philosophies look primarily at man first. They look at man's will, or man's reasoning, or man's culture, or his experience, or his economics, but Berman leads us not to these aspects of creation, but to the Creator. Questions such as: What is law? Why do we have laws? What is the purpose of law? And how do those answers affect government and the purpose of government and how a government should function? Most frequently the answers to those questions state that laws and government are needed to maintain order and to protect the people from wrongdoers. Or that man in his role as the Homeric Hero was as Michael Kelly explained fixed upon the humanistic vision of life, where the divine is not the center but where rational and philosophical characteristics, lead to the reinforcement of the idea that life and its purpose are centered around man. That in this idea of the "Greek Legacy" man is able to assume to role of the divine and that using reason or will alone, that man can be granted to power to order his life and world.¹⁷

¹⁵ "An ecumenical Christian legal philosophy is needed, which traces world law to all three forms of the triune God in whose image the human psyche is created – political will, moral reason, and historical memory – and which thereby can overcome the tensions and reconcile the conflicts that hold back the fulfillment of God's millennial plan to bring order, justice, and peace to a world community." Berman, *supra* note 5, at 15.

¹⁶ "[W]e are, for the first time, living in a single history." Joseph W. Dellapenna, *The Internet and Public International Law: Law in a Shrinking World: The Interaction of Science and Technology with International Law*, 88 Ky. L.J. 809, 882 (1999). Professor Dellapenna of Villanova University also addresses the issue of a single emerging history as he explores the impact of a shrinking world on the development of the Internet and Public International Law.

¹⁷ "Man, in Homer, begins to think of himself and his deeds as the products of the divine within himself, an although Homer still though of those god-like features as coming to man from without, nevertheless h regarded them as innately human. As a result, a humanistic vision of life was opened up to the Greeks which, as its cultural ideads began to take on a more rational (i.e. philosophical character, led to an increasingly man centered definition of life and purpose...The gods will recede father into the background if not dissappear altogether, and man will emerge as to think and act in accordance with abstract and Impersonal ideas.

We have always found those answers to be insufficient. They seem to be by-products and not the reason for laws. Why should we have order? Why should we protect people from wrongdoers? Why would we call these goals good? It has also been stated that absent the fallen state of man there would be no need for laws or government.¹⁸ The recurring theme seems to be in all these philosophies that law and government are products of a need. The need to maintain order, a need to protect its citizens, a need to produce wealth, a need for justice, a need for personal freedoms, etc. However, Berman's theory does not start with a "need" that must be addressed, but rather a "who" that is addressing man! This is truly a radical departure from other legal theories. Thus it demands a response.

Berman states that our three seemingly diametrically opposed legal theories are not-coincidentally found in the Godhead. If this is true, the implications are far reaching. Laws and government then, are present not because they serve a function (though they certainly do) but because law is in the very character of God, it is who He is,¹⁹ it is His nature, part of His intrinsic being.²⁰ He is, and He is the same yesterday, today, and forever.²¹ When viewed through the lens of law being a reflection of the Godhead rather than law merely being a method to address human temporal needs, laws and

Reason in man will assume the role of the divine in man and become the power needed to order his life and world." Kelly, *THE IMPULSE OF POWER*, Part I Ch. 1, (Contra Mundum Books 1998).

¹⁸ The view that that government is a necessary evil can be traced back to St. Augustine. He believed that government was part of the curse placed on man when he fell in the Garden. God did not intend for men to have dominion over other men, only over the earth. Primarily, Augustine believed that government served a negative function – which is to restrain the wicked. AUGUSTINE, *THE CITY OF GOD*, bk. XIX, ch. 15 (Henry Bettenson trans., Pelican Books 1972) (1467).

¹⁹ "God is himself law and therefore law is dear to him." Berman, *supra* note 2, at 292. "God is love" 1 *John* 4:8. These two statements seem opposed at first glance. Is God love or is He law? Berman also addresses this issue. "Love needs law to give it structure; law needs love to give it direction and motivation." BERMAN, *Law and Love*, in *FAITH AND ORDER: THE RECONCILIATION OF LAW AND RELIGION* 313, 314 (Scholars Press 1993). When Jesus was asked to summarize the Mosaic law, he stated simply that it was love of God and love of neighbor. See *Mathew* 22:36-40.

²⁰ See *Isaiah* 6:1-4; *Romans* 7:12; *Psalms* 19:7.

²¹ See *Hebrews* 13:8; *Revelation* 1:8; *Exodus* 3:14; *John* 8:58.

government cease to be a burden on society, a necessary evil that humanity must endure.²² Nor are they a by-product of the curse placed on man in the garden.²³ Rather they are a glimpse into the Eternal Being, His character, His justice, His mercy, His love. Therefore we have a criterion to guide us as we form and reform our laws and our governmental institutions, and we do so not grudgingly, but with the knowledge that laws that reflect the character of God will be a light to our world and will testify of His greatness.²⁴

Berman bases much of his ecumenical Christian jurisprudence theory on St. Augustine's writings on the Trinity. In this response to Berman's theory, it is necessary to go directly to the source of the Holy Scriptures to substantiate St. Augustine's will, reason, and memory description of the Godhead with Berman's application to the current state of legal philosophy. This response will focus on providing a biblical foundation for Berman's theory of an integrative and ecumenical Christian jurisprudence. To be asked and answered are these following fundamental issues: Is there a scriptural basis for the correlation that Berman makes between the three schools of legal philosophy and the Godhead? Are there scriptural examples to any legal or governmental system that follow an integrative jurisprudence? Is an integrative jurisprudence reflective of a Christian theistic worldview? And finally, how can an integrative

²² "If men were angels, no government would be necessary." The Federalist No. 51 (James Madison). I do not think that Madison was referring to heavenly beings, for even one-third of the angels rebelled against the Most High. See *Revelation* 12. In general terms, I believe that Madison was simply saying that if men acted generally trustworthy they would not need to be checked as either private citizens or public servants. This philosophy most closely resembles that of Augustine for government is serving the negative function of restraining the wicked. See Augustine, *supra* note 18.

²³ See generally *Id.* (The reciprocal implication is that if man is not fallen than laws and government are not needed). I disagree with that premise. I submit that laws and government would be present even if man were not fallen, because laws and government are a reflection of the image of God in man. They would arise naturally as part of the *imago dei* within humanity. Discussed further *infra* II(B)(4).

²⁴ Perhaps even more so than the city on a hill of which John Winthrop dreamed. See John Winthrop, *A Model of Christian Charity* (1630) in 7 COLLECTIONS OF THE MASSACHUSETTS HISTORICAL SOCIETY 33-34, 44-48 (3d ser. 18380, reprinted in 1 A DOCUMENTARY HISTORY OF AMERICAN LIFE 66-69 (Jack P. Green ed., 1966).

jurisprudence positively impact the development of international or world law?

II. SCRIPTURAL BASIS FOR AN INTEGRATIVE JURISPRUDENCE AND THE GODHEAD

The Trinity is not a doctrine that can be derived from reason, or observed in nature, or even deduced or inferred from human experience. It is a doctrine that is unique among all the religions and belief systems of the world.²⁵ The Trinity is only known because God has revealed it to man through divine revelation. Professor Edward J. Murphy of Notre Dame Law School explains:

Philosophers, ancient and modern, have offered many arguments for the existence of God. But no philosopher ever undertook to demonstrate that God is three persons in one divine nature. We simply would not know of the Trinity unless God had chosen to tell us about it. For only through revelation can it be known that the one divine nature is possessed in its totality by three distinct persons.²⁶

God reveals this truth about the makeup of His divine nature in the very first chapter of the Bible as if saying these are the very first things that must be understood. Moses²⁷ shares the account of creation²⁸ and at the climax of the account is the creation of man.

Then God said, 'Let Us make man in Our image, according to Our likeness ...' God saw all that He had made, and behold, it was very good.²⁹

²⁵ See generally Trinity, Answers.com, <http://www.answers.com/topic/trinity> (last visited Dec. 30, 2006) (Judaism and Islam, the other two major monotheistic religions of our world, reject the doctrine of the Trinity. Pagan polytheistic religions and philosophies have a history of divine triads amongst their many other gods. However, the idea of one true God in three persons is distinct to Christianity).

²⁶ Edward J. Murphy, *The Sign of the Cross and Jurisprudence*, 69 Notre Dame L. Rev. 1285, 1286 (1994).

²⁷ Traditionally held as the author of the Pentateuch.

²⁸ *Genesis* 1-2.

²⁹ *Genesis* 1:26-31 (New American Standard Bible).

In these verses there are at least two foundational truths. The first is that God paused before creating man and consulted with the Holy Council. God says, “Let *Us* make man in *Our* image, according to *Our* likeness.”³⁰ The Godhead, the Three-in-One, thus desires to implant the image and likeness of itself on man, and in fact He does so. Secondly, God looks upon all of His creation, which now includes man created in His image, and declares that it is “*very* good.”³¹ This is reminiscent of when Jesus answered the rich young ruler who addressed Jesus as “Good teacher” and Jesus answered him by saying, “Why do you call Me good? No one is good except God alone.”³² God alone is good and His creation, which bears His image and likeness, are therefore also good.

The implications of man being created in the image of a triune God are crucial to understand God’s creation order. Again, Murphy explains, “The Trinity is the central fact of all reality. There is nothing more basic than this. It is a fact of such overriding significance that everything else must be seen in relationship to it.”³³

In this next section we will explore the implications of the Trinity in human experience, specifically in social orders.

A. The Centrality of the Trinity in Human Experience

The three-in-oneness of God contains three distinct persons, but yet is one in being.³⁴ Thus, there is both unity and diversity present in the Godhead. Unity and diversity are equally present individually and are in perfect relational harmony.³⁵ Man being created in the image of God thus has worth both as an individual, but also as a member of a group. Nancy R. Pearcey, the Francis A. Schaeffer Scholar at the World Journalism Institute, a visiting scholar at Biola University's Torrey Honors Institute, and a senior fellow at the

³⁰ *Genesis* 1:26 (NASB).

³¹ *Genesis* 1:31 (NASB).

³² *Mark* 10:18 (NASB)

³³ Murphy, *supra* note 24, at 1286-1287.

³⁴ “[O]ne in being and three in person” NANCY R. PEARCEY, *TOTAL TRUTH* 132 (2004).

³⁵ “God is not “really” one deity, who only appears in three modes: nor is God “really” three deities, which would be polytheism. Instead, both oneness and threeness are equally real, equally ultimate, equally basic, and integral to God’s nature.” *Id.*

Discovery Institute, addresses the implications of the Trinity on human social orders in her book TOTAL TRUTH:

[The Trinity] provides a solution to the age-old opposition between collectivism and individualism. Over against collectivism, the Trinity implies the dignity and uniqueness of individual persons. Over against radical individualism, the Trinity implies that relationships are not created by sheer choice but are built into the very essence of human nature. We are not atomistic individuals but are created for relationships.³⁶

Pearcy also explains that because of the fallen nature of man, this balance between unity and diversity has been lost in human experience. Societies have either stressed the primacy of the individual or the group, always at the expense of the other.³⁷

One need not look very far to observe examples of this tension in western civilization between the individual good and the group good. In the Cartesian tradition man is seen in his role as an individual, in his paper *Man and the modern mind*, as the individual man has the duty to “start from nothing for nothing was certain in the mind of man and from this basis he would create a new world by means of his unaided reason.”³⁸ From the Cartesian perspective, law and man now faces new challenges. Terrorism has forced the United States to find new ways to attempt to balance individual civil liberties (the individual good) with national security (the common good).³⁹ In a recent eminent domain case⁴⁰, the United States Supreme Court ruled in favor of the City of New London (the group good), for the city to develop higher tax generating properties such as hotels, retail stores, and restaurants. The property rights and interests of the current owners (the individual good) was ruled inferior to the interests of the city’s

³⁶ *Id.*

³⁷ *See Id.* “Ever since the Fall, however, societies have tended to tilt toward either the individual or the group” *Id.*

³⁸ *Makers of the Modern Mind*

³⁹ Visit <http://www.heritage.org/Research/HomelandDefense/wm612.cfm> and <http://www.aclu.org/safefree/patriot/index.html> for opposing views of the PATRIOT Act.

⁴⁰ *Kelo v. City of New London*, 545 U.S. 469 (2005).

group good. Federalism is also an attempt to balance the diversity of the individual good of the states with the unity of a centralized government that is to protect the common good of the nation.

These tensions are not limited to the American democratic experience. In early twentieth century Russia, debate raged over the right of an individual to leave an inheritance (an individual good). The idea of privately owned property passing to another private individual at the original owners death was not consistent with Soviet philosophy. Subsequently, in 1918 the Soviet Bolsheviks abolished inheritance. The new law⁴¹ simply stated that upon the death of the owner, his property would become the property of the state (the group good). Interestingly, the abolition of inheritance lasted only four years.⁴²

Pearcey also offers four examples where this tension between the individual and the group in human experience is evident. Firstly, family law reflects this tension. In the family unit there are two individuals who come together to form something that is more than merely “the sum of its parts.” It becomes a “being” unto itself. Therefore the husband, the wife, and the married couple are defined as both individuals and as the relationship they hold as one being or entity.⁴³ In American family law we have seen the pendulum swing from recognising the primacy of the family as a unit to the primacy of the individuals in the family.⁴⁴ The marriage union went from

⁴¹ See 1 Sob. Uzak., RSFSR, No. 34, item 456, Apr. 26, 1918.

⁴² See Frances Foster, *The Development of Inheritance Law in the Soviet Union and the People’s Republic of China*, 33 *Am. J. Comp. L.* 33 (1985); Comment, *Soviet Inheritance Law: Ideological Consistency or a Retreat to the West?*, 23 *Gonz. L. Rev.* 593 (1988).

⁴³ “Every married couple knows that a marriage is more than the sum of its parts—that the relationship itself is a reality that goes beyond the two individuals involved. The social institution of marriage is a moral entity in itself, with its own normative definition. This was traditionally spoken about in terms of the common good: There was a “good” for each of the individuals in the relationship (God’s moral purpose for each person), and then there was a “common good” for their lives together (God’s moral purpose for the marriage itself). Pearcey, *supra* note 30, at 132.

⁴⁴ See generally *Maynard v. Hill*, 125 U.S. 190 (1888) (marriage as an institution, something more than a mere contract between two consenting parties); *Meyer v. State of Nebraska*, 262 U.S. 390 (1923) (the U.S. Constitution protects the right of an individual to marry); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (legislation may not unreasonably interfere with the liberty of parents . . . to direct the upbringing and education of children under their control); *Prince v*

being considered more than a mere contract, rather a separate institution (entity),⁴⁵ to being declared “not an independent entity...but an association of two individuals.”⁴⁶ The Trinity teaches that both the individuals that make up the family and the family unit in and of itself have value and should be recognized. That balance is still being sought in American courts today.

Rousseau attempted to explain this phenomenon as a function of the home. In other words that to property combat vice. Rousseau claimed that “the charms of home” are the means by which society strengthens the bonds between one another, and in doing so improves the lives of those involved. “The charms of home, are the best antidote to vice. The noisy play of children, which we thought so trying, becomes a delight; mother and father rely more on each other and grow dearer to one another; the marriage tie is strengthened. In the cheerful home life the mother finds her sweetest duties and the father his pleasantest recreation. The real nurse is the mother and the real teacher is the father.”⁴⁷

Pearcey also addresses the unity and diversity image of the Trinity in philosophy, politics, and economics.

Ever since the ancient Greeks, philosophers have asked, Does ultimate reality consist of a single being or substance (as in Pantheism) or of disconnected particulars (as in atomism)? In politics, the opposing poles play out in the two extremes of totalitarianism versus anarchy. In economics, the extremes are

Massachusetts, 321 U.S. 158 (1944) (Constitution respects realm of the family, however it is not fully beyond the police power of the state); Eisenstad v. Baird, 405 U.S. 438 (1972) (providing dissimilar treatment for married and unmarried persons concerning access to contraceptives violates the Equal Protection Clause); Skinner v. Oklahoma, 316 U.S. 535 (1942) (marriage and Procreation a basic liberty); Loving v. Commonwealth of Virginia, 388 U.S. 1 (1967) (freedom to marry is a vital personal right); Zablocki v. Redhail 434 U.S. 374 (1978) (The decision to marry is among the personal decisions protected by the right of privacy); Griswold v. Connecticut, 381 U.S. 479 (1965) (the marriage relationship lies within the zone of privacy created by several fundamental constitutional guarantees).

⁴⁵ See *Maynard v Hill*, 125 U.S. 190 (1888).

⁴⁶ See *Eisenstad v. Baird*, 405 U.S. 438 (1972).

⁴⁷ MAKERS OF THE MODERN MIND, THOMAS NEIL (1984)

socialism or communism versus laissez-faire individualism.⁴⁸

In practice, the polarizing philosophies of the individual versus the group are very difficult to execute in their purest sense because of God's triune image implanted in man. What results is a hybrid where the primacy is slightly skewed either in favor of the individual or the group. The more skewed the primacy of one becomes, the more likely the other is to suffer. In other words, if the individual good is given primacy, the common good will suffer, and vice-versa. Both the individual good and the common good must always be addressed and kept in balance.⁴⁹ Without the foundation of the Trinity, however, society is left grasping between the two extremes. Influential philosopher Jean-Jacques Rousseau (whose writings greatly influenced Robespierre, Marx, Lenin, Mussolini, Hitler, Mao, and Pol Pot) stressed the primacy of the individual, labeling personal relationships such as marriage, family, church, and workplace as oppressive.⁵⁰ By contrast, Buddhist philosophy stresses that individuality is only an illusion and that Nirvana is reached when the "one" individual self is merged (lost) into the group universal One.⁵¹ Only the Trinity can bring reconciliation between the individual good and the common good, between diversity and unity. Finally, Pearcey concludes by stating, "By offering the Trinity as the foundation of human sociality, Christianity gives the only coherent basis for social theory."⁵²

In modern legal parlance, the Trinity provides public policy for social orderings by providing that both the individual and the group have innate equal value. The protection of each should be equally sought, and any bent towards the primacy of either should be avoided. The goal is to balance unity and diversity as it is balanced in the Trinity.

B. The Centrality of the Trinity in the Law

⁴⁸ Pearcey, *supra* note 30, at 133.

⁴⁹ *Id.*

⁵⁰ *Id.* at 138.

⁵¹ *Id.* at 146-47.

⁵² *Id.* at 133.

As stated, the image of the triune God in man provides *the* coherent foundation for man's social orders. Both the individual and common good are thus given their equal value. The tension that exists between unity and diversity in society can be reconciled as they are reconciled in the Trinity. This same species of tension exists in the law. The Trinity must be the beginning point to resolve this tension in the law as well. Murphy again describes the centrality of the Trinity, this time in the law, "In formulating a legal philosophy, the Christian must, of course, begin with the triune God [.]"⁵³ Can unity in law and diversity of jurisprudence be reconciled?

The three schools of legal philosophy that Berman addresses have variously define law. However, their definitional differences are due to their self-imposed limited viewpoint. As Berman advocates, however, a particular aspect of the image of the triune God is evident in each. Further exploring each of the three schools will provide more insight into how each school reflects one particular aspect of the image of the Godhead.

1. Positivism, Will, and the First Person of the Trinity

The Positivist school defines law as the will of the lawmaker.⁵⁴ Positivism reverted to REX LEX.⁵⁵ Positivism is primarily interested in what the law is and not what it ought to be.⁵⁶ Positivism firmly believes that law must be distinguished from justice to be understood as a science. Hans Kelsen, a prominent positivist, wrote in his exposition of the positivist theory, *The Pure Theory of the Law*, that justice connotes an absolute value and that it

⁵³ Murphy, *supra* note 24, at 1290.

⁵⁴ See John Austin, *The Province of Jurisprudence Determined*. Austin's command theory defined law as the signification of the desire of the sovereign.

⁵⁵ See Samuel Rutherford, *Lex, Rex* (1644). Rutherford's *Lex, Rex* brought him wide attention as a political theorist. The title of the book was purposely deceptive as it could mean the law and the prince or what was Rutherford's actual message which was that the law is king. Rutherford was espousing a political theory that the King was subject to the law. This was in contrast to the prevailing political theory that what the king willed was the law (i.e. REX LEX).

⁵⁶ "[Positivism] endeavors to answer the question, What is Law? But not the question, What ought it be?" Hans Kelsen, *The Pure Theory of Law Part I*, 50 L.Q.Rev. 474 (1934), *reprinted in* IS HIGHER LAW COMMON LAW? 76 (Jeffrey A. Brauch ed., 1999).

(justice) is an irrational ideal.⁵⁷ The idea of justice is only used as a carrot to manipulate the populace into obeying the will of those in power.⁵⁸ As far as validity of a law, positivism is only concerned with whether the process or procedure of law making was properly followed in the promulgation of the rule.⁵⁹ The positivists' dilemma lies in their desire to prove that laws are the sole property of will, while using rational thought and reason to do so. They wish to strip the study of law from "irrational" concepts such as justice, fairness, and eternal truths, so that a "rational" or "scientific" study of law can be accomplished. If law is only the unfettered will of the sovereign,⁶⁰ then their "rational" studies will lead them to frustration. Pure will does not have to be rational, or consistent, or follow rules of procedure.⁶¹ What is the purpose of seeking a rational study of the irrational?⁶² It is because the positivist theory seeks legitimacy. Thus, they value the fruit more than the tree that bore it by refusing to acknowledge that the tree is as relevant as the fruit. The tree, to the positivist, is a mere collateral issue that must be addressed separately from the fruit. Yet, the fruit of consistency and procedure, which the positivists seek, are picked from the tree of justice and fairness.⁶³

This is not to say that will does not play a role in what law is. The positivist may have unknowingly and unwillingly still tapped in to

⁵⁷ *Id.*

⁵⁸ Hans Kelsen, *The Pure Theory of Law Part II*, 51 L.Q.Rev. 517 (1935), reprinted in *IS HIGHER LAW COMMON LAW?* 76 (Jeffrey A. Brauch ed., 1999).

⁵⁹ *Id.* at 74.

⁶⁰ Oliver Wendell Holmes, Jr., explained that law was what was "in accordance with the will of the de facto supreme power in the community." To Holmes, a good law was one which reflected the "will of the dominant forces of the community." See ALBERT W. ALSCHULER, *LAW WITHOUT VALUES: THE LIFE, WORK AND LEGACY OF JUSTICE HOLMES* 58-59 (2000).

⁶¹ Pure will is only force which will inevitably lead to violence. As St. Thomas Aquinas explained, "A tyrannical law, through not being according to reason, is not a law, absolutely speaking, but rather a perversion of law...." Peter Kreeft, *A Summa of the Summa: The Essential Philosophical Passages of St. Thomas Aquinas' Summa Theologica Edited and Explained for Beginners* (1990), reprinted in *IS HIGHER LAW COMMON LAW?* 25 (Jeffrey A. Brauch ed., 1999).

⁶² Or said more specifically - Why then do positivist seek a rational study of the irrational will?

⁶³ Hans Kelsen himself ran when faced with his theory made reality. Kelsen fled Germany, when the will of the lawmaker in Nazi Germany declared Kelsen less than human. JEFFREY A. BRAUCH, *IS HIGHER LAW COMMON LAW* 69 (1999). Positive law gives no solutions to the great evils of society such as segregation or ethnic cleansing. There is only is and no ought.

the eternal, even the Eternal Being. They seek to find only the “is”, what they seek was given to Moses at the burning bush when the Eternal uttered His name, “I AM.”⁶⁴ HE IS. Is God then, like the positivist theory of law, just an unfettered will, acting on whim alone? Is there no ought to His is? God is a triune being and it is God the Father who is attributed with pure will. It is the Father’s will that must be done.⁶⁵ It is God’s will that should be sought.⁶⁶ Yet there are two more persons in the trinity.

This is somewhat the situation scene in the Newtonian model of God. In the Sir Isaac Newton’s view, God is best seen as “a personal God, but imperceptibly He becomes the God of deism, the all-knowing, all-good Creator who, after making the best possible universe and giving it ironclad rules of operation, withdrew into His heavens to watch His perfect piece of machinery tick away”⁶⁷.

Positivists, by treating the “ought” as distinguished from the “is” are left with a vacuum of purpose. They recognize this vacuum and seek to fill it with Utilitarianism, the social sciences, the great American pragmatism and convenience, or the theory of law and economics defining wealth as the greatest good to seek. Positivists would say social utility is good, or convenience is a good that is naturally sought, or wealth is a good thing to increase, or crime is a thing that must be deterred. Law thus becomes a useful means or instrument to accomplish these ends and judicial decisions are mere experimentations in social utility. If law is only force these attempts are meaningless and futile. Berman explains:

If law is merely an experiment...why should individuals or groups of people observe those legal rules or commands that do not conform to their interests? ... [F]ar more important than coercion in securing obedience to rules are such factors as trust, fairness, credibility, and affiliation. ... In the last analysis, what deters crime is the tradition of being

⁶⁴ *Exodus* 3:14

⁶⁵ *Mathew* 6:10; *Mathew* 26:39; *Mathew* 26:42; *Mathew* 7:21; *Mathew* 10:29; *Mathew* 12:50; *Mark* 14:36; *Luke* 22:42; *John* 6:40; *Galatians* 1:4.

⁶⁶ *Mathew* 6:10; *Mathew* 26:42; *John* 7:17; *Romans* 8:27; *Romans* 12:2; 1 *Thessalonians* 4:3; 1 *Thessalonians* 5:18.

⁶⁷ MAKERS OF THE MODERN MIND

law-abiding, and this in turn depends upon a deeply or passionately held conviction that *law is not only an instrument of secular policy but also part of the ultimate purpose and meaning of life*⁶⁸ (Emphasis added).

What positivists ultimately seek is purpose or validity for law's existence.

2. The Natural-law, Reason, and the Second Person of the Trinity

The natural law states that some laws are basic and fundamental to human nature and are discoverable by human reason.⁶⁹ Professor J. Budziszewski, professor of government and philosophy at the University of Texas, would add that the natural law is not only right for all, but at some level known to all – the universal common sense of the human race.⁷⁰

Many times natural law theory is disparaged as a religious doctrine and therefore discarded in legal discourse. However, natural law has its roots in Greek philosophy. Aristotle states, “There is a natural form of political justice which has the same validity everywhere and does not depend upon acceptance.”⁷¹ In addition, the Roman jurist Cicero placed natural law in the context of reason: “True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting.” He further explains, “And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and at all times.”⁷² St. Thomas Aquinas when speaking of the natural law stated that, “the light of natural reason, whereby we discern what is good and what is evil, which is the

⁶⁸ Berman, *supra* note 1, at 1.

⁶⁹ Encyclopedia information about natural law on Answers.com. The Columbia Electronic Encyclopedia, Sixth Edition Copyright © 2003 by Columbia University Press. Published by Columbia University Press, <http://www.answers.com/topic/natural-law>(last visited Dec. 30, 2006).

⁷⁰ J. BUDZISZEWSKI, WHAT WE CAN'T NOT KNOW 15 (2003).

⁷¹ See Aristotle, *Politics*, bk. IV, ch. 11, at 157-60 (Barker trans., 1995), reprinted in *THE HISTORY, PHILOSOPHY, AND STRUCTURE OF THE AMERICAN CONSTITUTION* 5-7 (Douglas W. Kmiec, et al., 2nd ed. 2004).

⁷² Marcus Tullius Cicero, *De Legibus* bk. III, at 211 (Clinton Walker Keyes trans., 1928), reprinted in *THE HISTORY, PHILOSOPHY, AND STRUCTURE OF THE AMERICAN CONSTITUTION* 13 (Douglas W. Kmiec, et al., 2nd ed. 2004).

function of the natural law, is nothing else than an imprint on us of the Divine light.” The common law tradition of England was held to be a reflection of the natural-law. Professor Scott Pryor, Associate Professor of Regent University Law School writes, “At one point in history, the common law itself came to have an authoritative voice. The common law was not simply the object of study, it was the historically instantiated expression of a higher law.”⁷³ The natural law tradition has also played a major role in the development of American legal thought. The Declaration of Independence is widely held as one of the most famous and important legal declarations of the natural-law. The Declaration of Independence calls on the authority of the law of nature and nature’s God to declare the infant nation independent from tyranny. It speaks of self-evident truths, and unalienable rights endowed by the Creator, and of men being created equal.

But the natural law tradition did not die with the founding Fathers. The Civil Right’s movement found its “ought” to the positive laws “is” in the natural-law. Martin Luther King, Jr., in “Letter from Birmingham Jail” explained why civil disobedience was appropriate, “There are just and unjust laws...An unjust law is no law at all...an unjust law is a human law that is not rooted in...natural-law. ...So I can urge men to disobey segregation ordinances because they are morally wrong.” Natural law is the “ought” that the positivists seek to distinguish in their search for the “is.” Therefore, although the will of the state is segregation, Martin Luther King, Jr., can say with authority, “it ‘ought’ not to be” and therefore it is no law at all and there is “legal” right to disobey the will of the state; and the posited law of England “is” taxation without representation, but Jefferson can write, “it ‘ought’ not to be” for it violates a precept of the natural law which makes English tax on the colonies no law at all and may be “legally” disobeyed. The idea of basic human rights is founded in the natural law tradition and not in the idea that positive law is the only true law.

Is this to say that positive law theory is incorrect, and we only need natural law in our society? Not at all. In fact, natural law itself

⁷³ C. Scott Pryor, *The Third National Conference of the Association of the Religiously Affiliated Law Schools: Mission Possible: A Paradigm for Analysis of Contractual Impossibility at Regent University*, 74 St. John's L. Rev. 691, 707 (2000).

dictates the need for a positive-law. Jeremy Waldron, in his essay *THE IRRELEVANCE OF MORAL OBJECTIVITY* (1962),⁷⁴ explained with regards to so-called “legal positivism” that:

[L]aw can be understood in terms of rules of standards whose authority derives from their provenance in some human source, sociologically defined, and which can be identified as law in terms of that provenance. Thus statements about what the law is – whether in describing a legal system, offering legal advice, or disposing of particular cases – can be made without exercising moral or other evaluative judgment.⁷⁵

Almost 800 years before Waldron, St. Thomas Aquinas answered the question whether promulgation is essential to a law. He first answered that promulgation or posited law is necessary for notification and for the law “to obtain its force.” He goes on to summarize what is now revered as the most complete definition of law, “[Law is] an ordinance of reason for the common good, made by him who has care of the community, and promulgated.” Waldron and Aquinas address the issue for the need of promulgation, both to notify the public and for the law to have enforcement value. Therefore, positive law serves a requirement of justice from the natural-law.

The natural law is often criticized in that it relies too heavily on reasoning. The criticism lay in that these universal truths or laws that the natural law holds to exist, cannot be known at some level by all or even discoverable through reason alone. As opposed to positivists, natural law theorists do not deny the moral or supernatural origin of law. However, many who believe in eternal⁷⁶

⁷⁴ Waldron, Jeremy in George, R.P. (ed.) *Natural Law Theory: Contemporary Essays* (Clarendon Press, Oxford, 1992), 160, *cited with authority in* Olsen, Henrik P., *Law in its Own Right* (Hart Publishing, Oxford, 1999), 29-30.

⁷⁵ *Id.*, at 29-30.

⁷⁶ St. Thomas Aquinas when answering, “Whether there is an Eternal Law? ...a law is nothing else but a dictate of practical reason emanating from the ruler who governs a perfect [complete] community... the world is ruled by Divine Providence...the whole community of the universe is governed by Divine Reason ... and since the Divine Reason’s conception of things is not subject to time but is eternal ... therefore it is that this kind of law is eternal.” Aquinas, *supra* note 50, at 21. Augustine however goes on to explain that things can be know in two ways,

and divine law,⁷⁷ may deny the capacity for man to reason sufficiently to discover these truths on their own. What role, if any, does reason play in the eternal? If the positivists unknowingly pointed to the will of the Father, does natural law also point to reason in the Godhead?

Proverbs chapter eight commends wisdom.⁷⁸ In verses 22-31, wisdom is personified and it is universally understood as a description of Christ.⁷⁹ Wisdom is thus personified as the Christ. The eternal wisdom, understanding, knowledge, perfect and holy reason, is embodied in the second person of the Trinity. Verse 23 explains that this Wisdom was established from everlasting, at the beginning, and that He was the master workman of creation (verse 30). It is well understood that this is what the Apostle John alluded to in the first verses of his Gospel.⁸⁰ Jesus Christ himself refers to this passage as he prays to his Father right before he is betrayed.⁸¹ It is a mystery of the gospel. Mathew Henry in his commentary of Proverbs eight, describes this mystery, "All divine revelation is the revelation of Jesus Christ, which God gave unto him, and here we are told who and what he is, as God, designed in the eternal counsels to be the Mediator between God and man." Further, "Wisdom explains herself (v. 23): I was set up from everlasting. The Son of God was, in the eternal counsels of God, designed and

either in and of themselves or through their effects. Since we cannot know God in and of Himself, we can not know the full extent of the eternal law, only the effects of it. *Id.* at 25

⁷⁷ "The divine law is that part of the eternal law which God made known by special revelation." FN 257, *Id.* at 23.

⁷⁸ The chapter begins with, "Does not wisdom call And understanding lift up her voice?" The whole chapter is a call from Solomon to humanity to search and heed the call of wisdom. *See Proverbs 8.*

⁷⁹ "[Proverbs 8:22-31] is not meant of a mere essential property of the divine nature, for Wisdom here has personal properties and actions; and that intelligent divine person can be no other than the Son of God" Matthew Henry, *Matthew Henry Complete Commentary: Commentary on Proverbs 8*, at <http://bible.crosswalk.com/Commentaries/MatthewHenryComplete/mhc-com.cgi?book=pr&chapter=008> (last visited Dec. 28, 2005).

⁸⁰ "In the beginning was the Word, and the Word was with God, and the Word was God. He was in the beginning with God. All things came into being through Him, and apart from Him nothing came into being that has come into being." *John 1:1-3*

⁸¹ "Now, Father, glorify Me together with Yourself, with the glory which I had with You before the world was." *John 17:5*

advanced to be the wisdom and power of the Father... both in the creation and in the redemption of the world.” Therefore Christ, (wisdom or perfect reason personified), is the mediator between man, and the Father’s perfect holy will. The Father himself declares the link between reason and redemption in Isaiah, “Come now, and let us reason together,” Says the LORD, “Though your sins are as scarlet, They will be as white as snow; Though they are red like crimson, They will be like wool.”⁸² The Father invites man in Isaiah to reason with him. In Proverbs He cries out to Man to heed the call of wisdom. The Father is saying, “Listen to my son, in whom I am well pleased.”⁸³ What does the son testify about the Father? “Let your will be done.”⁸⁴ The Apostle Paul also addresses the link between Christ, Wisdom, Mediator, and God’s will in his first letter to the Corinthians in chapter one verse 21, “For since in the wisdom of God the world through its wisdom did not know him, God was pleased through the foolishness of what was preached to save those who believe. Jews demand miraculous signs and Greeks look for wisdom, but we preach Christ crucified: a stumbling block to Jews and foolishness to Gentiles, but to those whom God has called, both Jews and Greeks, Christ the power of God and the wisdom of God,” then in verse 30, “It is because of him that you are in Christ Jesus, who has become for us wisdom from God—that is, our righteousness, holiness and redemption.” Jesus Christ, the wisdom of God, and man’s redemption. The Father and the Son unite will and reason.

3. Historical Jurisprudence, Memory, and the Third Person of the Trinity

The historical school of law arose as a separate theory of jurisprudence in the 19th century, mainly in Germany.⁸⁵ The historical school holds that “legal institutions of a people are, like their art or music, an indigenous expression of their culture, and

⁸² *Isaiah* 1:18.

⁸³ *Mathew* 17:5. It is also important to note that it is through Christ that the world is created. It is through Christ that the world was created and redeemed. After creation, the Father is pleased with the work of his son and declares it to be good and at the work of redemption the Father declares his completed pleasure in satisfaction in the redeeming work of his son.

⁸⁴ *Mathew* 6:10; *Mathew* 26:42.

⁸⁵ Berman, *supra* note 2, at 304.

cannot be externally imposed.”⁸⁶ The term *Volksgeist* is frequently used when speaking of the historical school which translates in English to the “Spirit of the People.”⁸⁷ Cultural norms that develop over time are then the ultimate root of law for those who adhere to a historical jurisprudence. Law is simply another expression of a people’s particular set of values that they wish to be enforced by the sovereign. In this context the historical school was closely tied to a sense of nationalism. The historical school felt it a duty to fight against the encroachment of both positive and natural law theory. In Germany, Friedrich Karl Von Savigny, set forth a theory of historical jurisprudence as a response to a call in his country to codify the law.⁸⁸ Savigny felt that a codified positive law would do away with the national consciousness; the distinct identity of a people would be at grave risk and at the mercy of the law-giver. Savigny also felt that natural rights were the product of a “shallow philosophy” and the natural law theory as a whole was “infinitely arrogant.”⁸⁹ Only through the study of history, historical jurisprudence theorists believed, could an appropriate study of law be accomplished.

The historical school has much in common with the positivist school. There are only two relevant differences between the two legal philosophies -- the definition of a sovereign and the validity of a law. Though they may take slightly different roads they arrive at the same “is” devoid of an “ought.” The sovereign in the historical school is the people. It is the people’s collective historical will that determines what the law is. Though instinctively in the West we trust the will of the people above the will of a central government, the spirit of the people is just as capable of depravity as any sovereign. The historical school places the validity of a law on whether it arises from the people as part of the accepted norm of that particular society. The necessary process for validity may differ from that of the positivist school, but it remains a process that defines the validity of a law. History alone, at best, can teach us how things came to be as they are, but history alone does not provide a standard for an “ought.”

⁸⁶ *Id.*

⁸⁷ *Id.* at 299.

⁸⁸ *Id.* at 298

⁸⁹ *Id.*

Is this to say that the historical school was absolutely irrelevant in its observations of the role that history plays in the development of law? Does the historical school also point to the triune God?

As stated above, St. Augustine also attributes memory as a quality of the triune God.⁹⁰ Man, created in the image of the triune God, is a creature of memory as well. This is more of an inference of reason, logic, and of simple observation than of biblical exegesis. St. Augustine's doctrine that will, reason, and memory as the interlocking qualities of the mind of God and that they directly correspond to the three persons of the Trinity, leaves a remainderman of memory to the Holy Spirit. The case to attribute "memory" as a specific function of the Holy Spirit is implicit, for it has very little direct or explicit biblical support.⁹¹

The Holy Spirit plays many functions. Thus it is difficult to categorize it specifically to memory. The Holy Spirit makes the will of the Father known.⁹² He also provides a renewed mind capable of better reasoning. As it pertains to memory, the Holy Spirit does, however, reveal the future.⁹³ He reminds of the words of Christ.⁹⁴ He directs in the ways of godliness, directs decision-making.⁹⁵ He guides.⁹⁶ He appoints leaders.⁹⁷ And He directs where to go and where not to go.⁹⁸ However, these examples only point to the much larger doctrine of God's providence. For a history to have an

⁹⁰ Berman, *supra* note 5, at 8.

⁹¹ In contrast to what we have found with the Father and Son, it is a constant trait that "will" is attribute to God the Father., and there is ample explicit support for "reason" to be attributed to directly to the Son. However, the trait of "memory" corresponding directly and specifically individually to the Holy Spirit is more implicit.

⁹² 1 *Corinthians* 2:10,13.

⁹³ *Luke* 2:26; *Acts* 21:11.

⁹⁴ *John* 14:26.

⁹⁵ *Acts* 15:28. Decision making can be also properly attributed to reason, however a decision is made at a point in time, therefore there are past and future considerations. The Holy Spirit can direct a decision that may seem contrary to reason, but because of His omniscience, He may properly direct decision making to fulfill the will of God for the future.

⁹⁶ *John* 16:13.

⁹⁷ *Isaiah* 48:16; *Acts* 13:2; 20:28.

⁹⁸ *Acts* 8:29; 10:19,20; *Acts* 16:6,7.

“ought,” it must be providential. Prof. Berman defines history more completely when he writes,

When we say “history” we mean something more than chronology; we mean not merely change but patterns of change, implying direction in time, which in turn implies either purpose or fate. We mean either Hebrew linear history from Creation to the coming of the Messiah, or Greek cyclical history, or Enlightenment progress, or Christian history of fall and rise, decline and regeneration, death and rebirth. “History” does not mean “the past,” nor does it mean “time” in some abstract Kantian sense. It means, rather “the times,” and especially “our times,” including times which separate our past times from our future times. It inevitably contains a prophetic element.⁹⁹

Prophecy *is* a gift of the Holy Spirit,¹⁰⁰ but the work of Providence is not necessarily attributed directly to the person of the Holy Spirit anywhere explicitly in Scripture. By inference, it is the Holy Spirit that works in the hearts of man, and directs his paths, and if He does so individually, it would seem proper to believe that He does so collectively as well. The idea of the “fullness of time” is a theme of the gospel.¹⁰¹ God providentially, by inference through the Holy Spirit, brought Joseph to Egypt to save the sons of Israel. By Providence Rahab met and hid the spies in Jericho, to usher the children of Israel into the land flowing with milk and honey. By Providence the vastness of the Roman Empire was used to spread the gospel to spur the growth of the early church. Providence is a common theme throughout scripture, and it would not be a huge leap to state, as Pope John Paul, II, that the “Holy Spirit works in all creation and history.”¹⁰² History becomes, in fact, another means by which the Eternal, existing outside of time, becomes as one of us, existing within the constraints of time. Time itself becomes a means of communication between God and man.

⁹⁹ Berman, *supra* note 2, at 309.

¹⁰⁰ 1 *Corinthians* 14:1.

¹⁰¹ *Galatians* 4:4; *Mark* 1:15

¹⁰² Holy Father's General Audience Address of August 12, 1998.

Therefore, history alone only provides, at best, a retelling of the past. Providential history provides much more. It explains the happenings of the past to give purpose and meaning to today, and direction and guidance for the future – including in the area of law.

4. Unity and Diversity, and Integrative Jurisprudence

The Trinity has provided us with a coherent foundation for the reconciliation of positivism, natural-law, and historical jurisprudence. Just as there are three distinct persons in the Trinity, there are three distinct aspects to law. However, the Godhead is more than just the sum of its parts. It is the relationship between the three distinct persons that make the Godhead – He is one being. And it is the relationship between positivism, natural-law, and historical jurisprudence that unite them. The three schools can be identified distinctly, and each has its distinct value, but they inevitably interact. They *must* interact because the imprint of the triune God is in them. The Fall has made it seemingly impossibly difficult to give each school its value as each school fights for primacy. However, the image of the triune God resurfaces as the three interact in practice. The law then becomes something more than the sum of the individual parts of the three schools, it is their interaction, their relationship, which will unite them into one coherent philosophy of law. This is an integrative jurisprudence that will result in a complete jurisprudence – unity and diversity in law as in the Trinity. May the prayer of Jesus to His heavenly Father in the Garden of Gethsemane be echoed for the three schools, “that they may be one even as We are.”¹⁰³

For this to happen there needs to be more than a realization and understanding of the image of the triune God within man and man’s social orderings. Because of the Fall, a renewing of the minds is needed. Romans chapter twelve, “And do not be conformed to this world, but be transformed by the renewing of your mind, so that you may prove what the will of God is, that which is good and acceptable and perfect.”¹⁰⁴ The New International Version translates the passage as, “Do not conform any longer to the pattern of this world...” The pattern of the world is to separate the aspects of law and to give one particular aspect primacy over the others.

¹⁰³ *John* 17:11.

¹⁰⁴ *Romans* 12.

The reconciliation of the three schools requires a renewing of the *mind* to know the *will* of the Father -- this is the work of the Holy Spirit.¹⁰⁵ Here again will, reason, and memory are working together again. For an integrative jurisprudence to come into being, the Holy Spirit must renew the mind to be able to know and apply the will of the Father.¹⁰⁶

In final analysis, the Scriptures provide ample foundation for Berman's application of St. Augustine's description of the character of the triune God. The Trinity provides a model for unity and diversity in human social orders. This model of unity and diversity applied to the three schools of jurisprudence provide a coherent foundation for their reconciliation and integration.

III. SCRIPTURAL EXAMPLES OF LEGAL OR GOVERNMENTAL SYSTEMS THAT FOLLOW AN INTEGRATIVE JURISPRUDENCE

The Scriptures have provided a foundation for an ecumenical integrative jurisprudence. They also provide an application to an integrative jurisprudence as it relates to law and government. The author of Hebrews teaches that Jesus is a High Priest in the order of Melchizedek.¹⁰⁷ The priesthood in the order of Melchizedek is established in Genesis and the Psalms.¹⁰⁸ The account in Genesis begins with Abraham returning from a battle when Melchizedek the King of Salem meets him.¹⁰⁹ Abraham then proceeds to offer his tithes to Melchizedek.¹¹⁰ Melchizedek is described as being a king as well as a priest of God Most High. Later, in the Psalms and in Hebrews, it is said that Melchizedek had neither beginning nor end, thus resulting in his priesthood being eternal. Melchizedek is known

¹⁰⁵ 1 *Corinthians* 2:10,13.

¹⁰⁶ The application of the will with a renewed mind, occurs at a particular point time in a particular situation, and in a manner that transcends that particular moment. May the Father's "will be done, On earth as it is in heaven" *Mathew* 6:10.

¹⁰⁷ *Hebrews* 7:1-10.

¹⁰⁸ *Genesis* 14; *Psalms* 110:4.

¹⁰⁹ Melchizedek offers Abraham bread and wine, coincidentally the sacraments of the Lord's Supper. *Genesis* 14:18.

¹¹⁰ *Genesis* 14:20.

as a type of Christ.¹¹¹ Jesus will return as King of Kings,¹¹² He is the eternal High Priest,¹¹³ and His kingdom will endure forever.¹¹⁴

Here again we see Berman's integrative jurisprudence. Jesus as King relates to a political or state authority. He has been given all authority in heaven and on earth.¹¹⁵ He has all authority to promulgate law. He is the lawmaker, the lawgiver. It is His will that rules. He is the positivist. He is also the High Priest.¹¹⁶ He has all moral authority. He is Justice. He is Truth.¹¹⁷ He is Wisdom.¹¹⁸ He is the embodiment of the natural law. Finally, His rule is eternal, from beginning to end, yes, the Alpha and Omega.¹¹⁹ It is His Story. He is History. Integrative jurisprudence is embodied in one man, the God-man, Jesus Christ.

Is this not what humanity yearns for? Not a coercive state ruling by force, not a moral majority ruling under the threat of moral condemnation, and not a blind nationalism ruling under the guise of popular opinion. Berman explains:

With the Enlightenment, Western legal philosophers sought a new ultimate authority. Some found that ultimate authority in politics, others found it in morality, still others found it in history. The positivists say that the ultimate source of law is the will of the lawmaker and its ultimate sanction is political compulsion: they deify the state. The naturalists say that the ultimate source of law is reason and conscience and its ultimate sanction is moral condemnation: they deify the mind. The historicists say that the ultimate source of law is national character, the historically developing traditions of the people, what in the United States is sometimes called the unwritten constitution, and that

¹¹¹ See *supra* note 95.

¹¹² *Revelation* 17:14.

¹¹³ *Hebrews* 7:1-10.

¹¹⁴ *Isaiah* 9:7.

¹¹⁵ *Daniel* 7:14.

¹¹⁶ *Supra* note 101.

¹¹⁷ *John* 14:6.

¹¹⁸ *Proverbs* 8.

¹¹⁹ *Revelation* 1:8.

its ultimate sanction is acceptance or repudiation by
the people: they deify the people, the nation.¹²⁰

The ultimate source humanity seeks is Christ. He alone balances the equation. The fullness and completion of Berman's theory will not be realized until Christ's return and reign on earth. It is then our present task, as we wrestle with the legal questions of the day, as we continue to form our government, as we interpret our written constitution, and so forth, that we do so by heeding Berman's call to an integrative jurisprudence. This is a story of reconciliation, of Law and Religion, of Church and State, of Politics and Morality, of Will and Reason, all tied together with a providential view of history. We do so knowing that our efforts may point towards the ultimate reconciliation, which is between God and Man.

An integrative jurisprudence is not only a call to the legal community; it is a call to all of humanity and humanity's institutions – the individual, the family, the church, and the state. An integrative jurisprudence reflects the image of the Triune God in legal philosophy, but it is useful in understanding all of man's institutions since they all have the image of God in them. The chart below is an attempt to organize how the image of the triune God and an integrative jurisprudence reemerges in all of man's societal institutions.

Jesus Christ, High Priest in the order of Melchizedek	King	Priest	Eternal
Integrative Jurisprudence (Professor Harold Berman)	Positivism	Natural law	Historical jurisprudence
The Mind of God (St. Augustine)	Will	Reason	Memory
Branches of Government	Executive	Legislative	Judicial

¹²⁰ Berman, *supra* note 2, at 293.

Societal Institutions	State	Church	Family and the Individual
Spheres of Authority	Political	Moral	Cultural
Family (cornerstone of society)	Father	Mother	Children
The Individual (made in the image of God)	Will	Reason	Memory

In each of these social orders man's fallen nature creates angst for primacy. Again, the Trinity provides the only coherent foundation to bring each column into harmony with its members to form a unified entity. We submit that tomes could be filled applying the foundation of the Trinity to each of these social orders. An aside that could also fill volumes is how exactly the Fall effected the image of the triune God in man and the purpose and role of man's societal institutions during this time before the restoration of the created order.¹²¹ However, would these principles of unity and diversity function under any understanding of God? Under what particular worldview could these principles actually work? We submit that non-Christian and Christian jurisprudential positions, juxtaposed in a pluralistic society, can and have led to conflicts of culture, which make an integrative jurisprudence difficult to establish. Both must be understood in such circumstances, but we will endeavor to show how the Christian Theistic worldview provides coherence and sensibility.

¹²¹ See, F.C. Coplestone, *Aquinas* 237 (1955), *reprinted in* THE HISTORY, PHILOSOPHY, AND STRUCTURE OF THE AMERICAN CONSTITUTION 13 (Douglas W. Kmiec, et al., 2nd ed. 2004), for a discussion concerning the roll of the image of God and the fallen nature of man in government. "It is a mistake to think that government exists simply in order to keep the peace and punish evil doers. According to Aquinas, government would be required even if there were no evildoers and even if no one was inclined to break the peace. St. Augustine had been inclined to speak as though the State were a result of the Fall of man and as though political authority existed primarily because fallen human beings stand in need of a coercive power to restrain their civil tendencies and to punish crime. But this was not at all Aquinas's point of view. "Man by nature is a social animal. Hence in a state of innocence (if there had been no Fall) men would have lived in society. But a common social life of many individuals could not exist unless there were someone in control to attend to the common good." *Id.*

IV. INTEGRATIVE JURISPRUDENCE AND A CHRISTIAN THEISTIC WORLDVIEW

In this final section this response will address three final points. First, the concept of worldview itself reflects the image of the triune God in every human being (theist, atheist, and everyone in between) will be discussed. Second, how a Christian Theistic worldview is necessary to fully understand and properly apply an ecumenical integrative jurisprudence. And finally, we will address how the Trinity again provides an answer to the challenge of how to take a concept so rooted in Christian theism and take it to a pluralistic emerging global community

A. The Centrality of the Trinity in Worldview

James W. Sire (Ph.D., Univ. of Missouri), in his seminal work, *The Universe Next Door: A Basic Worldview Catalog*, defines worldview as:

[A] commitment, a fundamental orientation of the heart, that can be expressed as a story or in a set of presuppositions (assumptions which may be true, partially true, or entirely false) which we hold (consciously or subconsciously, consistently or inconsistently) about the basic constitution of reality, and that provides the foundation on which we live and move and have our being.¹²²

Sire states that worldview is distinguishable from a personal philosophy or an adopted theology, which very few people would be able to define much less live by consistently. But, rather, everyone has a worldview. It is the framework in which individuals actually operate in their everyday lives. Actions reflect the worldview, which may or may not be in line with a professed philosophy or theology.¹²³ The fact that everyone has a worldview is a product of humanity being created in the image of God. Every human being has the imprint of God set inside of him. A further exploration of the definition of worldview will provide correlation between the will,

¹²² JAMES W. SIRE, *THE UNIVERSE NEXT DOOR* 17 (4th ed. 2004).

¹²³ *Id.* at 16.

reason, and memory that make up the image of the triune God in man.

Sire states that a worldview provides the “rock-bottom” answers to seven specific questions. These questions in and of themselves, I submit, are reflective of the Triune God.

1. Will, and the “Is” Questions

The first four of Sire’s questions deal with ultimate reality. Simply stated the questions are, “What is?” Specifically:

1. What is prime reality – the really real? Sire, “To this we might answer God, or the gods, or the material cosmos. Our answer here is the most fundamental. It sets the boundaries for the answers that can consistently be given to the other six questions”¹²⁴

2. What is the nature of external reality, that is , the world around us? Sire, “[Do] we see the world as created or autonomous, as chaotic or orderly, as matter or spirit...”¹²⁵

3. What is a human being? Sire, “we might answer: a highly complex machine, a sleeping god, a person made in the image of God, a naked ape.”¹²⁶

4. What happens to a person at death? Sire, “we might reply: personal extinction, or transformation to a higher state, or reincarnation, or departure to a shadowy existence on “the other side.”¹²⁷

All four of these questions seek to ultimately find what “is.” What are the naked facts? Is there a God? If yes, what kind of god *is* it? *Is* it one or many? *Is* it personal or impersonal? Is the material world the only reality? Is it created or evolved? Is it orderly or chaotic? Is a human a highly evolved organism? Is a human a creature created

¹²⁴ *Id.* at 20.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

in the image of God? What is a human after his death? Is a dead human just decomposing matter? Is a dead human now transcending into a spiritual reality?

These are all “is” questions. They are simply defining how the world “is.” They are positivist in nature. They are “will” questions because that is how the world has been “willed” into order, whether by God or by nature, depending on your answer to the questions. Finally, these questions are also reflective of the first person of the Trinity. Things are the way they are because that is what the Father willed it to be. He is the ultimately reality. He created the “world around us.” He created man with an eternal spirit to commune with Him in eternity after life on earth has ended for him. Therefore, the first four of Sire’s questions can be organized to correlate to the “is” of the Father’s will.

2. Reason, and the “Ought” Questions

The next two questions deal with reason, ought, and correlate to the second aspect of the Trinity. They are:

5. Why is it possible to know anything at all? Sire, “Sample answers include the idea that we are made in the image of an all-knowing God or that consciousness and rationality developed under the contingencies of survival in a long process of evolution.”¹²⁸

6. How do we know what is right and wrong? Sire, “Again, perhaps we are made in the image of a God whose character is good, or right and wrong are determined by human choice alone or what feels good.”¹²⁹

These questions deal with what can be known. What can be reasoned? What are the “oughts” derived from knowledge or reason. These are the questions that natural law addresses. As stated above, wisdom is personified in the book of Proverbs as the Christ.

¹²⁸ *Id.*

¹²⁹ *Id.*

Jesus is the wisdom of God. When one puts on the mind of Christ is when the will of the Father is known.

3. Memory, and the History Question

Finally, the last question addresses history:

7. What is the meaning of human history? Sire, “To this we might answer: to realize the purposes of God or the gods, to make a paradise on earth, to prepare for a life in community with a loving and holy God...”¹³⁰

Memory is the third character of the triune God and is represented here by the final question that needs to be addressed to assess a worldview. It is the question that historical jurisprudence attempts to address. As stated above, implicitly, it is the Holy Spirit that directs the paths of individuals and peoples, to bring things into accordance with the will of the Father.

4. Concluding the Centrality of the Trinity in Worldview

The image of the triune God reemerges again, this time in Sire’s definition of worldview. As stated by Sire, everyone has a worldview, and as stated in the Scriptures everyone has the image of God in them. It is inescapable. The fall has tainted everyone’s worldview, but the concept remains ready to be awakened and brought in reconciliation with its created purpose.

B. Christian Theism Worldview Necessary to Apply an Ecumenical Integrative Jurisprudence

Sire answers the seven questions and thus defines Christian Theism in the following manner:

1. God is infinite and personal (triune), ..., and good.¹³¹
2. God created the cosmos ex nihilo to operate with a uniformity of cause and effect in an open system¹³²
3. Human beings are created in the image of God and thus possess personality, self-transcendence,

¹³⁰ *Id.*

¹³¹ *Id.* at 26

¹³² *Id.* at 29

intelligence, morality, gregariousness and creativity.¹³³

4. Human beings can know both the world around them and God himself because God has built into them the capacity to do so and because he takes an active role in communicating with them.¹³⁴

5. Human beings were created good, but through the fall the image of God became defaced...¹³⁵

6. For each person death is either the gate to life with God and his people or the gate of eternal separation...¹³⁶

7. Ethics is transcendent and is based on the character of God as good (holy and loving)¹³⁷

8. History is linear, a meaningful sequence of events leading to the fulfillment of God's purposes for humanity.¹³⁸

When Sire describes God's personal nature under Christian Theism, Sire's remarks are in line with Percy's unity and diversity statement on the Trinity. Sire states, "He [God] is a unity, yes, but a unity of complexity."¹³⁹ This also is in line with the integration of the three schools – though they are diverse and complex there can be unity because it is a reflection of the image of God.

Sire also defines Christian Theism as belief that God is good. As in God is the very definition of good. Under Christian Theism goodness is defined in two ways, Sire states, "through holiness and through love."¹⁴⁰ Sire explains that, "first that there is an absolute standard of righteousness (it is found in God's character) and, second there is hope for humanity (because God is love and will not abandon his creation)"¹⁴¹ This is inline with Berman's writing on the relationship between law and love. It is also very much in line with

¹³³ *Id.* at 31

¹³⁴ *Id.* at 34

¹³⁵ *Id.* at 37.

¹³⁶ *Id.* at 40.

¹³⁷ *Id.* at 41.

¹³⁸ *Id.* at 42.

¹³⁹ *Id.* at 27.

¹⁴⁰ *Id.* at 29.

¹⁴¹ *Id.*

Berman's hope that there can be a reconciliation between the three schools. Even if the three schools have fallen, God will not abandon His creation and provide the means for reconciliation.

Sire also states that God's created universe is "open." Meaning that history is not programmed. Berman's definition of History is also in line with the Christian Theistic worldview in that although History is providential, man is still open to make decisions. He can affect history. Man's actions have consequences, such as when Adam and Eve ate of the apple, yet God still providentially works within this open environment of history to provide guidance and purpose for the future.

Sire states that in Christian Theism God wants to make Himself known to man, and He uses both general and special revelation.¹⁴² Christian Theism also states that the second person in the Trinity came down and lived among men. Sire describes reason and knowledge in men, "God's own intelligence is this the basis of human intelligence. Knowledge is possible because there is something to be known (God and His creation) and someone to know (the omniscient God and human beings made in his image)."¹⁴³ Man is fallen and therefore his understanding has been "tainted" but Christ provided the redemptive means to bring "humanity on the way to restoration of the defaced image of God...substantially healing in every area."¹⁴⁴

Finally, Sire states, "History is not meaningless... it is a form of revelation"¹⁴⁵ for those with a Christian Theistic worldview. Berman is in line with this excellent analysis of what history is in its full meaning and understanding of history when he states that history has "inevitably prophetic element."

In conclusion Berman's ecumenical integrative jurisprudence makes sense only under a Christian Theistic worldview. Under this worldview, there is a triune personal God. This God wants to make Himself know to man, who is His creation that bears his image and likeness. Because of the image of God on man, man reflects many

¹⁴² *Id.* at 35.

¹⁴³ *Id.* at 42.

¹⁴⁴ *Id.* at 39.

¹⁴⁵ *Id.* at 43.

of the attributes of God, such as will, reason, and memory. Because of man's fallen nature these attributes are tainted. However God himself has provided the means of restoration back to the fullness of the image and likeness of God. History is where all this is played out, and history itself becomes part of God's communication with man.

*C. The Centrality of the Trinity in Addressing the Legal Needs of the
International Community*

How can a jurisprudence that is so drenched in a Christian theistic worldview be relevant and effective to a post-modern society in the West and a pluralistic international community? Berman's concluding call is for Christian legal leadership to embrace an integrative ecumenical Christian jurisprudence if they are to make the most of this unique time in world history in which "humanity is for the first time living a single history."¹⁴⁶ For the first time since perhaps the Tower of Babel,¹⁴⁷ God's message in history is singular to all of humanity. Before, each nation or region had its own distinct history that God used as part of His revelation and prophetic element specific to those people. But now all of humanity is living one history. Providential history teaches that God is sovereign, yet He has left the universe open. He has been moving to make the global community emerge. However, the future is not programmed, and human actions affect the future. How does a jurisprudence founded on the Trinity respond to this opportunity?

The Trinity provides 1) a public policy of unity and diversity, and 2) a model to reconcile the three schools of jurisprudence. Adherents to an Integrative Jurisprudence can go forward boldly with these two foundational truths because all of humanity and all human social orders bear the image of God. The individual good versus the common good is a real, tangible, practical issue that is as relevant today as ever. The Trinity provides value for both, and a call to balance those two interests. An integrative jurisprudence provides a model where positive law and natural law reconciled actually strengthen each other by giving law both structure and the moral

¹⁴⁶ See *supra* note 17.

¹⁴⁷ *Genesis* 11:1.

weight needed to garner the confidence in law that has been lost.¹⁴⁸ It is necessary that Christians provide coherent, relevant, solutions to the international community as it develops into a system of world law. The move toward world law is inevitable. Without the Trinity as a foundation, world law will be grasping for solution as the rights of the individual and the need of the common good will be fighting for primacy, only to surely cause great suffering in the future. It is necessary to sit at the table and to address issues of public policy and to foster an interaction between the three schools of jurisprudence.

Berman believes that the world community and the West can benefit each other as they engage in the development of a world legal tradition.¹⁴⁹ First, Berman states, the world can benefit from the West's "concept of ongoing evolving legal tradition."¹⁵⁰ This concept is a "conscious historical evolution of law over generations and centuries."¹⁵¹ A developing world legal tradition must be autonomous from any political system, so that it can endure beyond any great revolution.¹⁵² Secondly, Berman believes that as the West engages the world, the West will be challenged to "rediscover its religious roots and its threefold source in . . . politics, morality, and history."¹⁵³

Berman cites many examples of the spontaneous emergence of world law.¹⁵⁴ This includes mercantile law,¹⁵⁵ sports law,¹⁵⁶ environmental law,¹⁵⁷ world intellectual property rights,¹⁵⁸

¹⁴⁸ Berman, *supra* note 2.

¹⁴⁹ Harold J. Berman, *The Edward Douglas White Lectures on Citizenship—The Western Legal Tradition in a Millennial Perspective: Past and Future*, 60 *La. L. Rev.* 739, 762 (2000).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Berman, *supra* note 5, at 12-14.

¹⁵⁵ *See Id.* at 12-13. (international recognition of negotiable bills of lading and letters of credit developing out of centuries of interaction between the transnational community of merchants, bankers, carriers, underwriters, and their lawyers).

¹⁵⁶ *See Id.* at 13. (200 different sports organized at a world level with an Arbitration Court holding jurisdiction to hear disputes arising out of Olympic competition).

¹⁵⁷ *Id.*

protection of universal human rights,¹⁵⁹ and criminal law.¹⁶⁰ Berman believes that these developments “reflect a universal belief in law.”¹⁶¹ This should not be surprising as all of mankind is made in God’s image and “God is himself law,”¹⁶² and it would only be natural for His creation to reflect, even begrudgingly, an essential composition of His character.

V. CONCLUSION

The Apostle Paul is reported to have said:

The God who made the world and everything in it is the Lord of heaven and earth and does not live in temples built by hands. And he is not served by human hands, as if he needed anything, because he himself gives all men life and breath and everything else. From one man he made every nation of men, that they should inhabit the whole earth; and he determined the times set for them and the exact places where they should live. God did this so that men would seek him and perhaps reach out for him and find him, though he is not far from each one of us.¹⁶³

An ecumenical Christian integrative jurisprudence provides the only coherent foundation to address the legal issues of today and tomorrow. The centrality of the Trinity provides a public policy of unity and diversity and the model to reconcile positivism, natural law, and historical jurisprudence. God has brought humanity together at this time to live a single history, “so that men would seek

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 13-14. “Statute of the International Criminal Court, to which... over ninety nations have subscribed, gives that court jurisdiction over murder, rape, apartheid, and various other “crimes against humanity” when committed as part of a widespread or systematic attack directed against any civilian population.”
Id.

¹⁶¹ *Id.* at 14.

¹⁶² Berman, *supra* note 18.

¹⁶³ *Acts* 17:24-27.

him and perhaps reach out for him and find him, though he is not far from each one of us.”¹⁶⁴

¹⁶⁴ *Id.*