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LAWYERS AND THE BIBLICAL PROPHETS

THOMAS L. SHAFFER*

This is part of a broader exploration of the suggestion that the biblical prophets—Moses, Isaiah, Jeremiah, Amos, Nathan, and the others—are sources of ethical reflection and moral example for modern American lawyers. The suggestion appears to be unusual; I am not sure why. The Prophets were, more than anything else, lawyers—as their successors, the Rabbis of the Talmud, were. They were neither teachers nor bureaucrats, not elected officials or priests or preachers. And the comparison is not an ancient curiosity: Much of what admirable lawyer-heroes have done in modern America has been prophetic in the biblical sense—that is, what they have done is like what the biblical prophets did. Dean Charles Hamilton Houston and the early civil-rights lawyers come to mind. Both the biblical prophets and these modern American lawyer-prophets were angry at injustice and firm, even noisy, as they spoke out against injustice. They brought prophetic anger at injustice into the public square in America.

Both the biblical prophets and modern American lawyer-prophets courted danger. Both suffered. For both, things did not always turn out well, because prophets are not deal makers; they are stubborn; they demand more than conventional common sense stands ready to grant them. Maybe one reason they do not get put in our legal-ethics texts is that they are too stridently focused, as their biblical counterparts were, on the practice of law (the practice of biblical prophecy) as *communal concern for social justice*. The communal part insists on the “we.” The concern for social justice in part insists on what modern Catholicism has come to name the preferential option for the poor (and then

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pays little attention to). Both parts of the agenda (the “we” and the concern) aim to be relentlessly radical.

Prophets speak to communities as what Professor Milner S. Ball calls the mouth of God,¹ because the God of the Prophets speaks to communities. The Prophets speak for this God and they speak more to communities than to individuals. It is a matter of *we*, not I. The teachers I have turned to in thinking about the prophets as lawyers—Professor Ball, Rabbi Abraham Joshua Heschel, Sister Joan Chittister, Justice Louis D. Brandeis, Professor Walter Brueggemann²—speak, as all of the prophets, modern and scriptural, speak, in the first-person plural. It is “we” they talk about. It is “us” to whom the prophets speak—to “us” as in “us Americans” sometimes, but more radically to “us” as in “us believers.” (I am thinking here mostly of us believers who happen to be lawyers.)

I turn, then, to an attempt to develop five observations that might help focus on this prophetic “we” in the public square: (i) one of these has to do with *community* as the anthropological and scriptural place in which we find ourselves; (ii) one has to do with the fact that prophetic faith is inevitably about *politics*, and particularly (iii) politics as it is discerned and proclaimed from the communal quality of *belief*; (iv) one has to do with the *restlessness* of prophetic politics; and (v) one has to do with the importance of *beginning at the bottom*.

COMMUNITY

Three times a year for more than a decade I gave students in the legal-aid clinic at Notre Dame an orientation talk on ethics. The most useful scholarly source for getting my thought going for that assignment was H. Richard Niebuhr’s lectures to Christian ministers, later published as a book he called *The Responsible*

1. MILNER S. BALL, CALLED BY STORIES 9–17 (2000).

2. See WALTER BRUEGGEMANN, TESTIMONY TO OTHERWISE: THE WITNESS OF ELIJAH AND ELISHA (2001) [hereinafter TESTIMONY TO OTHERWISE]; WALTER BRUEGGEMANN, THEOLOGY OF THE OLD TESTAMENT 622–49 (1997) [hereinafter THEOLOGY OF THE OLD TESTAMENT]; WALTER BRUEGGEMANN, A SOCIAL READING OF THE OLD TESTAMENT (Patrick D. Miller ed., 1994) [hereinafter A SOCIAL READING OF THE OLD TESTAMENT]; WALTER BRUEGGEMANN, HOPEFUL IMAGINATION: PROPHETIC VOICES IN EXILE (1986) [hereinafter HOPEFUL IMAGINATION]; WALTER BRUEGGEMANN, THE PROPHETIC IMAGINATION (1978) [hereinafter THE PROPHETIC IMAGINATION]; ABRAHAM JOSHUA HESCHEL, THE PROPHETS (1962); ALBERT VORSPAN, GIANTS OF JUSTICE 22–39 (1960) (on Louis D. Brandeis); Joan Chittister, *Transfiguration Story*, NAT’L CATH. REP., Mar. 2, 2001, at 13; Joan Chittister, *Easter Calls Us To Resurrection—Our Own*, NAT’L CATH. REP., Apr. 6, 2001.

Self.³ Niebuhr ended his fruitful adventure with two questions: (i) To whom am I responsible?; and (ii) In what community?

The “we” part of the present agenda focuses on the second question. I notice, with my small groups of unselfish clinical law students, that we live and work in several communities—(a) in a rust-belt Midwestern civil community of about two hundred thousand; (b) in a relatively small local legal profession where we, for the most part, know the lawyers and judges we’re dealing with personally; (c) back in the office, where we work together in what functions as a law firm of from twenty to fifty people practicing law; and, finally, (d) in close relationships with clients—communities of two, three, or four people at a time.

The fact that there are four of these communities, and each of us is in all of them, makes urgent and perplexing Niebuhr’s question about in which community I am (we are) responsible. When I undertake in conscience to try to stiff a payday loan outfit for one of my clients, I act in (and am largely disapproved of in) the civic community. When I take a position in negotiation with the bill-collector lawyer who is oppressing my client, I am in a community of lawyers (some of whom disapprove of what I am doing, some of whom are quizzical about it). When I practice law that way in our “firm,” I am introducing an attitude toward our law practice that, if I were going to be responsible (Niebuhr’s first question), I would need to check out with my client and with the other lawyers in our partnership. And when my client and I decide to take this approach to the claim against her, we either make a mutual decision in conscience or we neglect to do what we should do. Niebuhr’s question is: In which of these communities am I responsible? I often cannot figure out a way to respond in *all* of them at the same time: The civil community and, probably, the professional community have one idea about my practice; my client seems to have the opposite idea; and my partners in the firm are scratching their heads.

Roles and a Life

One way to negotiate Niebuhr’s questions is to play roles, switching from one to the other as context seems to demand. There are lawyers who would say that attempting to do that is a life style of chronic schizophrenia. There are trial lawyers who say that attempting to live one way in town and another way at home—which trial practice and the adversary ethic seem to require—is a ticket to alcoholism. Among reflective scholars

3. H. RICHARD NIEBUHR, *THE RESPONSIBLE SELF: AN ESSAY IN CHRISTIAN MORAL PHILOSOPHY* (1963).

whom I respect, resolving the many-communities reality in our lives by switching roles is an ethic of *amorality*. We teachers of legal ethics often pull up for our students quotations from these scholars, but I fear we do not often come up with clarity enough to encourage them as they prepare to practice law, to encourage and prepare them as H. R. Niebuhr encouraged and prepared Christian ministers. I have not been persuaded that role-based morals are either clear or encouraging.

The alternative is to fasten on one of these roles not as a role but as a *life*, as a way of orienting a life in the law—all parts of it. Role may then be possible as to the others, but this one orienting life is more than a role. What is involved is finding or noticing where we are when we are at home. And then, having found where we are when we are home, to realize that this home we have found is a community, not lonely individuality, but the network of moral relationships the biblical prophets sought and celebrated and revived. Notice that this life-in-community might occur in the civil community (think of the small-town lawyer as squire, all-purpose guru, conscience); in the Bar (think of the worthies of our American professional history—David Hoffman, George Sharswood, Judge Thomas Goode Jones, Henry Drinker); in the law firm (as in a novel by Louis Auchincloss); or in a community of clients (as in “cause lawyering”).

Many of the lawyers I have read and listened to say that they have done this and that the orienting community, the home they operate from and direct their roles from, is a family. I think of the insightful account of the way family worked—still does work, often—among Italian American lawyers: The moral center of their life, they say, is communal, and the community is the family. The ethical reference is *l'ordine della famiglia*. Their associations, their roles, are in a series of concentric circles around a life in a family—so that the young lawyers I talked to learn at home how to behave in groups of peers, in school groups, in neighborhoods and churches and towns, and finally in associations with clients and with other lawyers. In their *life* in the family they learn how to negotiate their *roles* outside the family.

Richard Russo's character, Hank Devereaux, comes to understand this, as an alternative to lonely individualism, after many adventures: “[W]e have spouses and children and parents and colleagues and friends, because someone has to know us better than we know ourselves. We need them to tell us. We need them to say, ‘I know you, Al. You’re not the kind of man who’”⁴

4. RICHARD RUSSO, *STRAIGHT MAN* 374 (1997).

Miss Manners, Judith Martin, understands home as an alternative to the confusion of roles. She understands as well that the ethics of the home community orients systems of rules and customs in the communities in which we play roles: "Its very premises are different from those of society outside," she says. "Cooperation without competition, sharing of resources unrelated to who has more or less earning power, and extra efforts on behalf of the less productive, such as the young, the ill and the aged[—][f]airness is supposed to take a secondary place to fondness" there.⁵

It is not so much that ethics in home communities are carefully observed as it is that we know when we fail. The home community's system of ethics points to the way we know we should behave there, and when we are playing roles in civil and professional life, or when we undertake to advise and represent someone who needs our help. We know, and when we forget and suppress what we know, family, the home community, reminds us of what we know.

Reminding us of what we know is the main thing a prophet does. In the biblical story, Naaman, a Syrian general, was healed of leprosy by the prophet Elisha. "Now I know," Naaman said, "that there is no god anywhere on earth except in Israel."⁶ He seemed to have found a home and a life. His problem was that he had roles to fill. He was a general, a fat cat, a Syrian, and a worshiper of the Syrian god Rimmon—and he could not bring himself to give up any of those *roles*—could not let the *life* he had found in Israel govern those roles. When he lent his supporting arm to his king, to worship with the king in the temple of Rimmon, he was in a role—and Naaman understood that this was a role he no longer belonged in. "In this one matter only," he said,

5. Judith Martin, *When Police Knock, Etiquette Not Home*, S. BEND TRIB., June 4, 1995, at F3. Such a community is constituted by forgiveness. See also Thomas L. Shaffer, *The Radical Reformation and the Jurisprudence of Forgiveness*, in CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT 321 (Michael W. McConnell et al. eds., 2001). Father John Krenzke, reflecting on *John* 20:22–23, wrote recently:

To give them and us the power to forgive effectively is to endow us with the heart of divine power. We gaze with wonder at the magnificence of the divine power in the creation of the world but to forgive is to use a far deeper divine power than the power which brought the physical world into existence. . . . [W]e have the ability to renew and re-create this earth in God's holiness. . . . [T]he ability to forgive and heal and grow once more allows humanity to realize its destiny.

Father John Krenzke, *Jesus Invites Us to Believe Again*, TODAY'S CATH., Apr. 7, 2002, at 37.

6. 2 *Kings* 5:15 (New Revised Standard Version).

"may the Lord forgive me."⁷ He thought he could get back home by taking two mule loads of soil from Israel, soil on which he would stand in Syria when he worshiped God. He asked Elisha to let him take the soil. Elisha did not respond.⁸ Poor Naaman had, in his roles, failed to take up the life he had found. He failed to hold on to a community substantial enough to sustain a life.⁹

Community as Moral Focus

Catholic Social Teaching points to community as the central moral focus, and to family as the central community. Our church has learned from Judaism that God does not address lonely individuals; God addresses God's *peoples*, families, and a family of families. Family is the normative community. It would have been that for Naaman. Elisha's silence reminded him of that. It is true of the families described by Miss Manners and in the novels of Anne Tyler and Barbara Kingsolver. Miss Manners knows about families, as she knows how communal morality creates families: "[M]ost human beings like to surround themselves with family and friends," Miss Manners says. "Not necessarily the family and friends they happen to have, of course, but somebody's. They love the idea"¹⁰

Tyler's and Kingsolver's families are that and more than that. The lessons they learn and teach are more than loving the idea. They have come to adopt the idea, to find homes in their families, to orient their roles there; and, unlike Naaman, they hold on. Taylor Greer, in Barbara Kingsolver's story of western Native Americans,¹¹ lived for a while in a town in Arizona, a town that caused her to think that her neighbors there were accidental. Unlike the community she had among the Cherokee in Oklahoma, they had not come to think of themselves as a family or as based in families. "'[W]hen you never put a name on things,' she said, 'you're just accepting that it's okay for people to leave when they feel like it.'"¹² Naaman left when he felt like it, and Elisha looked away from him. Characters in Tyler novels don't often feel like leaving, and when they do leave they usually return later.

7. *Id.* 5:18.

8. *Id.* 5:19.

9. See generally TESTIMONY TO OTHERWISE, *supra* note 2, at 56-57.

10. Judith Martin, *Even Casual Gatherings Have Rules*, ME. SUNDAY TELEGRAM, Oct. 18, 1998, at 5G.

11. BARBARA KINGSOLVER, PIGS IN HEAVEN (1993).

12. *Id.* at 328.

Other examples are in Wendell Berry's stories about his little farm town in Northern Kentucky.¹³ It is a community from which it is not okay to leave when you feel like it. His aging farmer, Old Jack, is as unlikely to move away in the face of death as Socrates was unlikely to flee Athens in the face of death. In more "intellectual" terms, Berry expands on his insight as a poet to notice, for law and jurisprudence and politics, that such moral communities transcend the rugged individualism that is said to characterize us Americans and the national culture we celebrate uneasily on the Fourth of July or when America goes to war:

The concerns of public and private, republic and citizen . . . are not adequate for the shaping of human life. Community alone, as principle and as fact, can raise the standards of local health (ecological, economic, social, and spiritual) without which the other two interests [the public and the private] will destroy one another.¹⁴

Bonnie Thurston's poem "Ice Dance" put these ideas into a picture, as she noticed how a flock of geese came to and moved along on a frozen lake:

Once, in icy February,
I watched a flock of geese
land on a frozen lake,
land and glide across
in a great, silent dance.

Each bird put down
one webbed foot,
slid it forward,
hesitated for an instant
before shifting weight to it.
They all did this:
step, hesitate, slide.

Rising and falling together,
the whole flock waltzed forward,
each one testing the ice,
each one ensuring
the other's safety.

Not birds of the air
nor any creeping thing,
not beasts of the field
nor human kind in God's image

13. WENDELL BERRY, *SEX, ECONOMY, FREEDOM & COMMUNITY* (1993).

14. *Id.* at 119.

can safely dance alone.
The ice is too thin;
the dance is too dangerous.¹⁵

Solidarity

With family as the notion and the reality that explains theory, Catholic Social Thought uses terms such as "solidarity" and "subsidiarity" to develop political and economic teaching from scriptural and Judaic models. *Solidarity* begins with the intuitive, natural-law insight that we human beings, like the geese in Bonnie Thurston's poem, are all in this thing together. None of us can safely dance alone. Solidarity rests in Hebrew Scripture, in what is sometimes called corporate personality, a vision of the person, as in a network of relations: The "I" implies a "we." Solidarity showed up, as the elders among us may recall, in the anti-communist labor movement in Poland; its deeper history is in the opposition of believers to the Enlightenment notion that each of us is her or his own moral tyrant. Solidarity is about commitment to the common good, and, when commitment involves struggle, to our standing together in defense of the common good.¹⁶

Subsidiarity is another piece of Catholic Social Thought. Subsidiarity, as you may have noticed, is more popular among political conservatives than among us liberals. It, too, is rooted in the ethics of the family. It is the teaching that whatever organized humanity needs to do should be done on the most local, most immediate, most personal level. The level that is most likely to engage and be thought about in, say, families, or organizations that can seriously claim family as a metaphor for themselves.

Solidarity and subsidiarity suggest what Walter Brueggemann calls an angle of vision, a *prophetic* angle of vision.¹⁷ Notions such as solidarity and subsidiarity belong among the Prophets and remind us that the Prophets, too, came from communities, and proclaimed in their anger the memory and the ethics of the communities they shared with those they spoke to in their anger. By contrast, "the dominant text of our [modern

15. Bonnie Thurston, *Ice Dance*, 59 THEOLOGY TODAY 106 (2002) (used with permission of Ms. Thurston and of the publisher).

16. See generally Matthew L. Lamb, *Solidarity*, in THE NEW DICTIONARY OF CATHOLIC SOCIAL THOUGHT 908–12 (Judith A. Dwyer & Elizabeth L. Montgomery eds., 1994).

17. See TESTIMONY TO OTHERWISE, *supra* note 2; THEOLOGY OF THE OLD TESTAMENT, *supra* note 2; A SOCIAL READING OF THE OLD TESTAMENT, *supra* note 2; HOPEFUL IMAGINATION, *supra* note 2; THE PROPHETIC IMAGINATION, *supra* note 2.

American] culture is one that is programmatically committed to amnesia," Brueggemann says, "because what is past is over and done." But "the past that Israel celebrates is a collage of remembered transformations that attest that the world is [still] open to generous, inexplicable transformation."¹⁸

When the Prophets spoke of justice, those to whom they spoke knew what the Prophets meant; they shared a Jewish passion for justice. They shared in their families their pondering about what to do about widows and orphans and immigrants. The Prophets spoke at home. And they were among a priestly people, reminding a priestly people of the mandate the Lord had given their family and their families to proclaim Jewish justice to the nations.

The lawyer's life of the modern prophet Louis D. Brandeis, whom President Franklin D. Roosevelt called "Isaiah," is another example. Brandeis worked into middle age as a prosperous Boston corporate lawyer. Then he looked out from his comfortable law office, as Karl Marx had looked out from the British Museum, and saw the condition of working people around him. Brandeis decided, as he later put it, that "we hear much of the 'corporation lawyer' and far too little of the 'people's lawyer.' The great opportunity of the American bar is and will be to stand . . . ready to protect . . . the interests of the people."¹⁹ From there he developed a prophetic law-reform practice. He was lawyer for workers whose hours were long, whose pay was minimal, and whose conditions of employment were miserable; lawyer for poor children and women working in factories for starvation wages. Brandeis was not paid for this prophetic legal work. In fact, since he was taking time he had been spending for corporate clients, he paid his law partners for his own time.

Brandeis later realized what it meant for his law practice that he was a Jew. When he figured that out, he was able to say, "The twentieth century ideals [he was arguing for] in America have been the ideals of the Jew for more than twenty centuries."²⁰ One of his biographers says that Brandeis then came to realize that for the two parts of his conversion to solidarity fit together:

It was the task of the Jew to help clothe these majestic [American] principles with the flesh of reality by ennobling American life with the [prophetic] Jewish preference for social justice and the Jewish exaltation of the saga of

18. Walter Brueggemann, *A Text That Redescribes*, 58 THEOLOGY TODAY 532 (2002).

19. VORSPAN, *supra* note 2, at 27.

20. *Id.* at 28.

the spirit. In short, Brandeis came to feel that a Jew in America could be genuinely and fully American only as he was fully and intensely a Jew.²¹

Biblical Community

Biblical prophecy subsists in communities that are in a covenant with God. The biblical process is always communal, from a community of slaves in Israel, to a community hauled away to Babylon, to the community of the Maccabees, to the oppressed community of Jews in Palestine in the first century of the common era, to the community Brandeis discovered he belonged to and then joined, to the communities of freed slaves Dean Charles Hamilton Houston's civil-rights lawyers brought into participation in America, to the community of Islam that we Christians are only now beginning to take into account.²²

These lives—not roles, but *lives*—exhibit, as Walter Brueggemann puts it,

an urgent insistence upon the communal character of human life and the strange processes of transmission and inheritance in the historical community. It is simply not true, so Israel would claim, that personal immediate experience is adequate for life. The community, some community, countercommunity, or anticommunity, shapes perception and governs personal experience. Not only is private experience not adequate for life, it is a deception to speak of private experience; for all human experience is deeply social.²³

The first observation about the prophetic “we” in the public square is about *community*; the first lesson for modern American lawyers who think they rely only on themselves—one at a time—is that they don't. They are not alone; the ice is too thin for that, and the dance too dangerous.

21. *Id.*

22. Father John R. Donahue added the Greek notion of friendship to his reflection on the Christian community described in *Acts* 2:42–47:

The emphasis on communion and “holding all things in common” is a way of expressing the Hellenistic idea of friendship. A friend was a person with whom one held all things in common, and friendship was considered to be the highest form of love. The stress on selling property and meeting the needs of others countered the major barriers to true friendship in antiquity—namely, disparity of class and wealth.

Father John Donahue, *Directions to the Nearest Church, AMERICA*, Apr. 1, 2002, at 31.

23. WALTER BRUEGGEMANN, *THE CREATIVE WORD: CANON AS A MODEL FOR BIBLICAL EDUCATION* 25 (1982).

POLITICS

The biblical model of community is, because communal, also political. Politics in and from communities was urgent for the Prophets and is urgent for us modern American lawyers.

One reason for urgency just now is that the few real communities that have survived in American society—biblical communities along with all the others—are, all of them, weakened. Everybody says so. Randy Cohen, who writes the “ethics” column in the Sunday *New York Times Magazine*, senses this. Almost every week he pushes his readers into greater *political* consideration for their neighbors and for the civil communities and workplaces that are crumbling all around them:

[T]he difference between ethics and politics seems to me artificial Often the only way to achieve an individual ethical goal is through group endeavor—i.e., politics An ethics that eschewed . . . nominally political questions would not be ethics at all, but mere rule-following. It would be the ethics of the slave dealer, advocating that one always be honest about a slave’s health and always pay bills promptly.²⁴

For example, Mr. Cohen takes issue with William Bennett’s arguments for the politics of patriotism: “The times when one cannot stand both ‘for God and for country’ are rare indeed,” Mr. Bennett said.²⁵ “This curious assertion,” Mr. Cohen wrote, “would startle those [communities of] Americans who opposed the Vietnam War, or the [communities of] abolitionists in the early nineteenth century, or [communities] fighting for women’s suffrage in the early twentieth” There is a kind of virtue that does not involve bold, male, patriotic bravery. There is a kind of virtue that is communal-political and communal-legal, rather than communal-violent, “that lies not in extraordinary actions, not in saving poor orphans from burning buildings, but in steadfastly working for a world where orphans are not poor and buildings comply with decent fire codes.”²⁶ Politics in other words; politics is what Mr. Cohen writes about when he writes about ethics. He could have been writing about the practice of law in communities such as our clinic at Notre Dame. He was claiming that Mr. Bennett’s “my country right or wrong” is bad ethics, bad politics, and bad law.

24. Randy Cohen, *The Politics of Ethics: By Identifying Ethics with Civic Virtue, We Create an Ethics of the Left*, NATION, Apr. 8, 2002, at 21.

25. *Id.* at 22 (quoting *Responsibility, in THE BOOK OF VIRTUES* (William J. Bennett ed., 1993)).

26. *Id.*

Mr. Cohen says he does not write “to depreciate individual virtue, but we are unlikely to understand any behavior if it is seen only as a matter of individual moral choice detached from its social context. And we are unlikely to increase honorable behavior significantly if we rely only on individual rectitude,” which is Mr. Bennett’s territory. “There is a kind of ecology of ethics” that depends, as Mr. Cohen argues, on formation in communities and on community discourse and decision: politics, in other words.²⁷

Mr. Cohen writes about American culture in general, and regrets its individualistic bias against politics as ethics and ethics as politics. Among believers who ponder the biblical prophets (this is a second reason for urgency in communal politics), communal life has not only become private and unpolitical; it has also become “peripheral.” Our worshiping communities are not at the center of things as much as they once were. That may have occurred—I think it did—because of what we believers have allowed our communities of belief to become. In any event, our position at the periphery does not excuse our communal failure to be engaged, to be political, to forget what Albert Vorspan called the Jewish passion for social justice²⁸ or the Gospel injunction to let our light shine. Islam, Mehrdad Azimi reminded believers recently, encourages us toward freedom, kindness, and appreciation of all God’s creatures: us, plural; Jewish passion, plural; our light, plural. The prophetic community ponders then speaks an alternative word, a *religious* word, against what Brueggemann refers to as the dominant community’s “consumer militarism.”²⁹

Economics

A prophetic angle of vision in politics is economic, like the one announced by the prophet Ezekiel, who referred to the state as “shepherds of Israel” and said God bade him to say,

[H]ow I hate the shepherds of Israel who care only for themselves! Should not the shepherd care for the sheep? You consume the milk, wear the wool, and slaughter the fat beasts, but you do not feed the sheep. You have not

27. This was the theological burden of the late John Howard Yoder’s *For the Nations*. JOHN HOWARD YODER, *FOR THE NATIONS* (1997); see also THOMAS L. SHAFFER, *MORAL MEMORANDA FROM JOHN HOWARD YODER: CONVERSATIONS ON LAW, ETHICS, AND THE CHURCH BETWEEN A MENNONITE THEOLOGIAN AND A HOOSIER LAWYER* (2002).

28. VORSPAN, *supra* note 2, at 27.

29. HOPEFUL IMAGINATION, *supra* note 2, at 126.

encouraged the weary, tended the sick, bandaged the hurt, recovered the straggler, or searched for the lost; and even the strong you have driven with ruthless severity. They are scattered, they have no shepherd, they have become the prey of wild beasts. My sheep go straying over the mountains and on every high hill, my flock is dispersed over the whole country, with no one to ask after them or search for them.³⁰

That was politics—communal, prophetic, economic politics.

Here is an example of a modern prophetic angle of vision and of religion's influence in politics: There is afoot a movement among academic economists to dust off and apply what they refer to as "new thinking" in their discipline. Many of these—my colleague Denis Goulet prominent among them—are Catholics, and, of those, most are students of Catholic Social Thought. The "new thinking" movement challenges the claim by dominant thinkers (by the economics of capitalism I think) that their economics is objective. It seeks economic analysis "as if people mattered"; it claims that what people need is more central than what they want; it tries to avoid analysis based on purchasing power. Its negative agenda is that "conventional" economics is not objective—is in fact just as value-laden as the economics of Catholic Social Thought. "Conventional" economics "quite clearly espouses the virtues of individualism, of competition, of the pursuit of self-interest, and of unlimited material expansion."³¹ It is value-laden. And its values are bad.

One example, an old one in Catholic social teaching and an ancient one in Judaism, is work: "Conventional" economics, evident in American corporate management, is that labor is a commodity; the "new thinking" sees work as "no mere commodity, but creative human activity which promotes fulfilling livelihoods This means qualitatively 'good work' and not simply more jobs."³² Another example is the ancient (and biblical) disposition to see to it that engines of wealth in some way care for those who are exploited and neglected by the economy—what modern Catholic thinking calls "the preferential option for the poor," and what the Prophet Ezekiel called feeding the sheep.

In politics, this "new thinking in economics" becomes ethics—that is, a set of moral arguments. Professor Goulet usefully summarizes these (in reference to such things as jobs and pov-

30. *Ezekiel* 34:2–6 (New English Bible).

31. Denis Goulet, *Catholic Social Doctrine and New Thinking in Economics*, 42 *CROSS CURRENTS* 504, 506 (1992–1993).

32. *Id.*

erty) as technological, political, and ethical. The technological moral argument is to get something done, to apply scientific knowledge to the solving of problems, to deal with what comes up in instrumental terms. "Hard logic" he calls it.³³ The "conventional" political moral argument aims to assure the survival of institutions, to preserve the rules of the game, and to maintain positions of power.³⁴ The moral argument of "new thinking" is one that promotes values for their own sake, using not words of technology (what works) or conventional politics (what the powerful always say has worked) but prophetic political words such as good, bad, fair, unfair, just, unjust.

The ethical argument, which is the one the Prophets made—since they had no technical clout and rarely had power—seems to draw sometimes on observation and intuition and sometimes (as with the biblical prophets) on what Goulet calls a "meaning system."³⁵ For example, the Hebrew Prophets, who reminded Israel of what it believed, drew on the Torah. One interesting thing about ethical rationality is that it is the only argument available to "those left out of power. . . . [T]heir vital interests can find no basis for expression other than their ethical justification."³⁶ That could lead one to guess why the God of Abraham, Isaac, and Jacob, preferred the poor, the widow, the orphan, the immigrant: The will of God was all they had.

The mainline church in America, like Ezekiel's self-deluded shepherds, has allowed our sacred texts to be turned into occasions for private meditation, but they never were and are not now either private or politically peripheral. Nor are they tentative in the claims they make—or should make—on neighbors. Prophetic politics in the law involve, I suggest, a radical point of beginning; an insistence on clear religious substance; and a steady endurance in the face of resistance and indifference, that questions managers, "that never concedes ultimate authority to any public claim, and that never fully settles for the 'official truth'"³⁷

The second point I want to make for lawyers as prophets is about politics, but then also, since we are lawyers who read the Bible, *it is about justice*. Lawyers and prophets claim to be specialists in justice.

33. *Id.* at 510.

34. *Id.* It strikes me as the sort of argument a lawyer often makes in politics and often comes to make for himself as well as his powerful clients.

35. *Id.*

36. *Id.* at 512.

37. BRUEGGEMANN, *supra* note 23, at 42 (quoting M.I. STEBLIN-KANESKI, *THE SAGA MIND* 46 (1973)).

THE COMMUNAL QUALITY OF BELIEF

Saul Bellow spoke of prophets and writers at the Nobel Prize ceremonies in 1992: He said the writer's task is "a prophetic call to use language to awaken modern civilization from its lethargy and its immersion in 'a mass of distractions.'"³⁸ No doubt he meant the distractions of power justified by political ideology—threat, violence, military force in politics. Maybe he meant the lethargy and immersion that keeps believers from facing up to the radical economics of the Bible: "The Lord sets captives free; the Lord gives sight to the blind; the Lord raises up those that were bowed down The Lord protects strangers; the fatherless and the widow he sustains, but the way of the wicked he thwarts."³⁹ The task of awakening modern civilization from lethargy and immersion in injustice is thus, as I think Bellow said, both a political task and a prophetic one. I want now to argue that its prophetic politics involves communal ethical discernment.

Walter Brueggemann has developed a theology of the Prophets that I read to say the Lord has put prophets among the Lord's people, from the beginning, from Israel's earliest day as the Chosen People.⁴⁰ The Prophets were put among this people, wherever it found itself, to criticize, to challenge, and to thwart and subvert legal order and governmental power. To thwart and subvert even law and government set up by God! Think of Moses defying state power in Egypt. Think of Abraham bargaining with God to save Sodom,⁴¹ or of Moses talking God out of punishing Israel. "Let your blazing wrath die down," said Moses to God. "Relent. . . . Remember your servants Abraham, Isaac, and Israel, and how you swore to them. . . . 'I will make your descendants as numerous as the stars in the sky.'"⁴² Those were political undertakings, prophetic undertakings, and—you might have noticed—subversive. And they were lawyer's work. The presence of subversive prophets is a steady reality in the history of biblical Israel, both when Israel had its own king, when prophets from Elijah to Micah confronted power with subversive speech, and when Israel suffered under the heel of a foreign oppressor: "Thus says the

38. Gerald T. Cobb, *A Laureate's Garden*, AMERICA, Feb. 12, 2001, at 28, 29 (discussing JAMES ATLAS, BELLOW: A BIOGRAPHY (2000)).

39. *Psalms* 146:8–9 (New American Bible).

40. See TESTIMONY TO OTHERWISE, *supra* note 2; THEOLOGY OF THE OLD TESTAMENT, *supra* note 2; A SOCIAL READING OF THE OLD TESTAMENT, *supra* note 2; HOPEFUL IMAGINATION, *supra* note 2; THE PROPHETIC IMAGINATION, *supra* note 2; see also WALTER BRUEGGEMANN, PEACE (2001).

41. *Genesis* 16:18–33.

42. *Exodus* 32:12–13 (New American Bible).

Lord . . . How long will you refuse to submit to me? Let my people go. . . . If you refuse to let my people go, I warn you⁴³

The Talmud says:

When Nebuchadnezzar, the mighty King of Babylonia, wanted to sing praises to God, an angel came and slapped him in the face. Asked the Kotzker, "Why did he deserve to be slapped if his intention was to sing God's praises?" He answered himself: "You want to sing praises while you are wearing your crown? Let me hear how you praise me after having been slapped in the face."⁴⁴

Moses, once the Lord helped him overcome his speech defect, was capable of being sarcastic. So was Ezekiel, when he compared those who used governmental power to oppress the poor to shepherds who claim, as rulers always do, to care for those they dominate and exploit: "Should not shepherds . . . pasture sheep?" You take their wool and slaughter their children, "but the *sheep* you have not pastured."⁴⁵ Therefore, the Lord says, *I will save my sheep!* That was the mood of a recent statement from the U.S. Catholic Bishops, addressed to those who were devising what they were calling "welfare reform": "It is not *beyond* your mandate to work for justice and peace," the Bishops said to the rulers.⁴⁶

Two things are implicit in these community-politics arguments. One is that determinations on what stands the community of the faithful should take in the civil community are made communally; the other is that they are made when the community of the faithful draws on the promises of God and on what my teacher, the late Professor John Howard Yoder, called "*the communal quality of belief*."⁴⁷ Paige Byrne Shortal, a pastoral associate in rural Missouri, covered both points in an essay last year: She urged the faithful to rage against the sea of shallow practices and oppression all around us in modern America (what Walter Brueggemann calls consumer militarism). "But," she finally asked, "how does a Christian rage?" Her answer was that

[w]e can decide to be different, to choose not to fit in. When we do this we find partners in our rage, a commu-

43. *Exodus* 10:3-4 (New American Bible).

44. LAWRENCE KUSHNER, *GOD WAS IN THIS PLACE AND I, I DID NOT KNOW* 36-37 (1991).

45. *Ezekiel* 34:2-3 (New English Bible) (emphasis added).

46. Jane Sammon, *Welfare Reform*, CATH. WORKER, Mar.-Apr. 2002, at 61 (emphasis added) (quoted from the Bishops' October 2001 Synod).

47. JOHN HOWARD YODER, *THE PRIESTLY KINGDOM* 24 (1984).

nity that exists all around us. They are among the teachers, the preachers, the social workers and nurses and doctors, the parents of children who don't fit, the unsuccessful in this world who have finally stopped blaming themselves, and the successful of this world who wake up one morning and realize that this kind of success is not enough to satisfy the human spirit.⁴⁸

I find her description of communal rage helpful; what I would add to it is that the community of the faithful, made up of such people—and when everyone gets to join in and everyone listens—and are able to call, as the apostles did in Jerusalem, on the promises of God, able to say as St. James did, “It is the decision of the Holy Spirit, and ours too.”⁴⁹

RESTLESSNESS

Restlessness is what Rabbi Abraham Joshua Heschel meant when he said the prophet is able “to hold God and the human person in a single thought.”⁵⁰ I think here of Rabbi Jacob Rothschild's involvement in the early civil rights movement in Atlanta. Rabbi Rothschild persuaded members of his congregation to early support for the civil rights cause when that kind of politics was more than a little dangerous, especially for Jews in the South. He moved his secure, even prosperous, congregation to open, prophetic support for civil rights, and the enemies of civil rights bombed the temple. Rabbi Rothschild said later, of his obviously imprudent and prophetic involvement:

I am of a people, small in number and weak in power, whose only claim to greatness has been its willingness to be the conscience of mankind. Reviled and persecuted, decimated by pogrom and holocaust, we have still maintained our visibility and sought to obey the rabbinic dictum: “Separate not thyself from the community.”⁵¹

There is a politics of restless minority at work in such stories, a politics that pulls together the understanding the prophet has a prophetic stance that is inevitably political, and then lets that political stance hold sway. What is unusual is the prophet's disinterest in claiming coercive power. Prophets, holding God and human persons in a single thought, do not seek to run things, but they do seek—urgently seek—to change things.

48. Paige Byrne Shortal, *Aspire to Rage Like Jesus*, NAT'L CATH. REP., Mar. 15, 2002, at 2.

49. Acts 15:28 (New American Bible).

50. See HESCHEL, *supra* note 2, at 21.

51. MELISSA FAY GREENE, THE TEMPLE BOMBING 429–30 (1996).

Another place that odd combination of prophetic candor and indifference to dominance shows up, amidst all of the varieties of prophetic lawyering I am trying to take into account, is among the Anabaptists. Yoder said the prophetic art involved was first understanding that the myths of power in Christianity—the myth of Christendom, for example, or the myth that the United States is a Christian country—are false. But, that doesn't mean the prophet is planning to take over.

And so, since the prophet is not talking about taking over, Yoder said, the prophetic stance involves talking within the community of the faithful about what the faithful are to seek to accomplish in the civil society—as Moses sought freedom for Israel, as Rabbi Rothschild and his congregation sought civil rights for their African American neighbors. Then, Yoder said, the prophetic community will find that it is able to use the rulers' language (to *be* political, in an ordinary way), without seeking what the ruler seeks, to use what he called "the machinery of democracy for our own and our neighbor's advantage,"⁵² and with these tools to confront the pretensions of the governing elite, to confront the elite in power for the prophetic community's sake, as well as for the sake of those the elite governs. It involves restlessly finding a way to feed the sheep.

As communal and political, biblical prophecy is characteristically alternative. It is new. If only because it does not seek what the ruler seeks, it is imaginative, and full of hope. It is, Brueggemann says, *restless*; it is restless on economic issues; its history is a history of restlessness. "The agenda of the Torah . . . is the transformation and redistribution of power in human affairs," Brueggemann says. "The narrative [we read together every week] must be left in its raw unacceptable subversiveness. It will not be reduced to safe religion or personal introspection. The disclosure of this [biblical] narrative is that power has been reassigned"⁵³ *not to the prophet but to the prophet's God*. "I will feed my sheep," God says.

"[W]e know where history is going,"⁵⁴ the Mennonite thinker Richard J. Sider, says.

The Christian community is always in every society a disturbing counterculture challenging the status quo at every point that it is wrong When Christians through silent

52. See SHAFFER, *supra* note 27.

53. BRUEGGEMANN, *supra* note 23, at 31.

54. Ronald J. Sider, *Christian Ethics and the Good News of the Kingdom*, in *PROCLAIMING CHRIST IN CHRIST'S WAY: STUDIES IN INTEGRAL EVANGELISM* 122, 139 (Vinay Samuel & Albrecht Hauser eds., 1989).

example, prophetic word and political deed succeed in moving the larger society a step closer to the shalom that is surely coming, we apply the norms of the kingdom to the larger society.⁵⁵

The fourth observation on prophetic politics is about the *restlessness* that moves our neighbors in America a step closer to shalom.

FROM THE BOTTOM UP

John Howard Yoder admired Dr. Martin Luther King, Jr. John had to ponder what Dr. King was up to—as all of us who admired the great prophet of the Black Church did then—when Dr. King seemed to turn from the civil rights movement to opposition to the Viet Nam War and to support for the Chicago fair housing ordinance. Some of us thought Dr. King was losing his focus. Not, however, John Yoder: These apparent changes, John said, “were indices of [Dr. King’s] growing awareness that the people of God whose dreams he spoke for was both smaller than and larger than America.”⁵⁶

My last point about prophetic politics is that this “smaller than” is also a “larger than.” The prophetic politics of Dr. King confronted deceitful and destructive international politics (“larger than”) as it also spoke of the deaths of fifty thousand Americans—most of them the children of the poor—and only God knows how many more people in Southeast Asia, virtually all of them poor people. And the fair housing effort in Chicago, like the garbage-collectors strike in Memphis (“smaller than”), involved a biblical confrontation with businesses and governments that foster hunger and homelessness.

The way the prophetic community learns what is going on is to listen from the bottom up, as Dr. King heard the children of the poor in war and people who empty garbage cans. That is what Dr. King was doing. It was not a loss of focus; it is what the Black Church has always done. The Black Church, as the 17th century rabbi Juda Loew ben Bezalel had, read the Bible and said, “God listens to the weeping that teaches him about the world He has created.” I think of that sort of listening as implicit in Walter Brueggemann’s cosmic conclusion: The “new truth is indeed from below,” he said, “from the powerless ones or on

55. *Id.* at 134, 139.

56. SHAFFER, *supra* note 27.

behalf of the powerless ones”⁵⁷ The last observation for lawyers as prophets is, “the voice from below is the voice of God The cry of the weak ones is the cry of God.”

57. BRUEGGEMANN, *supra* note 23, at 64.