Enthroning the Interpreter: Dangerous Trends in Law and Theology-Part I

Dr. Andy Woods

The disciplines of law and theology have much in common. Perhaps the most significant similarity between the two entails the relentless quest for authorial intent through the vehicle of a literal method of interpretation. In other words, a literal hermeneutical procedure is the key toward understanding the author's intended meaning when interpreting either legal documents or Scripture. This series of articles will demonstrate that the use of a literal method of interpretation in order to pursue the author's meaning is a time-honored practice in both fields. In addition, these articles will also draw attention to disturbing interpretive trends well under way in both disciplines that have introduced a gradual shift in authority from the text to the interpreter. This article (part one) will focus on how literal interpretation is a foundational interpretive method within the American legal system.

Literal Interpretation and the Legal System

Using Literal Hermeneutics when Interpreting Simple Legal Documents

Using the author's plain expression in order to arrive at his intended meaning is one of the bed rock principles of American jurisprudence. Such a hermeneutic is traditionally employed in order to arrive at the author's intended meaning when interpreting simple legal documents. Take as an example the area of contract law. How is the original intent of a contract to be understood by the courts when a dispute over the meaning of the contract later arises between the contracting parties? One member of the judiciary succinctly articulated the time-honored principle of contractual interpretation:

> It is well established that the intent of the parties to a written contract is to be regarded as being embodied in the writing itself, and when the words are clear and unambiguous the

> intent is to be discovered only from the express language from the agreement…the rationale for interpreting contractual terms in accord with the plain meaning of language expressed is multifarious, resting in part upon what is viewed as the appropriate role of the courts in the interpretive process: This court long ago emphasized that the parties have the right to make their own contract, and it is not the function of the court to re-write it, or to give it a construction in conflict with…the accepted and plain meaning of the language used…In addition to the justifications focusing upon the appropriate role of the courts in the interpretive process, the plain meaning approach to construction has been supported as generally best serving the ascertainment of the contracting parties mutual intent…In determining what the parties determined by their contract, the law must look to what they clearly expressed. Courts in interpreting a contract do not assume that its language was chosen carelessly. Neither can it be assumed that the parties were ignorant of the meaning of the language that they employed…[1]

Two significant interpretive principles are emphasized in this excerpt. First, the ambition of the courts in the interpretive process is not to remake the contract according to their own liking but is rather to seek to understand it as the original parties intended. By following this principle rather than substituting their own preferences in lieu of authorial intent, courts honor the right of the parties to enter into contractual terms of their own choosing. Second, the primary vehicle for understanding the original intent of the parties is through the plain meaning of the contract language.

Using literal interpretation as a means of uncovering authorial intent is not only found in the area of contractual interpretation, but it is also utilized in the realm of testamentary construction. The underlying goal of interpreting testamentary documents, such as will and trusts, is discovering the intent of the testator. Those who are stated as beneficiaries under such documents expect nothing less than for the court to derive the intent of the testator by first and foremost observing the plain meaning of his language as employed in the document itself. Literal interpretation is also employed in the area of statutory construction.

[1] Justice Flaherty; Quoted by E. Allan Farnsworth and William F. Young, *Cases and Materials on Contracts*, 5th ed. (Westbury, NY: The Foundation Press, Inc., 1995), 603-4.

Similarly, when courts interpret statutes they have traditionally sought out the intent of the legislative making bodies by first observing how these bodies have plainly expressed themselves in any given law. The underlying policy rationale for following such a procedure involves the judiciary's function as interpreter of the law rather than its maker. When courts rewrite a statute instead of interpreting it, they substitute their own personal ideologies and world views for that of the elected representatives. This issue will be more vigorously explored in part three. For now it is enough to say that adhering to a literal hermeneutic when interpreting statutes prevents courts from transforming themselves into "super legislatures" and thus violating the constitution's separation of powers doctrine. In sum, seeking authorial intent through literal interpretation is the primary method used within the legal community when attempting to discover the meaning of contracts, testamentary documents, and statutes.

Literal Interpretation and Constitutional Law

Using a literal hermeneutic as a means of arriving at authorial intent is not only utilized in order to interpret contracts, testamentary documents, and statutes, but it has also been traditionally employed when interpreting the Unites States Constitution. Perhaps one of the greatest debates raging in contemporary American society revolves around the issue of how the United States Constitution is to be read and understood. On one side of the debate are those who insist that that the authorial intent of the framers be followed when the Constitution is applied by the courts. On the other side of the spectrum are those who insist that the Constitution is a "living and breathing document" that automatically evolves with a changing society. Therefore, the original intent of the founding fathers is somewhat irrelevant in modern Constitutional application. Despite its ferocity, this debate is a relatively new one in American history. Going

back to our nation's founding and for most of our country's existence it was naturally assumed that members of the judiciary would simply follow the authorial intent of the framers when applying the Constitution to legal disputes. Influential founding father, Thomas Jefferson, reflected this philosophy when he declared that we must:

> Carry ourselves back to the time when the Constitution was adopted, recollect the spirit in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed.[2]

It was equally well understood that the intent of the framers could be derived from the plain meaning of the Constitution itself as well as from other relevant documents from the founding era. This historical interpretation is sustainable through the observation of several salient facts.

Note, first of all, the words of Jefferson. He said, "The Constitution on which our Union rests, shall be administered by me according to the safe and honest meaning contemplated by the plain understanding of the people of the United States, at the time of its adoption."[3] In addition, Joseph Story, who was Professor of Law at Harvard Law School, Associate Justice of the United States Supreme Court, and the leading constitutional scholar of the nineteenth century, later echoed similar sentiments. In his influential *Commentaries on the Constitution* (1833), he called for interpreting the constitution according to the intent of its authors as revealed in the plain meaning of their language. He noted, "The first and fundamental rule in the interpretation of all instruments, is to construe them according to the sense of terms, and the intention of the parties."[4] Upon informing his readers of his own approach to constitutional analysis, he indicated:

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[2] Thomas Jefferson, *Writings of Thomas Jefferson*, Albert Bergh, ed. (Washington D.C.: Thomas Jefferson Memorial Association, 1904), Vol. XV, p. 449, in a letter from Jefferson to Justice William Johnson on June 12, 1823.

[3] Thomas Jefferson; quoted in *Thomas Jefferson*, American Classic Series (Salt Lake City, UT: Freeman Institute, 1981), 65.

[4] Joseph Story, *Commentaries on the Constitution of the United Sates*, 3rd ed. (Boston, 1858), 283, 400.

> The reader must not expect to find in these pages any novel constructions of the Constitution. I have not the ambition to be the author of any new plan of interpreting the theory of the Constitution, or of enlarging or narrowing its powers, by ingenious subtleties and learned doubts…Upon subjects of government, it has always appeared to me that metaphysical refinements are out of place. A constitution of government is addressed to the common sense of the people, and never was designed for trials of logical skill, or visionary speculation.[5]

In a speech to the American Bar Association in 1985, then Attorney General Edwin Meese called for a return to the jurisprudence of original intention. In his speech, Meese quoted the following from Justice Story and pleaded that his words be taken seriously:

> In construing the Constitution of the United States, we are in the first instance to consider, what are its nature and objects, its scope and design, as apparent from the structure of the instrument, viewed as a whole and also viewed in its component parts. Where its words are plain, clear and determinate, they require no interpretation…Where the words admit to two senses, each of which is conformable to general usage, that sense is to be adopted, which without departing from the literal import of the words, best harmonizes with the nature and objects, the scope and design of the instrument.[6]

Of course, advocates of original intention do not naively suggest that in a changing world the Constitution would never need to be updated from time to time. Rather, original intent advocates simply point out that such changes are to come about through the amendment process rather than the judiciary. According to the constitution itself, the amendment process is the proper mechanism to be used when the Constitution was in need of updating. This process, spelled out in Article V of the Constitution, specifies the method that is to be employed when society deems it necessary to alter or change the text of the Constitution. By calling for a two thirds super majority approval in both houses or a two thirds approval of the state legislatures in order to simply propose a constitutional amendment, and by calling for a three fourths approval of the state legislatures or state ratifying conventions in order to ratify a constitutional amendment, Article V makes the amendment process deliberately cumbersome by placing the power to

[5] Ibid., viii.

change the Constitution in the hands of the elected representatives of the people. The following quotations make it apparent that the founders understood that the amendment process was the appropriate methodology to be employed when alteration of the constitutional text was contemplated. According to George Washington:

> If, in the opinion of the people, the distribution or modification of the Constitutional powers be at any particular wrong, let it be corrected by an amendment the way the Constitution designates. But let there be no change by usurpation; though this may in one instance be the instrument of good, it is the customary weapon by which free governments are destroyed.[7]

Samuel Adams similarly explained:

> The people alone have an incontestable, unalienable, and indefensible right to institute government and to reform, alter, or totally change the same when their protection, safety, prosperity, and happiness require it. And the federal Constitution, according to the mode prescribed therein, has already undergone such amendments in several parts of it as from experience has been judged necessary.[8]

These quotations illustrate how much the principle of seeking authorial intent through literal hermeneutics was the foundation of American constitutional interpretation. The framers simply expected the judiciary to follow the ordinary language of the Constitution when adjudicating matters. They never expected the courts to depart from the principles of literal interpretation by taking upon themselves the awesome power of amending the Constitution from the bench, thereby circumventing the process outlined in Article V of the Constitution. Modern examples of the judiciary legislating from the bench by departing from the principles of literal interpretation include the notions that the death penalty violates the cruel and unusual punishment clause of the Eighth Amendment, that the First Amendment mandates a strict

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[6] Joseph Story; quoted in Edwin Meese, III, Address to American Bar Association, 1985; adapted in "Toward a Jurisprudence of Original Understanding," *Benchmark* Vol. II, no. 1, (January-February 1986): 10.

[7] George Washington, *American Historical Documents* (NY: Barnes and Noble, Inc., 1960), 44.

[8] Samuel Adams, *The Writings of Samuel Adams*, Harry Alonzo Cushing, ed. (NY: G.P. Putnam's Sons, 1904), Vol. IV: 388.

separation between church and state, and that the Fourteenth Amendment contains a constitutional right to have an abortion. These issues will be explored in part three.

Because of this presumption that the justices would simply follow the intent of the constitution's authors through an application of a literal method of Constitutional interpretation, the framers saw the judiciary as a rather impotent body that never had the potential of posing any real threat to democracy. For example, Article III of the Constitution, which enumerates the power of the judiciary, "is the shortest and least specific of the constitutional provisions establishing the three branches of government."[9] The framers obviously spent far less time and debate when enumerating the powers of the judiciary than when deciding upon the powers of the executive and legislative branches of government.[10] Historian David Barton explains:

> As in many documents, the Constitution lists the most important aspects first, progressing to those of lesser consequence; following the preamble, Article I describes the Congress, Article II the Presidency, and Article III the Judiciary. Not only does the order of listing reveal their relative position of importance, the amount of detail provided by each branch also reflects its relative importance. The Legislature (Article I) received 255 lines of print while the Presidency (Article II) required only 114 lines. The judiciary (Article III) merited a mere 44 lines.[11]

The framers were so non-threatened by the judicial branch of government that they had no problem assigning members of the federal judiciary a life term to be terminated only by impeachment. Such life tenure stands in stark contrast to the limited terms that could only be fulfilled after voter approval given to members of the legislative and executive branches of government. The framers were obviously far more fearful of the threat that the executive and legislative branches posed to democracy than they were of the threat posed by the judiciary. It is

[9] Linda R. Monk, *The Words We Live By* (NY: Stonesong Press, 2001), 90.
[10] Ibid.
[11] David Barton, *The Myth of Separation*, 5th ed. (Aledo, TX: Wallbuilder Press, 1992), 221.

for reasons such as these that Alexander Hamilton depicted the judiciary as the branch of government that posed the least dangerous threat to democracy in *Federalist 78*.[12]

Even the founders themselves who served as members of the first Supreme Court recognized that the court was designed to inhibit it from wielding great power in the affairs of the nation. For example, John Jay became the court's first chief justice after being appointed by George Washington. However, he refused a second nomination as chief justice in 1801. In so doing, he told President Adams that he had no faith that the court could acquire enough "energy, weight, and dignity" to play an integral role in the nation's affairs.[13] This perceived impotency of the judiciary is also evidenced by the fact that up until 1935, the Supreme Court was never even housed in its own building independent of the building that housed Congress. From 1800 to 1935, the Supreme Court met in either the committee room of the capitol building, the Senate's former chambers,[14] and in a humble apartment in the basement beneath the Senate Chamber.[15] Historians Marshall and Manuel comment that during these years:

> An idle passerby might wander in and find two or three onlookers and a court clerk and several men who had given up trying to find work and felt grateful for a warm place to sit on a cold day…One could not tell that he had entered the highest courtroom in the land.[16]

In sum, the founders lack of concern regarding the power of the judiciary as well as the perceived impotency of the court from its inception furnish ample historical proof that the framers expected members of the judiciary to simply seek authorial intent through employing literal hermeneutics in handling cases. Deviation from this method was never contemplated nor

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[13] Robert G. McCloskey, *The American Supreme Court* (Chicago: University of Chicago Press, 1960), 31.

[14] Fred Friendly and Martha J. H. Elliot, *The Constitution: That Delicate Balance* (NY: Random House, 1984), 11.

[15] Albert J. Beveridge, *The Life of John Marshall* (Boston: Houghton Mifflin, 1929), Vol. III, 121.

[16] Peter Marshall and David Manuel, *From Sea to Shining Sea* (NJ, Fleming H. Revell Co., 1986), 197-98.

anticipated. Thus, literal interpretation is at the very heart of American constitutional interpretation.

Conclusion

Discovering authorial intent through literal hermeneutics plays a significant role in the field of law. A literal approach is the key toward discovering authorial intent when interpreting various legal documents such as contracts, testamentary devices, and statutes. Moreover, this same hermeneutical approach was viewed as the proper method when interpreting the Constitution for most of America's judicial history. In the next article (part two), these identical hermeneutical principles will demonstrate themselves to be equally important to the field of biblical interpretation as they are in the field of legal interpretation.

Enthroning the Interpreter: Dangerous Trends in Law and Theology-Part II

The previous article (part one) demonstrated that the utilization of a literal hermeneutic in order to ascertain authorial intent is a key component of American jurisprudence. This article (part two) will establish that the employment of this identical method of interpretation is also the cornerstone of proper biblical interpretation. This only stands to reason. If jurists employ literalism in order to discover the author's meaning in contracts, testamentary documents, statutes, or constitutions, why should interpreters of Scripture do no less when seeking to discover what God Himself has declared? Thus, one notices distinct similarities when comparing traditional maxims of legal interpretation with basic maxims of biblical interpretation. Specifically, this article will be show that proper biblical and legal interpretation both use the identical interpretive approach and underlying philosophy behind the approach.

Similar Interpretive Approaches in both Biblical and Legal Interpretation

Post reformation biblical interpretation employs what is called the literal, grammatical, historical method of interpretation. Let us break this phrase down into its component parts. The dictionary defines *literal* interpretation as that type of interpretation which is "based on the actual words in their ordinary meaning…not going beyond the facts."[17] Thus, literal interpretation encompasses the idea of assigning to every word the same meaning it would have in its normal usage, whether employed in speaking, writing, or thinking.[18] Cooper's "Golden Rule of Interpretation" incorporates such an understanding of literalism:

> When the plain sense of scripture makes common sense, seek no other sense; therefore take every word at its primary, ordinary, usual, literal meaning unless the facts of the

[17] *Webster's New Twentieth Century Dictionary*, unabridged, 2d ed., s.v. "literal."
[18] Bernard Ramm, *Protestant Biblical Interpretation* (Boston: W.A. Wilde, 1956), 89-92.

> immediate context, studied in light of related passages and axiomatic fundamental truths, indicate clearly otherwise.[19]

Because literalism resists "going beyond the facts," when interpreting a given text, literal interpreters resist the temptation to import foreign ideas from outside the text. A classic example of going beyond what the text says is the ancient interpretation that the four rivers in Genesis 2–the Pishon, Havilah, Tigris, and Euphrates–represent the body, soul, spirit, and mind. Such an idea is not readily apparent from studying the text in Genesis 2. One must go outside the text of Genesis 2 and bring into it foreign concepts in order to arrive at this conclusion.

It should be noted in passing that literal interpretation has been unfairly criticized on the basis that it adheres to a wooden, inflexible literalism that fails to allow for types, symbols, figures of speech, and genre distinctions. Such straw man argumentation is easily recognizable by simply reading how those advocating a literal hermeneutic define the term literal. Ryrie specifically notes that literalism "…does not preclude or exclude correct understanding of types, illustrations, apocalypses, and other genres within the basic framework of literal interpretation."[20] Ryrie further explains that literal interpretation "…might also be called plain interpretation so that no one receives the mistaken notion that the literal principle rules out figures of speech."[21] Ryrie buttresses this point by appealing to the following quote from E.R. Craven:

> The literalist (so called) is not one who denies that figurative language, that symbols are used in prophecy, nor does he deny the great spiritual truths are set forth therein; his position is, simply, that the prophecies are to be normally interpreted (i.e., according to received laws of language) as any other utterances are interpreted–that which is manifestly figurative so regarded.[22]

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[19] David L. Cooper, *The World's Greatest Library Graphically Illustrated* (Los Angeles: Biblical Research Society, 1970), 11.

[20] Ibid.

[21] Charles C. Ryrie, *Dispensationalism Today* (Chicago: Moody Press, 1965), 86.

[22] E.R. Craven and J.P. Lange, ed., *Commentary on the Holy Scriptures: Revelation* (NY: Scribner, 1872), 98 (cited in Ryrie, *Dispensationalism Today*, 87).

The absurdity of the notion that a literal hermeneutic fails to encompass basic figures of speech is also illustrated by the fact that the most extensive scholarly treatment of figures of speech available today[23] was completed not just by a dispensational literalist, but by a hyper dispensationalist! E.W. Bullinger, the creator of this work, was not only a literalist and a dispensationalist, but also a hyper dispensationalist who believed that the age of the church began after Acts 28:28. Ice observes that, "Bullinger's work demonstrates that literalists have at least thought about the use of figures of speech in a detailed and sophisticated way and do not consider such usage in conflict with literalism."[24]

Grammatical interpretation observes the impact that grammar plays in any given text. Thus, bible interpreters must correctly analyze the relationship that words, phrases, or sentences have toward one another. Such an analysis entails the study of lexicology (meaning of words), morphology (form of words), parts of speech (function of words), and syntax (relationship of words).[25] *Historical* interpretation takes into account historical context, setting, and circumstances in which the words of Scripture were written. Terry explains:

> The interpreter should, therefore, endeavour to take himself from the present, and to transport himself into the historical position of his author, look through his eyes, note his surroundings, feel with his heart, and catch his emotion. Herein we note the import of the term grammatico-*historical* interpretation.[26]

In essence, the literal, grammatical, historical method of interpretation is designed to arrive at authorial intent by allowing the ideas plainly found within the text to speak for themselves. By way of comparison, the literal, grammatical, historical hermeneutical method is identical to the

[23] Ethelbert W. Bullinger, *Figures of Speech Used in the Bible: Explained and Illustrated* (Grand Rapids: Baker, 1968).

[24] Thomas D. Ice, "Dispensational Hermeneutics," *Issues in Dispensationalism*, Wesley R. Willis and John R. Master, gen. eds. (Chicago: Moody, 1994), 42.

contractual hermeneutical method reflected in the words of Justice Flaherty that has already been mentioned in part one. Flaherty noted, "It is well established that the intent of the parties to a written contract is to be regarded as being embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language from the agreement…"[27] Furthermore, the literal, grammatical, historical method of interpretation is virtually identical to Joseph Story's aforementioned approach to constitutional interpretation. According to Story:

> In construing the Constitution of the United States, we are in the first instance to consider, what are its nature and objects, its scope and design, as apparent from the structure of the instrument, viewed as a whole and also viewed in its component parts. Where its words are plain, clear and determinate, they require no interpretation…Where the words admit to two senses, each of which is conformable to general usage, that sense is to be adopted, which without departing from the literal import of the words, best harmonizes with the nature and objects, the scope and design of the instrument.[28]

Moreover, Terry's above described definition of historical interpretation bears much resemblance to Thomas Jefferson's admonition to return to the Constitution's original intent. The previous article quoted Jefferson in this regard when he said that we must:

> Carry ourselves back to the time when the Constitution was adopted, recollect the spirit in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed.[29]

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[25] Roy B. Zuck, *Basic Bible Interpretation: A Practical Guide to Discovering Biblical Truth* (Wheaton, IL: Victor Books, 1991), 100.

[26] Milton S. Terry, *Biblical Hermeneutics* (NY: Philips and Hunt, 1883), 231.

[27] Justice Flaherty; Quoted by E. Allan Farnsworth and William F. Young, *Cases and Materials on Contracts*, 5th ed. (Westbury, NY: The Foundation Press, Inc., 1995), 603-4.

[28] Joseph Story; quoted in Edwin Meese, III, Address to American Bar Association, 1985; adapted in "Toward a Jurisprudence of Original Understanding," *Benchmark* Vol. II, no. 1, (January-February 1986): 10.

[29] Thomas Jefferson, *Writings of Thomas Jefferson*, Albert Bergh, ed. (Washington D.C.: Thomas Jefferson Memorial Association, 1904), Vol. XV, p. 449, in a letter from Jefferson to Justice William Johnson on June 12, 1823.

In sum, maxims of biblical interpretation have much in common with traditional maxims of legal interpretation. Both approaches have as their underlying goal the pursuit of authorial intent by first and foremost observing the ideas plainly presented in the text.

Philosophical Similarities in Legal and Biblical Interpretation

Although there are similarities in approach when comparing maxims of legal and biblical interpretation, the similarities do not end there. The philosophy of interpretation is also shared between the two disciplines. The underlying goal of both legal and biblical interpretation is to transfer the authority away from the subjective impulses of the interpreter and instead toward the objective standard of the text.

Why should biblical interpreters employ the literal, grammatical, historical method of interpretation? Pentecost cites several dangers when such an approach is not used.[30] First and foremost, the authority transfers from the text to the interpreter. In other words, the basic authority in interpretation ceases to be the Scriptures, but rather the mind of the interpreter. Jerome warns, "that the faultiest style of teaching is to corrupt the meaning of scripture, and to drag its reluctant utterance to our own will, making Scriptural mysteries out of our own imagination."[31] Farrar adds, "…once we start with the rule that whole passages and books of scripture say one thing when they mean another, the reader is delivered bound hand and foot to the caprice of the interpreter."[32] Ramm observes, "The Bible treated allegorically becomes putty in the hands of the exegete."[33] Thus, scripture becomes held hostage to whatever seems

[30] J. Dwight Pentecost, *Things to Come: A Study in Biblical Eschatology* (Grand Rapids: Zondervan, 1958), 5-6.

[31] Jerome; Quoted by F.W. Farrar, *History of interpretation* (NY: E.P. Dutton and Company, 1886), 232.

[32] Ibid., 238.

[33] Ramm, 30.

reasonable to the interpreter when the literal, grammatical, historical interpretive method is dispensed with.

Second, the Scripture itself is not being interpreted. The issue becomes not what God has spoken but what the interpreter thinks. In other words, the text becomes servant to the interpreter rather than the interpreter being subservient to the text. Terry explains:

> …it will be noticed at once that its habit is to disregard the common signification of words and give wing to all manner of fanciful speculation. It does not draw out the legitimate meaning of an author's language, but foists into it whatever the whim or fancy of an interpreter may desire."[34]

Third, one is left without any means by which the conclusions of the interpreter may be tested. When the objective standard of language's common meaning is dispensed with, one man's personal interpretation becomes just as valid as anyone else's. In such an environment, there is no way to determine whose interpretation is correct because there is no longer an objective standard that personal interpretations can be compared to. Fourth, there is no mechanism to control the imagination of the interpreter. Ramm notes:

> …to state that the principal meaning of the Bible is a second-sense meaning, and that the principle method of interpretation is "spiritualizing," is to open the door to almost uncontrolled speculation and imagination. For this reason we have insisted that the control in interpretation is the literal method.[35]

Thus, literal interpretation properly constrains the dictates of the carnal imagination by allowing it to roam only so far. Otherwise interpreters (to borrow the language of the great New York jurist, Chancellor James Kent) would be able to "roam at large in the trackless fields of their own imaginations." In sum, the philosophy behind utilization of the literal, grammatical, historical method of interpretation is to shift the authority in the interpretive process away from

[34] Milton S. Terry, *Biblical Hermeneutics* (NY: Philips and Hunt, 1883), 224.
[35] Ramm, 65.

the subjectivity of the interpreter's ever-vacillating imagination and back toward the objectivity of the static text.

This same rationale also exists in the domain of legal interpretation. For the same reasons described above, when interpreting a contract, courts first of all observe the plain meaning of the contract language. Because courts understand that parties have a right to enter into contractual terms of their own choosing, courts understand that they are not in the business of rewriting contracts in a way that is contrary to the express wishes of the parties. Therefore, courts allow the authority in the interpretive process to reside in the contract language rather than in their own opinions regarding what the contract should or should not say. As previously mentioned in part one, Justice Flaherty succinctly summarized the philosophy behind literal interpretation in contract law:

> …the rationale for interpreting contractual terms in accord with the plain meaning of language expressed is multifarious, resting in part upon what is viewed as the appropriate role of the courts in the interpretive process: This court long ago emphasized that the parties have the right to make their own contract, and it is not the function of the court to re-write it, or to give it a construction in conflict with…the accepted and plain meaning of the language used…In addition to the justifications focusing upon the appropriate role of the courts in the interpretive process, the plain meaning approach to construction has been supported as generally best serving the ascertainment of the contracting parties mutual intent…In determining what the parties determined by their contract, the law must look to what they clearly expressed. Courts in interpreting a contract do not assume that its language was chosen carelessly. Neither can it be assumed that the parties were ignorant of the meaning of the language that they employed…[36]

Similarly, because courts desire to honor the wishes of the testator, they also allow authority to rest in the testamentary document itself by utilizing a literal approach when interpreting such documents. Moreover, because the judiciary traditionally has not desired to transform itself into a super legislature, it has attempted to follow the plain language of statutes whenever possible when interpreting legislation. In addition, because jurists have traditionally not desired to amend

the Constitution from the bench, they have typically followed the plain language of the Constitution's drafters thus allowing authority to abide in the constitutional text rather in their own ideological predilections. Traditional principles of constitutional interpretation recognize that the maxim of following the plain language of the text is indeed the best insulation against an overly ideological judiciary. If jurists approached these documents any other way, they would not be interpreting. Rather, they would be amending and rewriting them.

Lawyers Advocating Literalism throughout Church History

As indicated in the preceding discussion, appropriate biblical interpretation, as capsulated in the works of hermeneutical authorities such as Ramm, Pentecost, Terry, and Farrar, is nearly identical to the principles of legal interpretation in both approach and philosophy. However, this similarity will come as no surprise to students of church history. Some of the greatest contributions to the church's understanding of the importance literal interpretation have come from those who were either lawyers or former students of the law. Great advances in hermeneutical method came about when these Christian jurists applied their legal training to the study of the Scriptures. Their efforts resulted in trusted interpretive methods later codified and summarized by recent hermeneutical authorities.

For example, reformers Martin Luther and John Calvin, both students of the law in their formative educational years,[37] played integral roles in rescuing the church from the Alexandrian allegorical method of interpretation that was introduced in the second century and grew to dominate the church throughout the middle ages. Luther denounced the allegorical approach to

[36] Justice Flaherty; Quoted by E. Allan Farnsworth and William F. Young, *Cases and Materials on Contracts*, 5th ed. (Westbury, NY: The Foundation Press, Inc., 1995), 603-4.

scripture in strong words. He said: "Allegories are empty speculations and as it were the scum of Holy Scripture." "Origen's allegories are not worth so much dirt." "To allegorize is to juggle the scripture." "Allegorizing may degenerate into a mere monkey game." "Allegories are awkward, absurd, inventive, obsolete, loose rags."[38] Luther also wrote that the Scriptures, "are to be retained in their simplest meaning ever possible, and to be understood in their grammatical and literal sense unless the context plainly forbids" (*Luther's Works*, 6:509).[39]

Calvin similarly rejected allegorical interpretations. He called them "frivolous games" and accused Origen and other allegorists of "torturing scripture, in every possible sense, from the true sense."[40] Calvin wrote in the preface of his commentary on Romans that "it is the first business of an interpreter to let the author say what he does say, instead of attributing to him what we think he ought to say."[41]

Both reformers rejected the use church tradition as a guide for spiritual truth and instead advocated returning to scripture alone or *"sola scriptura*" as the source of Christian belief and practice. To put this into legal terms, Luther and Calvin rejected the case law approach as a guide to scripture.[42] The case law method places more emphasis on studying what legal authorities have said about a given legal source than on studying the legal source itself. The case law method and its relationship to constitutional law will be dealt with in part three. In addition, both reformers recognized the value of knowledge of biblical Hebrew and Greek due to the fact that a return to scripture inevitably required knowledge of the original languages of Scripture.

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[37] Alan W. Gomes, *Reformation & Modern Theology and Historical Theology Survey Course Syllabus* (La Mirada: Biola Bookstore, 1999), 23; Justo L. Gonzalez, *The Story of Christianity* (San Francisco: Harper Collins Publishers, 1985), vol. 2: 62.

[38] Martin Luther; Quoted in Farr, 328.

[39] Martin Luther; Quoted by Zuck, 45.

[40] John Calvin; Quoted in Zuck, 47.

[41] Ibid.

[42] John Eidesmoe, *Christianity and the Constitution* (Grand Rapids: Baker Book House, 1987), 402.

However, despite their emphasis upon literally interpreting some aspects of Scripture, Luther and Calvin did not go far enough in applying a literal hermeneutic to all areas of divine truth. Regarding Luther, Zuck observes:

> Though Luther vehemently opposed the allegorizing of scripture, he too occasionally allegorized. For instance he stated that Noah's Ark is an allegory of the church. For Luther, Bible interpretation is to be centered in Christ. Rather than allegorizing the Old Testament, he saw Christ frequently in the Old Testament, often beyond what is legitimately provided for in proper interpretation.

Because the reformers were primarily concerned with soteriological issues, they failed to apply the same literal interpretation that they used to interpret soteriology to the areas of ecclesiology and eschatology.

Such a selective and inconsistent application of a literal hermeneutic was not rectified until the budding of the dispensational movement centuries later. What makes dispensationalism unique as a theological system is not merely its emphasis upon a literal hermeneutic, but its willingness to consistently apply this literal hermeneutic to the totality of biblical revelation. Thus, Ryrie includes consistent literal interpretation in his *sine qua non* of dispensational theology when he says, "the distinction between Israel and the church is born out of a system of hermeneutics that is usually called literal interpretation."[43]

By insisting on the application of a literal hermeneutic to all of Scripture, dispensationalism, in essence, completed the hermeneutical revolution begun by the reformers. Dispensationalists took the literal hermeneutic applied by the reformers in the area of soteriology and applied it to all areas of theology, including eschatology and ecclesiology. Just as Calvin and Luther, the two men most credited for introducing a literal hermeneutic to soteriological issues in the reformation era, were trained in the law, many of the leaders of the dispensational movement were heavily influenced by their legal training and thinking. For example, John Nelson Darby,

the man mostly credited with rediscovering the scriptural doctrine of the pretribulation rapture, planned to enter the field of law after he graduating from Trinity College in Dublin. However, after a spiritual struggle that led to his conversion he opted to give up the law in order to become a priest in the Church of England.[44]

Another key dispensational thinker was Sir Robert Anderson. His work *The Coming Prince* is considered a classic in the area of biblical chronology because of its detailed explanation of the literal fulfillment of Daniel's prophecy of the seventy weeks. Anderson, like Darby, was also heavily influenced by the legal profession. After receiving his law degree from Trinity College, Dublin in 1863, he worked drawing up legal briefs on a traveling circuit. He served as chief of the criminal investigative department of the Scotland Yard. After retiring with distinction, he used his investigative training and ability to think logically to study the Scriptures.[45]

Cyrus Ingerson Scofield was yet another influential dispensationalist who also happened to be a lawyer. Following the Civil War he studied law and received his law degree. He then entered politics in Kansas. He later appointed to the office of District Attorney by President Grant. Scofield's best remembered contributions include his influence as a Bible teacher as well as *The Scofield Reference Bible*, which advocated a pretribulation rapture, a literal return of the Jews to the homeland, premillennialism, and dispensationalism.[46] In sum, given the contributions that legal minds have made throughout church history concerning the significance of literal interpretation, its no wonder that the maxims of proper biblical interpretation, as summarized by

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[43] Charles C. Ryrie, *Dispensationalism: Revised and Expanded* (Chicago: Moody Press, 1995), 40.
[44] Mal Couch, *An Introduction to Classical Evangelical Hermeneutics: A Guide to the History and Practice of Biblical Interpretation* (Grand Rapids: Kregel, 2000), 112.
[45] Ibid., 119.
[46] Ibid., 119-120.

hermeneutical authorities such as Ramm, Pentecost, Terry, and Farrar, bear such a close resemblance to traditional maxims of legal interpretation.

Conclusion

Just as employing a literal method of interpretation in order to ascertain authorial intent is central in the field of law, the exact same maxim of interpretation is also crucial toward proper biblical interpretation. Not only is this interpretive approach the same in both fields, but the philosophy behind the approach is also the same in both. The rationale for a literal hermeneutic in both legal and biblical interpretation is to transfer authority away from the subjective impulses of the interpreter and toward the objective standard of the text.

These first two articles demonstrated the significance of literalism to proper legal interpretation (part one) and proper biblical interpretation (part two). Now that this foundation has been laid, the next two articles will expose gradual erosion of these principles in modern legal interpretation (part three) and in contemporary evangelical biblical interpretation (part four).

Enthroning the Interpreter: Dangerous Trends in Law and Theology-Part III

The previous articles demonstrated that use of a literal hermeneutic in order to ascertain authorial intent is foundational to proper legal and biblical interpretation. The next two articles will expose a drift away from these bedrock principles in both fields. Over the course of the previous century and a half, American jurisprudence has experienced a progressive movement away from seeking authorial intent through what the author has plainly stated. Although this trend is not necessarily discernible in all facets of legal interpretation, it is particularly noticeable in the field of constitutional interpretation. While Justice Story's previously mentioned classical approach to constitutional interpretation called for seeking the meaning of the meaning of the Constitution based upon the plain language of its drafters, modern constitutional interpretation places the ability to determine the Constitution's meaning almost exclusively within the subjective discretion of the interpreter. Thus, the end result is that the field constitutional interpretation has undergone a radical shift in authority from the objective constitutional text to the subjectivity of the interpreter's mind.

Legal Positivism: Its Origin and Essence

When did such a shift away from Justice Story's time honored objective approach to the Constitution begin? Historians have traced it to the following three individuals: Christopher Columbus Langdell (1826-1906), Roscoe Pound (1870-1964), and Oliver Wendell Holmes (1841-1932).[47] All three were influential in the legal community. Langdell was dean of Harvard Law School. Pound served as a professor at four different law schools and also served as the Dean of the law schools at Harvard and the University of Nebraska. Holmes was appointed to the

United States Supreme Court in 1902. By utilizing their spheres of influences within the legal profession, these men each played strategic roles in institutionalizing what is known as legal positivism. Langdell first introduced this dangerous trend in constitutional interpretation at Harvard Law school in the 1870's. Pound followed in this tradition when he subsequently became dean at Harvard. Holmes brought legal positivism into the fabric of American judicial making following his appointment to the nation's highest court.

In essence, the legal positivist maintains that the proper role of the judiciary is not the application of the Constitution's original understanding when adjudicating legal controversies. Rather, it is to study the needs, wants, and desires of a changing society and to reinterpret the Constitution in order to fulfill these societal needs, wants, and desires. A basic presupposition of legal positivist thinking is the belief in Darwinian evolution ultimately resulting in man's continued upward evolutionary ascent.[48] In other words, just as man evolved from the animal species, he continues to evolve and "progress." Thus, as man continues to evolve, it is necessary to have a Constitution that also continues to evolve and change along with him.[49] Therefore, legal positivists are quick to point out the absurdity of shackling enlightened 21st humanity to the under evolved and undeveloped legal principles 18th century that are reflected in the United States Constitution.

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[47] David Barton, *Original Intent: The Courts, the Constitution, and Religion* (Aledo, TX: Wallbuilders Press, 1996), 228-28; John Eidesmoe, *Christianity and the Constitution* (Grand Rapids: Baker Book House, 1987), 394.

[48] Barton, *Original Intent*, 228; Eidesmoe, *Christianity and the Constitution*, 391.

[49] This incorporation of evolutionary theory into legal thinking illustrates how evolution has become intertwined with numerous academic disciplines, which are not necessarily related to the sciences. Examples of such academic disciplines include Law, History, Economics, Political Science, Psychology, Anthropology, Theology and Sociology. For an exposition of how evolution impacts these disciplines see Henry M. Morris, *The Long War Against God: The History and Impact of the Creation/Evolution Conflict* (Grand Rapids: Baker Book House, 1989) and David A. Noebel, *Understanding the Times* (Manitou Springs, CO: Summit Press, 1991). Understanding evolution's influence not only in the sciences but also in numerous other disciplines helps one understand why challenges to evolutionary thinking are so vigorously resisted by academics of all varieties.

This evolutionary mentality is commonly found in modern legal decisions. For example, in *Trop v. Dulles*, Chief Justice Earl Warren contended that the State Department could not strip a man of his citizenship because he deserted from the armed forces in World War II. Warren based his decision on the grounds that the cruel and unusual clause of the 8th Amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."[50] Justice Brennan picked up on this theme in his concurrence in *Furman v. Georgia*.[51] In that case, Brennan maintained that although capital punishment was practiced at the time that the 8th Amendment was adopted, the practice of capital punishment still violated the 8th Amendment's prohibition against cruel and unusual punishment because this clause must be interpreted according to the "evolving standard of decency." In other words, even though capital punishment was regularly practiced during the founding era, it is cruel and unusual punishment in light of the enlightened and evolved standards of today.

Thus, jurists adhering to legal positivism ceased from viewing the Constitution as containing a set of fixed legal principles. Rather, they viewed it as a "living and breathing" document that evolved from one generation to the next. In legal positivist thinking, the role of a judge is not to discern the intent of the framers in order to apply such intent in the resolution of cases. Rather, the role of a judge is to engross himself in societal concerns and to use his decisions to guide the evolution of the law and the Constitution in order to fulfill these concerns. Professor Alexander Bickel explains:

> The function of justices…is to immerse themselves in the tradition of our society and of kindred societies that have gone before, in the history and in the sediment of history which is law, and…in the thought and the vision of the philosophers and poets. The justices will then be fit to extract 'fundamental presuppositions' from their deepest selves, but in fact from the evolving morality of our tradition."[52]

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[50] *Trop v. Dulles*, 356 U.S. 86 (1958).
[51] *Furman v. Georgia*, 408 U.S. 238 (1972).
[52] Alexander Bickel; quoted in Eidesmoe, *Christianity and the Constitution*, 395.

Bickel continues:

> Courts have certain capacities for dealing with matters of principle that legislatures and executives do not possess. Judges have, or should have, the leisure, the training, and the insulation to follow the ways of the scholar in pursuing the ends of government."[53]

If the role of a justice is to guide the evolution of the Constitution rather than derive the intent of the founding fathers, then the true authority in the interpretive process is the mind of the justice rather than the text itself. Such a radical shift in authority from the text to the interpreter is dramatically illustrated in the following quote from Edwin Meese:

> Under the old system the question was how to read the Constitution; under the new approach, the question is whether to read the Constitution.[54]

This shift in authority from the text to the interpreter is also illustrated by juxtaposing two quotations from two Supreme Court Justices, each of whom advocated differing approaches to constitutional interpretation. Justice Felix Frankfurter, who represented the traditional school of constitutional interpretation declared, "The ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it."[55] By contrast, Justice Charles Evan Hughes, who represented the legal positivist school of interpretation, asserted, "We are under a Constitution, but the Constitution is what the judge says it is."[56]

Legal Positivism's Impact on Legal Education

The influence of legal positivism had a profound impact upon the philosophy under girding American legal education. As legal positivism became more influential, the opinions of the

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[53] Ibid.

[54] Edwin Meese, III, Address to American Bar Association, 1985; adapted in "Toward a Jurisprudence of Original Understanding," *Benchmark* Vol. II, no. 1, (January-February 1986): 6.

[55] *Graves v. New York ex rel. O'Keefe*, 306 U.S. 466, 491-492 (1939).

[56] Charles Evans Hughes; quoted by Craig R. Ducat and Harold W. Chase, *Constitutional Interpretation* (St. Paul: West Publishing Co., 1974, 1983), 3.

founding fathers began to be perceived as irrelevant. In some instances, the beliefs of the founders were considered hindrances to the successful evolution of society. John Dewey expressed such a sentiment when he noted:

> The belief in political fixity, of the sanctity of some form of state consecrated by the efforts of our fathers and hallowed by tradition, is one of the stumbling blocks in the way of orderly and direct change.[57]

The marginalization of the ideas of the founding fathers in American education has been expedited in recent years through the influence of historical revisionism, which places under a magnifying glass the imperfections of the framers while simultaneously suppressing any good that they accomplished.

In addition, Blackstone's *Commentaries on the Laws of England* (1765-1760), with their emphasis on basing human law upon what the creator had revealed through the law of nature and the Scriptures,[58] began to be discarded in American legal education. Prior to the advent of legal positivism, Blackstone's *Commentaries* had enjoyed great influence within American legal education. In 1799, Justice Iredell noted:

> For nearly thirty years it [Blackstone's Commentaries] has been the manual of almost every law student in the United States, and its uncommon excellence has also introduced it into the libraries, and often to the favorite reading of private gentlemen.[59]

Perhaps the most significant impact of legal positivism upon American legal education was the introduction of the case law method of studying law. Prior to the rise of legal positivism, law schools focused their students' attention on the original sources of law, such as the text of the Constitution. However, the case law approach focused the attention of law students more on what judicial authorities have said about the Constitution rather than on studying the text of the

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[57] John Dewey, *The Public and Its Problems* (NY: Henry Holt and Company, 1922), 34.

[58] Sir William Blackstone, *Commentaries on the Laws of England* (Philadelphia: Robert Bell Union Library, 1771), Vol. 1: 39, 41-42.

[59] Justice Iredell; quoted in Barton, *Original Intent*, 217.

Constitution itself. The case law approach's emphasis upon judicial decisions and corresponding de-emphasis on the text of the Constitution is captured in the following statement by Pat Robertson as he reflected upon his own legal training:

> I spent three years getting my law degree at Yale Law School. From the moment I enrolled, I was assigned huge, leather-bound editions of legal cases to study and discuss. I read what lawyers and judges, professors, and historians said about the Constitution. But never once was I assigned the task of reading the Constitution itself…[60]

This sad state of affairs continues in the vast majority of law schools throughout the country today. Seldom do students receive a lecture or an assignment on the text of the Constitution. Moreover, bar examines dedicate scant attention to the constitutional text and instead test mostly on various Supreme Court holdings interpreting the text.

Furthermore, with the entrenchment of legal positivism and the case law method at the academic levels of the legal profession, it became common for legal scholars to excuse the lack of attention given to constitutional authorial intent under the guise that the intent of the framers was unknowable. The following remark from Justice Brennan reflects such an assertion:

> It is arrogant to pretend that from our vantage we can gauge accurately the intent of the framers on application of principle to specific contemporary questions. All too often sources of potential enlightenment such as records of the ratification debates provide sparse or ambiguous evidence of the original intention…And apart from the problematic nature of the sources, our distance of two centuries cannot but work as a prism refracting all we perceive.[61]

Legal Positivism's Impact on American Democracy

This above described shift in authority from the text to the interpreter in the area of constitutional interpretation has also had a significant impact upon America's democratic

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[60] Pat Robertson, *America's Dates With Destiny* (Nashville: Thomas Nelson Publishers, 1986), 95.

[61] William J. Brennan, Jr., "The Constitution of the United States: Contemporary Ratification," Teaching Symposium, Georgetown University, Washington D.C., October 12, 1985, p. 39. For a rebuttal of Brennan's argument see Robert H. Bork, *The Tempting of America: The Political Seduction of the Law* (NY: The Free Press, 1990), 161-67.

institutions. Because of the prevailing influence of legal positivism, the judiciary now has a new found ability to guide the evolutionary progress of the Constitution. As a result, many legal scholars have arrived at new definitions of "Constitution" and "constitutional convention." Eidesmoe explains that some scholars have indicated:

> that the Constitution is more than the written document signed in 1787; rather, the various decisions of the Supreme Court are part of the Constitution, and these along with the written document are the true 'Constitution' of the land. It has even been said that the Supreme Court sitting in session is a 'continuous constitutional convention.'[62]

Such a scenario threatens America's democratic ideals because it places the awesome power of amending the Constitution in the hands of nine life tenured unelected justices. Only five of these nine justices need to agree with one another in order to hand down a majority opinion. Because these justices are appointed for a life term, they are completely insulated from the electorate and thus totally unaccountable to the people for the decisions that they render. At any time, these five justices can circumvent the democratically controlled amendment process and alter America's most deeply cherished constitutional protections.

Such a system does not comprise a democracy or even a republican form of government but rather an oligarchy. The English word oligarchy is derived from the Greek word oligon (oligon), which means "a few." Under an oligarchical form of government just a few people rule the masses. America's current judiciary resembles an oligarchy because it places the authority of guiding the evolutionary progress of the Constitution and thus the power to amend the Constitution in the hands of five unelected and unaccountable philosopher kings. Ironically, the influence of legal positivism has transformed the judiciary from, according to Alexander Hamilton's words in *Federalist 78*, the least dangerous branch of government into government's

[62] Eidesmoe, *Christianity and the Constitution*, 397.

most dangerous branch. Thomas Jefferson warned that the judiciary had the potential transforming into such an oligarchy when he said:

> You seem…to consider judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men, and not more so…and their power is more dangerous as they are in office for life, and not responsible, as the other functionaries are to the elective control. The Constitution has erected no such single tribunal.[63]

In sum, Jefferson's fear of a judicial oligarchy has become a reality in our day because legal positivism has given justices permission to depart from authorial intent in order to guide the evolutionary progress of the Constitution. As long as justices are constrained by the plain meaning of the Constitution's language, the power to change the Constitution remains within the jurisdiction of the democratically controlled amendment process. However, once the judiciary departs from the Constitution's plain language, the Constitution, in the words of Jefferson, becomes "a mere thing of wax in the hands of the judiciary, which they may twist and shape in any form they please."[64] In so doing, the amendment power shifts to an unelected oligarchy. The following words of Professor Graglia best sum up the current crises in constitutional interpretation:

> …judicial usurpation of legislative power has become common and so complete that the Supreme Court has become our most powerful and important instrument of government in terms of determining the nature and power of American life. Questions literally of life and death (abortion and capital punishment), of public morality (control of pornography, prayer in the schools, and government aid to religious schools), and of the public safety (criminal procedure and street demonstrations), are all, now, in the hands of judges under the guise of constitutional law. The fact that the Constitution says nothing of, say, abortion, and indeed, explicitly and repeatedly recognizes the capital punishment that the court has come close to prohibiting, has made no difference. The result is that the central truth of constitutional law today is that it has nothing to do with the Constitution except that the words 'due process' or 'equal protection' are almost always used by the judges in stating their conclusions. Not to put to fine a point on it, constitutional law has become a fraud, a cover for a system of

[63] Thomas Jefferson, *Writings of Thomas Jefferson*, Albert Bergh, ed. (Washington D.C.: Thomas Jefferson Memorial Association, 1904), Vol. XV, p. 277, September 28, 1820.

[64] Ibid., Vol. XV, p. 213, a letter to Judge Spencer Roane on September 6, 1819.

government by the majority vote of a nine-person committee of lawyers, unelected and holding office for life.[65]

Legal Positivism Illustrated

The Death Penalty and Cruel and Unusual Punishment

Legal positivism's role in swaying constitutional interpreters away from pursuing authorial intent can best be illustrated by observing the following recent judicial decisions. In each case, the Supreme Court rejected the intent of the framers in order to guide the evolutionary progress of the Constitution and society. For example, mention has already been made of Justice Brennan's concurring opinion in *Furman v. Georgia.*[66] In this case, Brennan maintained that capital punishment violated the 8th Amendment's prohibition against cruel and unusual punishment. Brennan reasoned that his clause must be interpreted according to the "evolving standard of decency." Brennan's opinion in this case expressly demonstrates his pursuit of guiding the evolutionary progress of the Constitution at the expense of its authorial intent. His ambition to guide the evolutionary progress of the Constitution is evidenced through his use of the phrase "evolving standard of decency."

Brennan's discarding of the Constitution's authorial intent is demonstrated by the fact that capital punishment was routinely practiced at the time of the Constitution's writing. In other words, the very society that ratified the Constitution and the Bill of Rights consistently practiced capital punishment. Moreover, the very Congress that adopted the 8th Amendment also passed the 5th Amendment. By indicating that the Federal government may take life as long as due process is first afforded, the 5th Amendment expressly recognizes capital punishment. In addition, Brennan's opinion illustrates the oligarchical mentality fostered by legal positivism.

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[65] Lino A. Graglia, "Judicial Review on the Basis of 'Regime Principles': A Prescription for Government by Judges, *South Texas Law Journal*, Vol. 26, No. 3 (Fall 1985), pp. 435-52, at 441.

[66] *Furman v. Georgia*, 408 U.S. 238 (1972).

Despite Brennan's personal opinion that enlightened society has evolved beyond the necessity of capital punishment, public opinion polls consistently demonstrate that the practice of capital punishment enjoys the overwhelming support of the American people.

Privacy and Abortion

Legal positivism's influence also finds ample illustration in the infamous *Roe v. Wade*[67] decision. This case guaranteed women the constitutional right to procure an abortion. Interestingly, any reference to abortion or privacy cannot be found within the text of the Constitution. However, Justice Blackmun, in writing for the majority, was able to find such a right by seizing the opportunity of guiding the evolutionary progress of the Constitution.

Blackmun borrowed the right to privacy language from a case handed down a few years earlier called *Griswold v. Connecticut*.[68] In *Griswold*, the court struck down a state law restricting access to contraceptives. The court reached its decision on the grounds that such laws violated the constitutional right to privacy. Since the Constitution does not mention the right to privacy, where did the *Griswold* court base the existence of such a right? The court found it within the "penumbras" of the Bill of Rights. A penumbra is a shadow. In other words, despite the fact that the word privacy nowhere appears in the actual wording of the Bill of Rights, the court "discovered" the right to privacy within the shadows cast by the Bill of Rights. In *Roe*, the court ruled that state laws restricting access to abortion are unconstitutional. Blackmun based this decision on the privacy language from *Griswold*. Blackmun reasoned that procurement of an abortion falls within the purview of the right to privacy.

[67] *Roe v. Wade*, 410 U.S. 113 (1973)
[68] *Griswold v. Connecticut*, 381 U.S. 479 (1965)

The *Roe* court also found a constitutional right to obtain an abortion on the basis of the word "liberty" found in the 14th Amendment. However, the authorial intent of 14th Amendment has nothing to do with abortion. The 14th Amendment was passed in 1868 in the post-Civil War era in order to guarantee certain rights to the recently emancipated slaves. In fact, the authorial intent of the 14th Amendment argues strongly against using this amendment as a means of justifying a constitutional right to acquire an abortion. The very states that ratified the 14th Amendment in 1868 had either passed or were in the process of passing laws prohibiting abortion.

In sum, Blackmun and the *Roe* court were able to guide the evolutionary progress of the Constitution so that it would guarantee a woman's constitutional right to an abortion only by trampling on the intention of its framers. Because no such right to privacy exists in the text of the Constitution, Blackmun had to manufacture such a right from the shadows of the Bill of Rights. Moreover, Blackmun found the right to an abortion in the liberty clause of the 14th Amendment only by ignoring the historical context in which the amendment was written. Finally, *Roe* again illustrates the oligarchical method of decision making created by legal positivism. *Roe* attempted to resolve one of the most controversial issues of our time, the question of when life begins, through the unaccountable judiciary rather than through the democratically controlled legislative process.

Separation of Church and State

A final illustration of legal positivism can be found in the cases striking down voluntary public school prayer and Bible reading in 1962 and 1963. *Engle v. Vitale*[69] represented the first time in American history that the Supreme Court used the separation of church and state doctrine to illegalize the long standing American tradition of opening the public school day with the

voluntary recitation of a prayer. At issue in *Engle* was the practice of the New York public schools in having their students recite a short, 22 word, innocuous, non-denominational prayer that merely acknowledged dependence upon God. The words of the prayer were as follows:

> Almighty God, we acknowledge our dependence upon Thee, and we beg thy blessings upon us, our parents, our teachers, and our country.

A similar case came before the court a year later called *School District of Abington Township v. Schempp*.[70] The issue in this case involved voluntary Bible reading in the public schools. This practice involved one of the students reading the Bible without comment from a version of his or her choice with no additional instruction given. Once again, the Supreme Court used the separation of church and state doctrine to strike down this long-standing American tradition.

In these cases, the justices again took the opportunity of guiding the evolutionary ascent of the Constitution so that the "primitive" practices of voluntary prayer and Bible reading would be found unconstitutional. The fact that the court majorities perceived these practices as antiquated is evidenced by the *Schempp* court's willingness to rely on expert testimony indicating that psychological damage could be inflicted on a child if portions of the New Testament were read without explanation.[71] Once again, in the pursuit of its evolutionary agenda, the court ignored the intention of the Constitution's founders. Such a neglect of authorial intent becomes apparent through the observation of several facts.

First, the court based its ruling on the "wall of separation of church and state" from the 1st Amendment's prohibition of a state establishment of religion. However, it is odd for the court to base its ruling on this "wall of separation of church and state" language considering the fact that none of these words appears in the actual language of the text of the 1st Amendment. The religion

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[69] *Engle v. Vitale*, 370 U.S. 421 (1962)
[70] *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963).
[71] Ibid., 209.

clauses of the 1st Amendment simply say, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise there of." Interestingly, in 1958, one jurist commented on this conspicuous absence when he noted:

> Much has been written in recent years concerning Thomas Jefferson's reference to 'a wall of separation between church and state.' [It] has received so much attention that one would almost think at times that it is to be found somewhere in our Constitution.[72]

Interestingly, the words "Separation of Church and State" actually come from a letter that Thomas Jefferson wrote to the Danbury Baptist Association in 1802 rather than from the 1st Amendment itself. It is strange to connect Jefferson's words in this letter to the 1st Amendment considering the fact that Jefferson was out of the country serving as America's ambassador to France at the time that the Constitution was debated, ratified, and adopted. In fact, the separation of church and state language was not connected to the 1st Amendment until the *Everson v. Board of Education* case in 1947.[73]

Second, the court assumed that Jefferson's "wall of separation of church and state" was intended to prohibit the practice of Christian principles in government. However, this historical analysis is suspect for several reasons. For example, Jefferson was not opposed to religious practices in the public square. Not only did he praise the use of the local courthouse in his hometown for religious services, but he also introduced a resolution for a day of prayer and fasting while serving in the Virginia General assembly.[74] As President, Jefferson also supported and signed into law a treaty with the Kaskaskia Indians that provided a stipend from the federal

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[72] *Baer v. Kolmorgen*, 181 NYS 2d. 230, 237.

[73] *Everson v. Board of Education*, 330 U.S. 1 (1947). Earlier courts and legislatures that cited Jefferson's 1802 letter in full did not connect the wall of separation of church and state to the 1st Amendment. *See Reynolds v. United States*, 98 U.S. 145 (1878) and The Reports of the Committees of the United States for the Second Session of the Thirty-Second Congress, 1852-1853 (Washington: A. O. P. Nicholson, 1854), 1-9.

[74] Stephen K. McDowell and Mark A. Beliles, *America's Providential History* (Charlottesville, VA: Providence Press, 1988), 152.

treasury to support a missionary to minister to the Kaskaskia Indians.[75] Furthermore, the 1802 letter that the court cited to prove that Jefferson advocated "a wall of separation between church and state" is taken out of context. In writing to the Danbury Baptists, Jefferson used this expression to assure them that the federal government would not interfere with their private free exercise of religion. The letter had nothing to do with government sponsored religious activity.[76] In other words, Jefferson used the phrase "wall of separation of church and state" as a one way wall. The wall prevented the government from interfering with Christianity rather than preventing Christianity from influencing government.

Third, regarding the issue of religious practices in public schools, the court confidently asserted that the framers would have been opposed to such a practice. However, the court conveniently ignored the legislative activities of the first congress, which was comprised of those who wrote and adopted the Constitution and the Bill of Rights. This first congress passed the North West Ordinance, which was signed into law by President Washington. Article III of the Northwest Ordinance says:

> Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.[77]

Apparently, the framers of the 1st Amendment believed that schools and educational institutions were the proper place to encourage religion and morality. Based upon the legislative activities of those who framed the 1st Amendment, it would seem that they understood the prohibition against the establishment of a religion as forbidding only government sponsored denominationalism. The framers would have been perfectly comfortable with governmental sponsoring of the general

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[75] Robert L. Cord, Separation of Church and State: Historical Fact and Current Fiction (Grand Rapids: Baker, 1988), 38-39.

[76] David Barton, *The Myth of Separation*, 5th ed. (Aledo, TX: Wallbuilder Press, 1992), 41-42

[77] *Documents of American History*, Henry S. Commager, ed. (NY: Appleton-Century-Crofts, Inc., 1948), 131.

principles of Christianity that were applicable to all Christian denominations. After all, it was those who wrote the 1st Amendment that also placed government-subsidized chaplains into the congress and the military.

Fourth, the court applied the 1st Amendment's prohibition of a government established religion to religious activity taking place at the state level. Such an application contradicts the express wording of the religion clauses of the 1st Amendment, which say, "*Congress* shall make no law respecting an establishment of religion, or prohibiting the free exercise there of." The 1st Amendment places the prohibition of establishing a religion on Congress rather than upon the state governments. However, it is worth noting that the court was able to apply the 1st Amendment to the activities of state governments because fifteen years earlier the *Everson* court had made the 1st Amendment applicable to the states through the due process clause of the 14th amendment. Legal scholars call this legal maneuver the doctrine of incorporation.

Fifth, the court followed the precedent set by the *Everson* court in using the 14th Amendment as the vehicle for making the 1st Amendment's religion clauses applicable to the states. However, the 14th Amendment has nothing to do with religion. Historically speaking, the 14th Amendment was passed in 1868 in the post-Civil War era in order to guarantee certain rights to the recently emancipated slaves. Moreover, an attempt was made to allow the 1st Amendment to become applicable to the states through the vehicle of the 14th Amendment at the time the 14th Amendment was framed. Yet the very Congress that formed the 14th Amendment voted down all attempts to link the 1st Amendment and the 14th Amendment together in this manner.[78] Thus, for the *Engel* and *Schempp* courts to make the 1st Amendment applicable to the states through the vehicle of the 14th Amendment not only ignores the 14th Amendment's historical context, but it also contradicts the intent of those who drafted it.

Sixth, by banning voluntary prayer in public schools, the *Engel* court made the radical move of over turning a 340-year-old tradition in American educational history. The court did so without citing a single precedent. Yet following established precedent is one of the cornerstones of American jurisprudence. Legal scholars call this time honored principle *stare decisis*, which means "let precedent stand." Interestingly, a year later, the *Schempp* court called attention to the non-existence of any precedent cited in *Engel* when it noted:

> Finally, in *Engel v. Vitale*, only last year, these principles were so universally recognized that the court, without the citation of a single case…reaffirmed them.[79]

Seventh, the *Engel* and *Schempp* courts seemed to have followed more of a legislative philosophy rather than a judicial philosophy. It is interesting to observe that eight of the nine justices on the 1962-63 Supreme Court arrived on the court with an extended history of political rather than judicial experience. Barton observes:

> …Chief Justice Earl Warren had been the governor of California for ten years prior to his appointment to the court; Justice Hugo Black had been a U.S. Senator for ten years prior to his appointment; Justice Felix Frankfurter had been an assistant to the Secretary of Labor and a founding member of the ACLU; Justice Arthur Goldberg had been the Secretary of Labor and ambassador to the United Nations; Justice William Douglas was chairman of the Securities and Exchange Commission; all the justices except Potter Stewart had similar political backgrounds. Justice Potter Stewart, having been a federal judge for four years prior to his appointment, was the only member of the court with extended federal constitutional experience before his appointment. Interestingly Justice Potter Stewart was the only justice who objected to the removal of prayer on the basis of precedent. He alone acted as a judge: the rest acted as politicians.[80]

In sum, the preceding facts demonstrate how severely the court violated the original intent of the framers of the Constitution in order to guide the evolutionary progress of the Constitution so that it would prohibit the archaic and psychologically harmful practice of voluntary prayer and Bible reading in public schools. The oligarchical nature of these decisions

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[78] *McCollum v. Board of Education*, 333 U.S. 203, 218-219, n.6 (1948).
[79] *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963).
[80] Barton, *Myth of Separation*, 148.

should again be emphasized since public opinion polls routinely demonstrate that the type of practices banned in *Engel* and *Schempp* continue to enjoy the wide spread support of the American people.

Conclusion

This article has gone to great lengths to describe the abandonment of traditional hermeneutical principles in the field of constitutional interpretation. While traditional interpretive principles rested authority in the text rather than the interpreter, the advent of legal positivism has shifted the authority in the opposite direction. Today, the true power concerning what the Constitution means rests exclusively with the interpreter, who is the judiciary. Unfortunately, the story does not end there. A similar trend appears to be well under way in the area of evangelical biblical interpretation. An analysis of this disturbing trend will be the subject of the next journal article.

Enthroning the Interpreter: Dangerous Trends in Law and Theology-Part IV

The first two articles in this four-part series showed that proper legal and biblical interpretation involves pursuing authorial intent through the mechanism of a literal hermeneutic. The underlying philosophy behind such an approach is to dethrone the interpreter's personal ideological or theological preferences and instead to enthrone what is objectively revealed in the text. In other words, the goal of applying a literal hermeneutic is to transfer the authority in the interpretive process away from the dynamic and subjective imagination of the interpreter and instead toward the objective standard of the unchanging text. Part three of this series traced an erosion of this time honored principle in the area of constitutional interpretation. Because modern judicial philosophy determines the Constitution's meaning based upon what the judge says it means rather than based upon what the document actually says, the true authority in the interpretive process has transferred from the text to the interpreter.

Sadly, as will be demonstrated in this final article, a similar shift in authority is also detectable in the field of evangelical, biblical interpretation. In the legal arena, this trend is not necessarily discernible in all facets of legal interpretation but is particularly noticeable in the field of constitutional interpretation. Similarly, although this same trend is not necessarily apparent in all aspects of biblical interpretation, it is particularly observable in the way many modern interpreters approach the subjects of origins and eschatology.

Substituting Reason for Revelation

Forty-five years ago Dr. J. Dwight Pentecost warned that abandoning the application of a consistent literal hermeneutic to eschatological truths could lead to dire consequences.[81] One of

[81] J. Dwight Pentecost, *Things to Come: A Study in Biblical Eschatology* (Grand Rapids: Zondervan, 1958), 5-6.

these consequences enumerated by Pentecost involved the biblical text becoming reduced to whatever seems reasonable to the interpreter.[82] Today, it seems that Pentecost's warnings are more relevant than ever as more and more interpreters are substituting their own standard of reasonableness for what the biblical text reveals through its plain language. Many modern interpreters seem to be applying a literal hermeneutic as long as the end result appeals to their common sense or is consistent with their theological presuppositions. When such a result is not reached, these interpreters begin to allegorize the text's plain language. As developed in the previous article, legal positivism gave jurists permission to abandon authorial intent in order to foist upon the Constitution their own ideological preferences concerning what an enlightened and evolved American society should look like. Similarly, many modern biblical interpreters substitute their own personal theological presupposition and sense of reasonableness in lieu of authorial intent.

Progressive Creationism

Popular progressive creationist Hugh Ross exemplifies such an approach. Ross is a vocal proponent of the day-age theory or the belief that each of the creation days constitutes an extended period covering several hundred million years. Day age theorists reject the notion that the creation days represent consecutive 24-hour days. But how did Ross reach this conclusion? Van Bebber and Taylor explain as they respond to Ross' assertion that the day age view is the simplest way of reading the creation account:

> As a 17 year old, Ross first read this scripture with the goal of comparing the Creation account to his knowledge of the 'scientific facts.' He was already convinced of the Big Bang and the age of the universe. He was already convinced of the progression of life forms found in the 'geological column.' Is it any wonder that as a teenager with an uncritical acceptance of science, he would find the 'simplest' reading of the Bible to agree with his preconceived

[82] Ibid., 6.

> views? His reading of the Bible was also done without knowledge of Hebrew or the rules of proper hermeneutics, and without any real understanding of biblical theology. Yet the conclusions that he arrived at by his 'simple' reading are what he still teaches today. His further Bible study and training have not affected his original opinion.[83]

In the process of embracing the day age view, Ross ignored the exegetical evidence favoring interpreting the creation days as ordinary days. For example, the words "morning and evening" are combined with the word day ("yom") 38 times outside of Genesis 1. In each instance, such a combination always refers to a literal 24-hour day meaning. Moreover, in every other instance in the Old Testament where the word day is used with a numerical ordinal modifier it represents a normal day. This holds true in at least 358 of the 359 times that day is used with a numerical modifier outside of Genesis 1.[84] The only possible deviation is in Hosea 6:2. However, the Hebrew grammar of Hosea 6:2 shows that this passage is meant as a rhetorical device.[85] Furthermore, Exodus 20:8-11 sets up the Israeli workweek on the basis of God's work in creation. Such an analogy would be significantly strained if the creation days were understood as something other than ordinary days. In addition, a perusal of how New Testament speakers and writers quoted the early chapters of Genesis demonstrates that they interpreted these texts in their ordinary sense. Why should the creation days be treated any differently? In sum, no exegetical basis exists for taking the creation days as extended periods of time. The only logical reason for interpreting the creation days as anything other way than ordinary days has to do with the presupposition of an old earth and a desire to harmonize the Genesis account with that presupposition.

Rather than altering the plain language of the text in order to accommodate his own presuppositions, perhaps Ross should reevaluate his observations of the physical world. It is

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[83] Mark Van Bebber and Paul S. Taylor, *Creation and Time*, 2d ed. (Gilbert, AZ: Eden Communications, 1994), 63-64.

[84] Ibid., 73

difficult to categorize his findings as scientific facts. Standard definitions define science as something observable, testable, and repeatable. Because Ross was not present to observe the creation event when it transpired and because he certainly is in not capable of repeating the creation event, his findings are better categorized as interpretations of data. Interpretations of this nature are certainly not infallible. This lack of infallibility especially true considering the fact that other scientists, who are just as well credentialed as Ross, have selected differing interpretations of the same data that happen to better harmonize with biblical revelation.

In sum, because Ross approached the creation account with the presupposition that the universe is billions of years old, he found it unreasonable to follow the authorial intent as determined through the application of a literal hermeneutic. Instead, he stretched out the creation days in order to accommodate his presuppositions and in the process violated numerous standard linguistic, grammatical, hermeneutical, and exegetical rules. His hermeneutical approach therefore furnishes a text book example of an interpreter substituting his own personal presuppositions and sense of reasonableness in lieu of the author's plain meaning.

Preterism

Substitution of human reason in lieu of the author's plain meaning is also prevalent among evangelicals in the area of prophetic and eschatological interpretation. R.C. Sproul exemplifies such an interpretive approach through his advocacy of partial preterism. This theological system holds that most of Scripture's unfulfilled prophecies found their realization in A.D. 70. Sproul claims he adheres to the preterist interpretation because of the various texts found in the New Testament that seem to indicate that Christ would return within the life span of His original audience (Rev 1:1, 3; 3:11; 22:6-7; 22:10, 12, 20). However, Sproul also claims that by

[85] Ibid., 74-76.

promoting the preterist view, he believes that he is helping save biblical Christianity from modern skeptics who follow the thinking pattern of twentieth century liberals such as Bertrand Russell and Albert Schweitzer. Sproul notes that one of Russell's chief criticisms of the Jesus portrayed in the gospels is that Jesus was inaccurate with respect to the timing of His future return. Russell charged that Jesus failed to return during the time frame that he predicted. Sproul and other preterists answer this charge by saying that Jesus did in fact return in the first century. Christ returned spiritually through the military activities of Titus and the Roman army that destroyed the temple and Jerusalem in A.D. 70.[86]

In other words, Sproul approaches Scripture with the presupposition that it is unreasonable to have a delay in Christ's Parousia lasting for thousands of years in light of Christ's promises to return soon. To overcome such unreasonableness, Sproul embraces a theological system that maintains that Christ came back invisibly in the form of the Roman armies in A.D. 70. However, to reach such a conclusion Sproul must reject the plain language of scripture by wildly allegorizing Scripture's prophecies. Such excessive allegorization is necessary in order to fit scripture's predicted global events into the local event of A.D. 70. For example, Revelation predicts that the entire sea will be turned to blood (Rev 16:3), half of the world's population will be destroyed (Rev 6:4; 9:15), and the greatest earthquake in human history will occur (Rev 16:18). How can these prophesied global events have been fulfilled in the local Jewish War of A.D. 70? The ordinary import of Revelation's words and phrases makes it impossible to argue that most of the book's contents have already been fulfilled in a past local event. Thus, in order for the preterist system to work, the plain language of the text must be abandoned.

[86] R.C. Sproul, *The Last Days According to Jesus* (Grand Rapids: Baker Books, 1998), 13.

Preterists accuse futurists of also abandoning the plain language of the various passages predicting Christ's soon return.[87] However, this charge is unfounded. A more plausible alternative is to understand these texts qualitatively rather than chronologically. These texts could be describing the *manner* of Christ's return rather than *when* he will return. In other words, prophecies concerning Christ's soon return could be saying that when the action comes, it will come suddenly and with great rapidity. The New Testament allows such a usage. For example, Acts 22:18 says, "Make haste, and get out of Jerusalem quickly, because they will not accept your testimony about me." Here "quickly" (tacos) is used to depict how to leave Jerusalem rather than when to leave.

In sum, Sproul believes that is unreasonable for Christ's coming to be delayed for thousands of years in light of Christ's predictions of His soon return. This presupposition forces him to adhere to an interpretation that teaches that Christ did return in the first century. However, this system only becomes viable to the extent that the interpreter rejects the plain meaning of Revelation's language regarding global judgment. Note the similar hermeneutical approach displayed by both Hugh Ross and Sproul. Ross must reject the creation account's plain language regarding ordinary creation days in order to accommodate his presupposition of an old universe. Similarly, Sproul must reject Revelation's plain language communicating global judgments in order to teach that most of the Bible's prophecies were fulfilled in the first century. Sproul does this for the purpose of accommodating his presupposition that a lengthy delay in Christ's coming is unreasonable. The point of similarity linking both interpreters involves their willingness to substitute their own personal presupposition and sense of reasonableness in lieu of author's plain meaning.

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[87] Gary DeMar, *End Times Fiction: A Biblical Consideration of the Left Behind Theology* (Nashville: Thomas Nelson Publishers, 2001), 56.

Allegorization in the Apocalypse

Reducing the plain meaning of Scripture to the interpreter's private standard of reasonableness is also practiced by many evangelicals as they attempt to interpret John's Apocalypse. For example, preterist Kenneth Gentry contends that Revelation 20:1-10 does not necessarily limit the length of the duration of Christ's reign to a thousand years. Gentry explains:

> Only one place in all of scripture limits Christ's rule to a thousand years: Revelation 20:1-10, a half chapter in the most highly figurative book in the Bible.[88]

Despite the fact that the thousand year reign of Christ is mentioned no less than six times in Revelation 20:1-10, Gentry feels no obligation to be constrained by these clear textual statements. His reasons for ignoring what the text says include the fact that the duration of Christ's rule is only mentioned in Revelation 20, the information that speaks of the duration of Christ's rule only comprises half of Revelation 20, and elsewhere Revelation makes use of numerous symbols. Here, Gentry has introduced three arguments that really have nothing to do with what Revelation 20 actually says as rationalizations for why he should not be bound by Revelation 20's clear language. In other words, Gentry has substituted his own personal standard of what is logical or what makes sense to him in lieu of scripture's plain teaching.

Elsewhere, Gentry furnishes his rationalization as to why he refuses to employ a consistent literal approach in deciphering John's Apocalypse:

> Some instances of literalism seem to me to be strange, unreasonable, and unnecessary. For example, Robert Thomas holds that the eerie locusts of Revelation 9 and the strange frogs of Revelation 16 are literally demons who take on those peculiar physical forms, that the two prophets of Revelation 11 literally spew fire from their mouths, that every mountain in the world will be abolished during the seven bowl judgments, that the fiery destruction of the literal city of Babylon will smolder for more than 1000 years, that Christ will return from heaven on a literal horse, and that the new Jerusalem is literally a 1500-mile high cube.[89]

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[88] Kenneth L. Gentry, Jr., "A Preterist View of Revelation," in *Four Views on the Book of Revelation*, ed. C. Marvin Pate (Grand Rapids: Zondervan, 1998), 82.

In other words, Gentry rejects the application of literalism in Revelation because it runs the risk of producing results that he finds personally "strange, unnecessary, and unreasonable." If Gentry only accepts biblical ideas that appeal to his standard of reasonableness, then the text is no longer the authority in the interpretive process. Instead, Gentry becomes the authority. However, the issue in accepting biblical truth should not be based upon what seems reasonable to the interpreter but rather what the text reveals. Whether the text's meaning appeals to the interpreter's common sense or not is irrelevant. If Gentry were to consistently apply his subjective reasonableness test to the rest of Scripture, there are many biblical truths that Gentry would be forced to reject. Scripture often presents truths that contradict man's common sense, such as floating axe heads, the collapsing of the walls of Jericho after Joshua's troops had marched around them seven times, and even the preaching of the cross of Christ (1 Cor 1:23). Using Gentry's logic, the Apostle Peter would have rejected some of Paul's teaching since Peter indicated that some of the writing of Paul are difficult to understand (2 Peter 3:16).

Progressive dispensationalist David Turner is an example of yet another interpreter who reduces Revelation's plain teaching to his own personal standard of reasonableness. He intimates that Revelation 21:21, which states that the twelve gates of the eternal city will be pearls, should not be interpreted literally because no oysters large enough to produce pearls of such a size exist.[90] Along these same lines, Turner suggests that this same verse, which speaks of streets of gold, cannot be interpreted literally because not enough gold is available to pave such a large city.[91] Like Gentry's aforementioned interpretive philosophy, to Turner the issue is not what Scripture plainly reveals but rather whether the ordinary import of Revelation's words and

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[89] Ibid., 40.

[90] David L. Turner, "The New Jerusalem in Revelation 21:1-22:5; Consummation of a Biblical Continuum," *Dispensationalism, Israel, and the Church*, ed., Craig A. Blaising and Darrell L. Bock (Grand Rapids: Zondervan, 1992), 277.

phrases appeal to his personal standard of rationality and common sense. To Turner's contentions for treating Revelation 21:21 non-literally, classical dispensationalist Robert Thomas appropriately retorts:

> Yet these are paltry reasons for denying literality; the resources available to an infinite God to create such a city are beyond present condition. Far more materials are available to him than the humans of the present era can possibly comprehend.[92]

Ezekiel's Millennial Sacrifices

No where is the interpreter's willingness to lay aside his presuppositions more severely tested than in how he deciphers the predictions of the millennial temple and sacrifices as depicted in Ezekiel 40-48. Many interpreters reflexively and instinctively allegorize this section of Scripture because it is difficult for them to harmonize its plain language with statements found in Hebrews indicating that Christ's death rendered obsolete the animal sacrifices instituted under the Mosaic Law. Preterist Gary DeMar adheres to such an approach when he notes:

> The Book of Hebrews was written to show beyond a shadow of a doubt that the entire Old Covenant system-with its priest, sacrifices, ceremonies, and temple-has been done away with in Christ.[93]

DeMar's solution to this apparent contradiction is to allegorize Ezekiel 40-48. He maintains:

> The prophecy of Ezekiel's temple is a picture of the restored covenant community that returned to the land after the exile. The vision should not be projected 2500 years into the future into some earthly millennial kingdom where sacrifices will be offered *for atonement* in the presence of the crucified Christ.[94]

However, by allegorizing in this manner, DeMar ends up rejecting the plain import of Ezekiel 40-48. Nowhere does Ezekiel even hint at the notion that his description of the temple

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[91] Ibid.

[92] Robert L. Thomas, "A Classical Dispensationalist View of Revelation," in *Four Views on the Book of Revelation*, ed. C. Marvin Pate (Grand Rapids: Zondervan, 1998), 209-10.

[93] Gary DeMar, *Last Days Madness* (Atlanta: American Vision, 1999), 97.

[94] Ibid., 98.

and its scarifies are to be understood non-literally. In fact, the opposite seems to be the case. Ezekiel goes to great lengths to record the minute details of the millennial temple. The people involved as well as the geographical notations are discussed with great specificity. Moreover, the revelatory angel instructs Ezekiel to record all of the minute details of the temple vision so that he might declare them to the House of Israel. Such instruction would be meaningless if the details of the vision are not be understood plainly. In addition, Ezekiel employs a formula to inform his readers when he is speaking non-literally. He explains that a particular item is symbolic and then interprets the symbols for the reader. For example, in Ezekiel 37, Ezekiel explains that the valley of dry bones is symbolic and then he interprets this symbol as the House of Israel. No such formula is employed in Ezekiel 40-48.

In essence, because a literal interpretation of Ezekiel 40-48 contradicts DeMar's theological presuppositions and because the power of his own reasoning process cannot harmonize Ezekiel 40-48 with Hebrews, he attempts to resolve this tension by allegorizing Ezekiel's temple vision. Thus, DeMar represents another example of an interpreter who reduces Scripture's plain meaning to the level of his own private standard of reasonableness.

Another attempt at resolving this tension, which seems to have caught on in some dispensational circles, is an approach advocated by Mark F. Rooker. According to Rooker's view, he:

> does not take the sacrifices in a literal sense but views Ezekiel writing in the 6th century B.C. describing worship from his unique perspective…Ezekiel in referring to the literal worship of Yahweh in the millennium would be forced to use terms and concepts with which his audience was familiar.[95]

[95] Mark F. Rooker, "Evidences from Ezekiel," in *A Case for Premillennialism*, ed. D.K. Campbell and J.L. Townsend (Chicago: Moody, 1992), 133.

Thus, Rooker understands Ezekiel's temple vision as contextualized for his sixth century B.C. audience. Because Ezekiel's audience would understand restoration in terms of the restoration of sacrifices, Ezekiel merely described restoration in these terms. Thus, Ezekiel's vision must not be understood as predicting the literal restoration of sacrifices in the millennium. By allegorizing only part of Ezekiel's temple vision, Rooker's attempt at harmonization is at least less radical than DeMar's approach. However, it still resorts to the allegorizing of Ezekiel's plain language. Ezekiel plainly states that millennial temple sacrifices will be an ongoing reality throughout the millennial age.

Thus, both DeMar's and Rooker's allegorical approaches to Ezekiel's temple vision reduce Scripture to the standard of what seems reasonable to the interpreter at the expense of the text's plain language. Both interpreters resort to allegorical hermeneutics when they are at a loss at how to reconcile two apparently divergent passages. Fruchtenbaum explains the fallacy of such an approach:

> Do we really have to fully understand all the whys and wherefores in order to take a passage literally? Our critics claim that just because we cannot justify the Millennial sacrifices in light of the Messiah's sacrifice, these chapters cannot be literal. But is such a presupposition valid? I suspect that an Old Testament saint who understood Isaiah 53 literally would have concluded that the Messiah would be the final sacrifice for sin. But how would that correlate with the Law of Moses that prohibited human sacrifices. He may not have been able to answer all of the questions raised by the Law of Moses, but that would not have justified allegorizing all of the prophecies of Isaiah 53 away and in the course of progressive revelation and the coming of Messiah, the apparent contradiction became clear. The same thing may be true with the Millennial sacrifices. We may not be able to answer all of the questions that the book of Hebrews raises concerning the prophecies of the Book of Ezekiel, but that is not a good reason to automatically resort to allegorizing Ezekiel away. The final and complete answer may only come with further progressive revelation that will come with the return of the Messiah…we do have the answers to the questions raised over the literal temple and sacrifices, but even these answers may not answer all the questions and issues. But a lack of a complete understanding of all the issues raised never justifies the dismissal of the literal interpretation. It is for the critic to explain exegetically from the passage itself, why it is not literal.[96]

[96] Arnold Fruchtenbaum, "The Millennial Temple-Literal or Allegorical?" (An unpublished paper presented to the Pre-Trib Study Group, Dallas, Texas, 2001), 3-4.

According to Fruchtenbaum, those seeking to maintain the literality of both Ezekiel and Hebrews have produced plausible solutions for harmonizing these different areas of Scripture that do not resort to allegorization. Such a solution might involve viewing the millennial sacrifices as memorial in the same way communion is practiced to memorialize Christ's death. Perhaps a better solution may entail viewing the sacrifices as removing ceremonial uncleanness and preventing defilement from polluting the millennial temple.[97] Another possibility could include highlighting the numerous differences between the Law of Moses and what is described in Ezekiel 40-48. Emphasizing these differences could be used to argue that Ezekiel 40-48 is not really a return to the Mosaic Law and therefore it does not violate the New Testament teaching that the Law terminated with Messiah's death.[98]

However, even if these solutions do not answer all the questions or did not even exist at all, no justification would exist for allegorizing the plain language of Scripture. The discrepancy may become cleared up with the passage of time or the progress of revelation or at the Second Advent. Such an approach recognizes God's prerogative to reveal truths that are beyond human comprehension at the time they are given only to be made more understandable with the passage of time. A similar phenomenon occurs repeatedly throughout the Scriptures (Dan 12:4,9; 1 Peter 1:10-11). However, the initial obtuseness of these truths does not furnish a justification for allegorizing away their plain meaning. In essence, Fruchtenbaum's interpretive approach is the exact opposite of the approach offered by DeMar and Rooker. While Rooker and DeMar enthrone rationality and presupposition at the expense of Ezekiel's plain language, Fruchtenbaum enthrones the plain meaning of Ezekiel's vision at the expense of presupposition and subjective standards of reasonableness.

[97] Jerry M. Hullinger, "The Problem of Animal Sacrifices in Ezekiel 40-48," *Bibliotheca Sacra* 152 (July-September): 281-89.

Abandonment of Classical Hermeneutical Principles

The preceding discussion illustrates the fulfillment of Dr. J. Dwight Pentecost's warning. When a consistent, literal hermeneutic is abandoned, Scripture becomes held hostage to the interpreter's presuppositional bias and whatever he deems reasonable. Examples abound by observing the hermeneutical methods employed progressive creationism, preterism, allegorical approaches to the Apocalypse, and allegorical approaches to Ezekiel 40-48. All of these approaches at some point substitute presupposition and a subjective standard of interpretive reasonableness in place of the text's plain language. Thus, these approaches represent a marked departure from classical hermeneutical philosophy as articulated by hermeneutical authorities such as Milton Terry and Bernard Ramm. According to Terry:

> We…should aim…to place ourselves in the position of the sacred writers, and study to obtain the impression their words would have naturally made upon the minds of the first readers…Still less should we allow ourselves to be influenced by any presumptions of what the Scriptures ought to teach…All such presumptions are uncalled for and prejudicial.[99] He [the interpreter] must not allow himself to be influenced by hidden meanings, and spiritualizing processes, and plausible conjectures.[100]

According to Ramm:

> The danger of having a set theological system is that in the interpretation of Scripture the system tends to govern the interpretation rather than the interpretation correcting the system…Calvin said that the Holy Scripture is not a tennis ball that we may bounce around at will. Rather it is the Word of God whose teachings must be learned by the most impartial and objective study of the text.[101]

Conclusion

This series of articles has chronicled the rise and fall of literal interpretation in both the legal and theological fields. While both disciplines are built upon the pursuit of authorial intent

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[98] Fruchtenbaum, "The Millennial Temple-Literal or Allegorical?" 7-8.
[99] Milton S. Terry, *Biblical Hermeneutics* (NY: Philips and Hunt, 1883), 595.
[100] Ibid., 152-53.
[101] Bernard Ramm, *Protestant Biblical Interpretation* (Boston: W.A. Wilde, 1956), 115-16

through an investigation of what the author has plainly revealed, the time-honored principle of literal interpretation has also experienced steady erosion in both fields. In the legal field, the influence of legal positivism has shifted the authority in determining what the Constitution means away from the Constitutional text itself and toward the ideological predilections of the judiciary. In biblical interpretation, particularly in the area of origins and eschatology, the abandonment of consistent literalism has often reduced the biblical text to whatever seems reasonable to the interpreter.

This battle over biblical interpretation is nothing new. It reaches all the way back to Augustine, who, while approaching the rest of the scripture literally, treated prophecy as a special case that required a non literal hermeneutic.[102] The underlying motive behind this interpretive battle is also nothing new. It has to do with the age-old issue of pride. The central question is: Will interpreters humbly accept what God has plainly revealed even when it contradicts their presuppositions or personal standard of rationality? Or will they attempt to protect their presuppositions by explaining away Scripture's plain meaning through the adoption of an allegorical hermeneutical approach? As interpreters and teachers of God's Word, let us see to it that we do not stray from consistent literalism so we are able to give His message, rather than our own, to His people.

[102] John F. Walvoord, *The Rapture Question*, rev. ed. (Grand Rapids: Zondervan, 1979), 54.