


## Beyond Punks in Empty Chairs: An Imaginary Conversation with Clint Eastwood's Dirty Harry—Toward Peace Through Spiritual Justice

Mark L. Jones

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### Recommended Citation

Jones, Mark L. () "Beyond Punks in Empty Chairs: An Imaginary Conversation with Clint Eastwood's Dirty Harry—Toward Peace Through Spiritual Justice," *University of Massachusetts Law Review*: Vol. 11: Iss. 2, Article 4.  
Available at: <http://scholarship.law.umassd.edu/umlr/vol11/iss2/4>

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# **Beyond Punks in Empty Chairs: An Imaginary Conversation with Clint Eastwood’s Dirty Harry—Toward Peace Through Spiritual Justice**

Mark L. Jones

11 U. MASS L. REV. 312

## **ABSTRACT**

This Article is based on a presentation at the 2012 conference on “Struggles for Recognition: Individuals, Peoples, and States” co-sponsored by Mercer University, the Concerned Philosophers for Peace, and the Carnegie Council for Ethics in International Affairs, and it seeks to help combat our human tendency to demonize the Other and thus to contribute in some small way to the reduction of unnecessary conflict and violence. The discussion takes the form of a conversation in a bar between four imagined protagonists, who have participated in the conference, and Clint Eastwood’s Dirty Harry, who is having a bad day questioning his immersion in a violent world. Their conversation touches on many different areas including political philosophy, jurisprudence, psychology, political conversation, international relations, legal history, comparative law, and even theology. Thus the conversation ranges from Francis Fukuyama’s notorious thesis, expounded in his 1992 book *The End of History and the Last Man*, about the ideological superiority of liberal democracy (and the paradigmatic type of human beings who inhabit liberal democracies at the end of History) to the values underlying medieval animal trials and *The Confessions* of Saint Augustine, and it culminates in an apocalyptic thought experiment involving a literal last man.

## **AUTHOR NOTE:**

Professor of Law, Mercer University School of Law, Oxford University (B.A. 1974; (M.A., 1979)); University of Michigan (LL.M., 1983). At the Concerned Philosophers for Peace Conference held at Mercer University at the end of October 2012 at which I presented the talk that is the basis for this Article, I explained that I felt a bit of an interloper as I am not a trained professional philosopher. However, I have had great interest in the subject of philosophy ever since studying Jurisprudence as an undergraduate law student in the early 1970s. This interest received a significant boost following the fall of the Berlin Wall in November 1989 and the

publication in 1992 of Francis Fukuyama's *The End of History and the Last Man*, which figures prominently in this Article. I am grateful to wonderful colleagues like Shawn Loht, Jack Sammons, and David Ritchie who have patiently tried to help me learn more of what I need to know. I am additionally grateful to David for organizing the conference and for inviting me to participate in it, to Jack for a lively and challenging email exchange that helped to develop the thinking reflected in this Article and for his comments on an earlier draft, and to former Mercer Law School Dean Gary Simson, a true scholar-dean, for the summer research grant that supported the writing of this Article and for his helpful comments on an earlier draft.

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Consider if you will two contrasting works of imagination. The first is a famous, or perhaps infamous, piece of dialogue at the beginning and the end of the 1971 movie *Dirty Harry*. In both scenes Clint Eastwood's character, Inspector Harry Callahan, points his gun at a suspect whom he has wounded after an exchange of gunfire. When the suspect starts eyeing his firearm, which is within reach, Callahan says:

I know what you're thinking: "Did he fire six shots or only five?" Well, to tell you the truth, in all this excitement I kind of lost track myself. But being as this is a .44 Magnum, the most powerful handgun in the world, and would blow your head clean off, you've got to ask yourself one question: Do I feel lucky? Well, do ya, punk?<sup>1</sup>

In the first scene, Callahan has just killed two armed bank robbers. The wounded suspect, the third robber, submits and then discovers that Callahan's gun was empty. Callahan had already fired six shots.<sup>2</sup> In the second scene, the wounded suspect goes for his gun and is fatally shot by Callahan, who it turns out had fired only five shots during a preceding running gun battle.<sup>3</sup> We can usefully fold into this dialogue another famous, or infamous, piece of dialogue from the 1983 *Dirty Harry* movie *Sudden Impact* in which Harry Callahan kills three armed robbers in a coffee shop, confronts a slightly wounded fourth armed robber who has put a gun to the head of a hostage, points his gun at the robber, and utters the memorable line "Go ahead; make my day." Here again, the robber submits.<sup>4</sup>

The second work of imagination is an extract from a well-known poem *Strange Meeting* by the First World War poet Wilfred Owen:

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<sup>1</sup> DIRTY HARRY (Warner Bros. 1971). The quoted language is from the first scene. The dialogue in the second scene is very similar but there are subtle variations, including the addition of a second use of the term "punk" in the first line after "thinking."

<sup>2</sup> *Id.* In this scene, Callahan sees a bank robbery in progress and intervenes. For the scene, see <http://www.youtube.com/watch?v=8Xjr2hnOHIM>.

<sup>3</sup> *Id.* In this scene, Callahan chases the serial killer Scorpio who grabs a young boy as a hostage. Callahan wounds Scorpio in the shoulder and the boy escapes. For the scene, see [https://www.youtube.com/watch?v=V7NciGVuHE&feature=iv&src\\_vid=8Xjr2hnOHIM&annotation\\_id=annotation\\_563540](https://www.youtube.com/watch?v=V7NciGVuHE&feature=iv&src_vid=8Xjr2hnOHIM&annotation_id=annotation_563540).

<sup>4</sup> SUDDEN IMPACT (Warner Bros. 1983). In this scene, Callahan intervenes to end an armed robbery taking place in the coffee shop. For the scene, see <http://www.youtube.com/watch?v=3ishbTwXf1g>.

It seemed that out of the battle I escaped  
 Down some profound dull tunnel, long since scooped  
 Through granites which titanic wars had groined.  
 Yet also there encumbered sleepers groined,  
 Too fast in thought or death to be bestirred.  
 Then, as I probed them, one sprang up, and stared  
 With piteous recognition in fixed eyes,  
 Lifting distressful hands as if to bless.  
 And by his smile, I knew that sullen hall;  
 By his dead smile I knew we stood in Hell.  
 With a thousand fears that vision's face was grained;  
 Yet no blood reached there from the upper ground,  
 And no guns thumped, or down the flues made moan.  
 "Strange friend," I said, "Here is no cause to mourn."  
 "None," said the other, "Save the undone years,  
 The hopelessness. Whatever hope is yours,  
 Was my life also. . . .  
 I am the enemy you killed, my friend.  
 I knew you in the dark; for so you frowned  
 Yesterday through me as you jabbed and killed.  
 I parried; but my hands were loath and cold.  
 Let us sleep now. . . ."<sup>5</sup>

Each of these two works of imagination portrays extreme violence—violent death or the threat of violent death. In the Dirty Harry movies, the violence is internal to a society, the United States, and the deaths are those of criminal suspects many would characterize as “enemies of society.” In the Owen poem, the violence is between societies at war with one another, Great Britain and Germany, and the deaths are those of a German soldier and a British soldier who are “enemies” and foreign foes of one another.

In each case, the violence is tragic, as perhaps all violence ultimately is, not least because of its normalization.<sup>6</sup> Perhaps, indeed,

<sup>5</sup> Wilfred Owen, STRANGE MEETING (1919). The poem was written in the spring or early summer of 1918. Kenneth Simcox, *Strange Meeting*, The Wilfred Owen Association (2000), <http://www.wilfredowen.org.uk/poetry/strange-meeting>. Owen was killed one week before the end of the War. *This Day in History: November 4, 1918: Poet Wilfred Owen killed in action*, HISTORY.COM, <http://www.history.com/this-day-in-history/poet-wilfred-owen-killed-in-action>.

<sup>6</sup> This tragic normalization is acknowledged in the Bible when the first particular sin committed by a human being after expulsion from Paradise is Cain's murder of his brother Abel. *Genesis* 4:1-12. For a wonderfully insightful treatment of violence as the central problem in the human condition and as the problem that

the protagonists in the two cases could have avoided at least some of the tragedy by making a different decision in the deadly situation they faced—perhaps Harry Callahan could have refrained from daring the criminal suspects in front of him and running the risk of provoking another fatal outcome; and perhaps the German soldier and the British soldier could have chosen to surrender rather than to fight, much as the wounded third armed robber in *Dirty Harry* or the slightly wounded fourth armed robber in *Sudden Impact* chose to do. But the situations were already pathological by then and the room for maneuver very constrained. The deeper tragedy is that these pathological situations and the deadly violence they engendered were the culmination of countless individual and collective decisions about how to treat others, each decision having an incremental causative effect in socially constructing the “punks” or the “foreign foe” and in producing the ultimate tragic outcome.

Despite these similarities, the two works could not be more different. The *Dirty Harry* movies do not move beyond the deadly violence. Indeed, they portray such violence as the only solution to dealing with the simple, one dimensional “punks” that plague society.<sup>7</sup> The Owen poem *does* move beyond the deadly violence, and it does so by taking us to a place beyond death in which each soldier, with whom we are of course invited to identify, can recognize “the enemy,” the “foreign foe,” as a complex, multidimensional human being just like himself, to a place indeed in which he, and we, can recognize him as a “friend.” This is a dramatic and radical shift in perspective and Owen wants us to make it this side of the grave.

One goal of this Article, then, is to help avoid or minimize the type of pathological situations and associated deadly violence portrayed in these two works by supporting Owen’s poetic argument for making this shift in perspective with an extended philosophical argument. This argument is aimed at improving the quality of the causative decisions about how to treat others that can otherwise lead to such tragic outcomes. However, there is a second goal too. The pathological situations and associated deadly violence in these two works can also be seen as extreme metaphors for lesser degrees of conflict and

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is centrally addressed in the Hebrew Bible, see RABBI JONATHAN SACKS, *NOT IN GOD’S NAME: CONFRONTING RELIGIOUS VIOLENCE* (2015).

<sup>7</sup> Much of the popularity of the *Dirty Harry* movies lies in the perceived failures of the criminal justice system to address the problem of violent crime effectively. See, e.g., PATRICK MCGILLIGAN, *CLINT: THE LIFE AND LEGEND*, 209 (1999).

associated “violence,” whether that violence is physical or psychological, and the argument is aimed at improving the quality of causative decisions about how to treat others that result in these lesser conflicts and associated “violence” as well.

However, the argument is not utopian, aimed at eliminating conflict completely. That would probably be undesirable anyway. Instead, it is aimed at cultivating a particular kind of “recognition” among parties to conflict that will help promote a healthier resolution to conflicts, both those that occur within a national society and those that occur between societies. The goal is to help counteract our all-too-human tendency to demonize the “Other” or, given the context of the imagined conversation below—and if I may be permitted a neologism—to “punkify” the “Other.” When we do this, we strip the “Other” of his or her humanity. And even when we dialogue with the “Other,” often we do not really connect and we might as well be talking to an “empty chair.” The challenge, then, is to discover how to put a real human being in the chair—not a “punkified” caricature. The argument proceeds in the form of another exercise of the imagination—an imaginary conversation with Inspector Harry Callahan. It will seek to persuade him to shift from the perspective of Dirty Harry to the perspective of Wilfred Owen. And if you would enjoy the irony, you can even imagine the conversation taking place with an empty chair (although I hope that the chair will appear to be filled by a more human and sympathetic character by the end of it).<sup>8</sup> But first we must set the scene.

#### **SETTING THE SCENE:**

Professor Polly Anna Hope, a faculty member at Mercer University Law School, has just made three new friends at a

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<sup>8</sup> At the Philosophers for Peace Conference itself, and given Clint Eastwood’s then recent performance at the 2012 Republican Convention, during which he talked to an imagined President Obama sitting in an empty chair, I was unable to resist the temptation to conduct this conversation by talking to an empty chair in which I asked the audience to imagine Clint Eastwood was sitting as Dirty Harry. However, the reader will understand that what follows is an imaginary conversation that in no way should be understood as necessarily representing the views of the real life actor/director known as Clint Eastwood. He is definitely “in role” as Dirty Harry. The reader should also assume that the fictional Inspector Callahan or Dirty Harry, as portrayed here, has no objection to the recording of our conversation with him and to publication of the transcript of that conversation with notes.



Concerned Philosophers for Peace Conference on “Struggles for Recognition: Nonviolent Movements for Individual and Group Recognition” being held on the Mercer campus in her home town of Macon, Georgia. At the end of the first day’s proceedings they have dinner at a restaurant in town and then decide to go to a local bar, “The Wishful Thinker,” for a nightcap. As they went to dinner straight from the conference, they still have the materials they used in various presentations they made during the day. Sitting at the bar is someone who bears an uncanny resemblance to Clint Eastwood, *aka* Inspector Harry Callahan or Dirty Harry.<sup>9</sup> Intrigued, they go up to the bar, sit down, and order some drinks. Noticing that the object of their curiosity is staring into his glass and looking rather glum, Professor Hope engages him in conversation.

**Professor Hope:** Excuse me, I don’t mean to intrude, but aren’t you. . . . ?

**Dirty Harry:** Yeah, I’m Harry Callahan, what about it?

**Professor Hope:** Well, it’s just that you seem rather down in the dumps, and I was wondering if you would like to talk about whatever is bothering you.

**Dirty Harry:** I don’t think so. Thanks anyway.

**Professor Hope (persistently):** Are you sure? My friends and I are attending a Concerned Philosophers for Peace Conference at Mercer University here in Macon. My name is Polly Anna Hope; I teach Comparative Law and Alternative Dispute Resolution (ADR). And these are my friends—Professor Telly O. Logie: he’s a professional philosopher (his nickname is “Kojak” by the way)<sup>10</sup>; Professor Rhett Roe: he is a legal historian; and Father Francis Pope: he teaches at a

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<sup>9</sup> Readers who find their credulity strained by the notion that one might encounter Clint Eastwood, *aka* Inspector Callahan or Dirty Harry, in a bar in Macon, Georgia are referred to <http://gatewaymacon.org/top-5-lists/movies-filmed-macon.com> (discussing the films that have been made in Macon, including *TROUBLE WITH THE CURVE*, starring Clint Eastwood). See *TROUBLE WITH THE CURVE* (Malpaso Productions 2012).

<sup>10</sup> For the benefit of those who are not of a certain age, *Kojak* was an American TV series in the 1970s starring the actor Aristotelis “Telly” Savalas as the title character, Lieutenant Theodore “Theo” Kojak, a bald detective in the New York City Police Department with a predilection for Tootsie Roll Pops and for uttering the phrase “Who loves ya, baby?” See Raymond Hernandez, *Telly Savalas, Actor, Dies at 70; Played ‘Kojak’ in 70’s TV Series*, N.Y. TIMES (Jan. 23, 1994), <http://www.nytimes.com/1994/01/23/obituaries/telly-savalas-actor-dies-at-70-played-kojak-in-70-s-tv-series.html>.

Roman Catholic seminary. So we're quite a diverse bunch, and quite thoughtful. You never know; we might have something helpful to say.

**Dirty Harry:** A bunch of egg head peaceniks—I doubt it. But I must admit, I am experiencing something of what you clever Dicks would call “an existential crisis,” a moment of serious “angst.”

**Professor Hope** (*unable to resist a bit of arguably inappropriate academic humor*): But “angst” is good. For a moment there I was worried it was “ennui.” So, what seems to be the source of this “angst”?

**Dirty Harry:** There seems to be so much violence and violent death in the world—wars, terrorism, mass murders, other murders and maiming. Everywhere you look there seems to be violent conflict. And it seems, too, that the usual response to violence is yet more violence. Hell, look at me. In my movies, I often resort to force and violence as a solution to conflict, as in “Go ahead; make my day” or “[Y]ou’ve got to ask yourself one question: Do I feel lucky? Well, do ya, punk”?. And then, as often as not, I blow them away. My character lives in a world full of “punks.” But, recently I have been wondering whether there might be a better way to a better world. The trouble is, I just can’t see what that might be. It’s getting me down, so here I am in this bar.

**Professor Hope:** You know, I think maybe we *can* help. Perhaps Professor Logie can get us started.

## I. THE LONG MARCH TOWARD “THE END OF HISTORY”: FROM THRONES TO CHAIRS IN THE “STRUGGLE FOR RECOGNITION”—SPIRITUAL JUSTICE PART ONE

**Professor Logie:** Well, Inspector Callahan, my views have been greatly influenced by what one could call “the Hegel-Kojève-Fukuyama school of political philosophy.”<sup>11</sup>

**Dirty Harry:** The *what*? What the hell is that?

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<sup>11</sup> The views presented by Professor Logie in this exchange with Dirty Harry are based on the argument in FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* (1992). As we will see below, the “struggle for recognition” is central to Fukuyama’s thesis that modern liberal democracy represents the endpoint in the historical evolution of mankind’s political ideas. In articulating this thesis Fukuyama draws upon Hegel’s account of a Universal History as interpreted by Alexandre Kojève in the 1930s. For Fukuyama’s discussion of Hegel’s Universal History and the Hegelian dialectic between societies culminating in the “end of history,” see *id.* at 59-64. For Fukuyama’s discussion of Kojève and his work as Hegel’s “greatest interpreter in the twentieth century,” see *id.* at 65-67.

**Professor Logie:** It's a little complicated and will take a while to explain; but I do *need* to explain it before you will be able to see my main point about violence—if you can bear with me.

**Dirty Harry:** Well, I haven't got anything better to do. And it should be entertaining to see you get your academic knickers in a tangle.

**Professor Logie** (*somewhat perplexed and embarrassed by this reference to his academic knickers*<sup>12</sup>): In his book *The End of History and the Last Man*, published in 1992, Francis Fukuyama gives an account of a “Universal History” that is “coherent and directional” and that culminates in the “end of history,”<sup>13</sup> not in the sense that important events will cease to occur but in the sense that “the end point of mankind’s ideological evolution” has been reached with the realization of “the final form of human government.”<sup>14</sup> Fukuyama’s particular thesis is that the economic and political organization of societies has developed through different stages from the violent situation of the “first men” in a “state of nature” at the beginning of History to their culmination in the relatively peaceful situation of the “last men” in liberal democracy at the end of History. Liberal democracy is thus the best arrangement and superior to all alternatives such as “monarchy, aristocracy, theocracy, fascism, communist totalitarianism, or whatever ideology [people] happened to believe in.”<sup>15</sup>

**Dirty Harry:** What? Are you telling me that the “end of history” is reached when a bunch of liberal Democrats are in charge of everything? I bet you voted for Obama, didn't you?

**Professor Logie:** No, I'm not saying that; and I'm not telling you whom I voted for.

**Dirty Harry:** You don't have to. You academics are all the same. Anyway, do go on. What *are* you saying, then?

**Professor Logie** (*feeling quite smug because he actually voted for the Green Party ticket*): Fukuyama defines liberal democracy as “the doctrine of individual freedom and popular sovereignty”<sup>16</sup> and

<sup>12</sup> Professor Logie is perplexed by Dirty Harry's apparent use of this common expression to suggest his anticipation that the argument might become tangled and confused.

<sup>13</sup> FUKUYAMA, *supra* note 11, at xii.

<sup>14</sup> *Id.* at xi-xii (quoting from Francis Fukuyama, *The End of History?*, NAT'L INTEREST 4 (Summer 1989)).

<sup>15</sup> *Id.* at 211.

<sup>16</sup> *Id.* at 42.

understands it as comprising three main elements: (a) Political liberalism, which is “a rule of law that recognizes certain individual rights or freedoms from government control”<sup>17</sup>; (b) Democracy, which is “the right held universally by all citizens to have a share of political power, that is the right of all citizens to vote and participate in politics,” and which “can be thought of as yet another liberal right”<sup>18</sup>; and (c) Economic liberalism, which is “the recognition of the right of free economic activity and economic exchange based on private property and markets” and which also goes by the name of “capitalism” or “free-market economics.”<sup>19</sup>

**Dirty Harry:** Okay, I get that liberal democracy is not necessarily a bunch of liberal Democrats being in charge of everything. But why does the historical process culminate in these particular economic and political arrangements rather than in some fascist or communist dictatorship?

**Professor Logie:** Integrating the logic of modern natural science and the Anglo-Saxon account of liberalism, represented by Hobbes and Locke, with the Continental European account of liberalism, represented by Hegel-Kojève, Fukuyama concludes that the process of historical development must inevitably culminate in the idea of liberal democracy *and* that there is no set of economic and political arrangements superior to liberal democracy. He claims further that this conclusion is verified by the apparent verdict of history, consisting in the triumph of liberal democracy over its competitors in the twentieth century, such as fascism or communism.

The deep explanation for this theoretical conclusion and for the apparent verdict of history is rooted in certain truths about human nature or in “a trans-historical concept of man.”<sup>20</sup> Specifically, it is rooted in the tripartite division of the soul first explicated by Plato but

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 43. Fukuyama stresses that “[i]t is possible for a country to be liberal without being particularly democratic” and “[i]t is also possible for a country to be democratic without being liberal, that is without protecting the rights of individuals and minorities.” *Id.* at 43-44.

<sup>19</sup> *Id.* at 44. Fukuyama stresses that “there are many possible interpretations of this rather broad definition of economic liberalism, ranging from the United States of Ronald Reagan and the Britain of Margaret Thatcher to the social democracies of Scandinavia and the relatively statist regimes in Mexico and India.” *Id.*

<sup>20</sup> *See id.* at 137-39. For discussion of the difficulty in justifying a particular understanding of human nature or “trans-historical concept of man,” see *id.* at 364 n.7.

accepted, albeit with varying terminology, by Western philosophers up to Rousseau.<sup>21</sup> I need to explain all this in more detail so that I can highlight my main point.

**Dirty Harry:** Knock yourself out; I'm all ears. And I'm still looking forward to you getting your academic knickers all in a tangle.

**Professor Logie** (*still embarrassed, though not quite as much as before*): I will try to avoid doing that. Well, anyway, in the *Republic* Plato famously gives a metaphysical account of the soul that also represents a human psychology—an account of human nature, if you will. He identifies three parts to the soul—a reasoning part, a “spirited” part, and a desiring part that is the source of bodily appetites and material desires.<sup>22</sup> Fukuyama grounds his own “end of history” thesis in the following understanding of Plato’s account:

Plato in the *Republic* . . . noted that there were three parts to the soul, a desiring part, a reasoning part, and a part that he called *thymos*, or “spiritedness.” Much of human behavior can be explained as a combination of the first two parts, desire and reason: desire induces men to seek things outside themselves, while reason or calculation shows them the best way to get them. But in addition, human beings seek recognition of their own worth, or of the people, things, or principles that they invest with worth. The propensity to invest the self with a certain value, and to demand recognition for that value, is what in today’s popular language we would call “self-esteem.” The propensity to feel self-esteem arises out of the part of the soul called *thymos*. It is like an innate human sense of justice. People believe that they have a certain worth, and when other people treat them as though they are worth less than that, they experience the emotion of *anger*. Conversely, when people fail to live up to their own sense of worth, they feel *shame*, and when they are evaluated correctly in proportion to their worth, they feel *pride*. The desire for recognition, and the accompanying emotions of anger, shame, and pride, are parts of the human personality critical to political life.<sup>23</sup>

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<sup>21</sup> *Id.* at 162-63, 368 n.5. See *infra* note 41 (discussing the varying terminology used by Western philosophers over the centuries).

<sup>22</sup> For an accessible treatment of Plato’s “tripartite theory of the self or the soul or psyche or personality” as “the form, idea, or essence of man” and the arena of “psychological conflict,” see T.Z. LAVINE, FROM SOCRATES TO SARTRE: THE PHILOSOPHIC QUEST 49-53 (1984).

<sup>23</sup> FUKUYAMA, *supra* note 11, at xvi-xvii. For Fukuyama’s more detailed discussion of Plato’s account in the *Republic*, see *id.* at 163-66, 183. Fukuyama

In addition to emotions such as anger, shame, and pride, as well as the desire for recognition, courage is rooted in *thymos*.<sup>24</sup> It is also the psychological seat of other virtues such as selflessness, idealism, morality, self-sacrifice, honorability, generosity, and public-spiritedness, as well as resistance to tyranny.<sup>25</sup> However, as we will see, *thymos* has a “dark side” as well as a more benign side.

The historical process has been driven forward by the search to overcome the specific contradiction peculiar to each particular form of human society and to achieve a “form of social and political organization that is *completely satisfying* to human beings in their most essential characteristics.”<sup>26</sup> In other words, it has been driven forward by the search to satisfy all three parts of the soul. Two main forces or “mechanisms” explain the “directionality and coherence of History.”<sup>27</sup> First, the historical process has been driven forward by “the progressive unfolding of modern natural science” and economic imperatives rooted in the desiring part of the soul:

[T]he progressive unfolding of modern natural science . . . emanates from the desiring part of the soul, which was liberated in early modern times and turned to the unlimited accumulation of wealth. This unlimited accumulation was made possible because of an alliance that was formed

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distinguishes analytically between *thymos* and the desire for recognition. Thus “Plato’s *thymos* is . . . the psychological seat of Hegel’s desire for recognition;” consequently, “[*t*]hymos and the ‘desire for recognition’ differ somewhat insofar as the former refers to a part of the soul that invests objects with value, whereas the latter is an activity of *thymos* that demands that another consciousness share the same valuation.” *Id.* at 165.

<sup>24</sup> *Id.* at 163, 183.

<sup>25</sup> *Id.* at 171, 181. See also LAVINE, *supra* note 22, at 49. “[The] spirited element [is] expressed in emotional drives such as anger, aggression, ambition, pride, protectiveness, honor, loyalty, courage.” *Thymos* is also clearly implicated in the process of self-evaluation and self-criticism—for example, regarding whether one has lived up to accepted standards of virtuous behavior. See FUKUYAMA, *supra* note 11, at 164 (discussing Socrates’ story about Leontius’ inner struggle over whether to look at a pile of corpses and contrasting the anger Leontius feels after losing the battle with the pride he would have felt had he won it).

<sup>26</sup> FUKUYAMA, *supra* note 11, at 135-36.

<sup>27</sup> *Id.* at xiv (referring to natural science as “a regulator or mechanism”); *id.* at 144 (referring to “an alternative ‘mechanism’ . . . based on ‘the struggle for recognition’”).

between desire and reason: capitalism is inextricably bound to modern natural science.<sup>28</sup>

In fact, “the logic of advanced industrialization, determined by modern natural science, creates a strong predisposition in favor of capitalism and market economics,”<sup>29</sup> that is, economic liberalism.<sup>30</sup>

Although there is “a very strong overall correlation between advancing socio-economic modernization and the emergence of new democracies,”<sup>31</sup> modern natural science and advanced industrialization cannot fully explain why societies would adopt political liberalism as well as economic liberalism.<sup>32</sup> The reason is that humans are more than economic animals.<sup>33</sup> As Fukuyama puts it: Man is more than “Economic Man;” he is also “thymotic man.”<sup>34</sup>

**Dirty Harry:** “Thymotic man”! I think this might be the knickers tangle I’ve been waiting for. “The Thymotic Man” does sound like a good title for a movie, though.

**Professor Logie** (*no longer embarrassed and even a little irritated at these continued taunts and anticipatory Schadenfreude over the tangling of his academic knickers, but suddenly realizing that these exchanges are a mild example of thymotic conflict*): Yes, Fukuyama points out that the concepts of thymos and the desire for recognition do sound very strange and unfamiliar to us nowadays.<sup>35</sup> However, they are critical to Fukuyama’s thesis and, I suspect, to addressing your own existential crisis as the conversation develops further.

So, in addition to the mechanism of natural science, and for a much longer time—for thousands of years in fact—the historical process has also been driven forward by a second force or mechanism: the desire

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<sup>28</sup> *Id.* at 204. For more extended discussion of the role of modern natural science, see *id.* at xiv-xv, 72-81. For discussion of why the directionality provided by modern natural science is unlikely to be reversed, see *id.* at 82-88.

<sup>29</sup> *Id.* at 108-09.

<sup>30</sup> *Id.* at xv, 205-06.

<sup>31</sup> *Id.* at 112. See also *id.* at 205-06 (exploring the reasons for the correlation).

<sup>32</sup> See *id.* at xv, 112-25, 131-35, 238-44 (discussing the ultimate failure of various attempts to demonstrate that economic liberalism inevitably leads to political liberalism).

<sup>33</sup> *Id.* at 133-34.

<sup>34</sup> *Id.* at 180.

<sup>35</sup> *Id.* at 145, 162, 189-90 (noting the thoroughgoing “economization” of our thinking over the last few centuries). This is largely due to the influence on our thinking of the Anglo-Saxon liberal tradition, represented in particular by Hobbes and Locke. See *infra* notes 64-66 and accompanying text.

for recognition rooted in the thymotic part of the soul.<sup>36</sup> This second mechanism explains both why the historical process eventually culminates in liberal democracy and why there are deviations and discontinuities along the way.<sup>37</sup>

Recall that psychologically *thymos* operates as something “like an innate human sense of justice.”<sup>38</sup> Thus it “provides an all-powerful emotional support to the process of valuing and evaluating, and allows human beings to overcome their most powerful natural instincts for the sake of what they believe is right or just” both for themselves and for others.<sup>39</sup> However, the self-assertion engendered by the thymotic desire for recognition is deeply paradoxical in that although *thymos* is “the psychological seat of justice and selflessness,” it is also “closely related to selfishness” because “[t]he thymotic self demands recognition for its *own* sense of the worthiness of things, both itself and of other people.”<sup>40</sup> For this reason “[t]he desire for recognition remains a form of self-assertion, a projection of one’s own values on the outside world, and gives rise to feelings of anger when those values are not recognized by other people.”<sup>41</sup>

*Megalothymia* is the desire to be recognized as superior to others. It can manifest itself benignly as, for example, in the desire of the

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<sup>36</sup> The historical process at work here is very long-term, “measured in the thousands of years since the first appearance of master-slave social relations virtually up until the French Revolution.” FUKUYAMA, *supra* note 11, at 372 n.2. *See also id.* at 207 (referring to “an historical march of ten thousand years or more”).

<sup>37</sup> *See id.* at 133-35. Here Fukuyama refers to “discontinuities in history” as including “the majority of man’s wars, the sudden eruptions of religious or ideological or nationalist passion that lead to phenomena like Hitler and Khomeini,” or again, “the wars and sudden eruptions of irrationality out of the calm of economic development, that have characterized actual human history.” *Id.*

<sup>38</sup> *Supra* note 23 and accompanying text.

<sup>39</sup> FUKUYAMA, *supra* note 11, at 171-72.

<sup>40</sup> *Id.* at 172.

<sup>41</sup> *Id.* Fukuyama identifies the varied terminology that has been used to refer to the same “psychological phenomenon” over the centuries, including *thymos* or “spiritedness” (Plato), “man’s desire for glory” (Machiavelli), “his pride or vainglory” (Hobbes), “his *amour-propre*” (Rousseau), “the love of fame” (Alexander Hamilton), “ambition” (James Madison), “recognition” (Hegel), and “man as the ‘beast with red cheeks’”(Nietzsche); *id.* at 162-63 (explaining that “[a]ll of these terms refer to that part of man which feels the need to place *value* on things—himself in the first instance, but on the people, actions, or things around him as well”).



concert pianist “to be recognized as the foremost interpreter of Beethoven.”<sup>42</sup> However, it also has a very problematic “dark side” when it manifests as “the desire to dominate,” as in the case of the master over the slave, the tyrant who invades and enslaves his neighbors, or a power that engages in imperialism.<sup>43</sup> Indeed, the “dark side to the desire for recognition . . . has led many philosophers to believe that *thymos* is the fundamental source of human evil.”<sup>44</sup>

The historical process has been driven forward by the *megalothymia* of “masters,” and by the “struggle for recognition” on the part of “slaves”<sup>45</sup> to which this gives rise. At the beginning of history society becomes divided into aristocratic masters and slaves as the result of a “battle for pure prestige” in which “two primordial combatants . . . seek to make the other ‘recognize’ their humanness by staking their lives in a mortal battle.”<sup>46</sup> And “[w]hen the natural fear of death leads one combatant to submit, the relationship of master and slave is born.”<sup>47</sup> One could perhaps characterize this outcome as the master sitting on a throne and the slave groveling at his feet.

By demonstrating that he can overcome his natural instincts in this way, the master shows that he can exercise “free moral choice,” that is, that he has “free will”; and this is the essence of man’s specific dignity.<sup>48</sup> However, the outcome of this battle for recognition is unsatisfactory for both masters and slaves, because “[t]he slave, of course, was not acknowledged as a human being in any way whatsoever. But the recognition enjoyed by the master was deficient as well, because he was not recognized by other masters, but slaves

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<sup>42</sup> *Id.* at 182.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 181.

<sup>45</sup> Fukuyama clarifies that “[w]hen Kojève (or Hegel) refers to slaves, he is not speaking narrowly of people with the legal status of chattel, but of all people whose dignity is not ‘recognized,’ including, for example, the legally free peasantry in pre-Revolutionary France.” *Id.* at 372 n.2.

<sup>46</sup> *Id.* at xvi-xvii, 147-48.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 149-52. Like Kant and Hegel before him, Fukuyama is aware of the argument that free will is a chimera because all human behavior is, in fact, determined by physical or natural processes and forces. He side-steps this “tortured question,” as we will, by treating the issue not as a metaphysical one but as a psychological one: Thus, “[w]hether or not true free will exists, virtually all human beings act *as if* it does.” *Id.* at 151-52.

whose humanity was as yet incomplete.”<sup>49</sup> This dissatisfaction or “contradiction” drives history forward,<sup>50</sup> specifically because slaves took pride in their work, developed “something like a work ethic,” invented science and technology, and conceptualized the “*idea* of freedom” in the form of various philosophies or “slave ideologies.”<sup>51</sup>

Christianity has been the most consequential of these “slave ideologies” because “[t]he Christian God *recognizes* all human beings universally, recognizes their individual human worth and dignity” based on the capacity of all men for moral choice and belief.<sup>52</sup> However, because Christianity postponed the realization of human freedom until the next life, completion of the historical process required the secularization of Christianity through a philosophy, such as Hegel’s own, that “translat[ed] . . . the Christian idea of freedom into the here-and-now.”<sup>53</sup> It also required “one more bloody battle, the battle in which the slave liberates himself from the master,”<sup>54</sup> This is the historical role of the French and American Revolutions:

These democratic revolutions abolished the distinction between master and slave by making the former slaves their own masters and by establishing the principles of popular sovereignty and the rule of law. The inherently unequal recognition of masters and slaves is replaced by universal and reciprocal recognition, where every citizen recognizes the dignity and humanity of every other citizen, and where that dignity is recognized in turn by the state through the granting of *rights*.<sup>55</sup>

In sum, just as the combination of reason and desire in the first mechanism leads to capitalism or economic liberalism, and institutionalizes “rational desire” in the marketplace,<sup>56</sup> so also the combination of reason and *thymos* in the second mechanism leads to political liberalism and democracy, and institutionalizes “rational

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<sup>49</sup> *Id.* at xvii.

<sup>50</sup> *Id.* For further discussion of this point, see *id.* at 192-94.

<sup>51</sup> *Id.* at 194-96.

<sup>52</sup> *Id.* at 196-97.

<sup>53</sup> *Id.* at 197-98.

<sup>54</sup> *Id.* at 198.

<sup>55</sup> *Id.* at xvii-xviii.

<sup>56</sup> *Id.* at 211-12, 337 (referring to “rational desire”).

recognition” in “[t]he universal and homogenous state.”<sup>57</sup> In this state “the dignity of each person as a free and autonomous human being is recognized by all”<sup>58</sup> and “an all pervasive *isothymia*, that is, the desire to be recognized as the equal of other people” has “ethically vanquished” *megalothymia*.<sup>59</sup> Thus “[t]he internal ‘contradiction’ of the master-slave relationship was solved in a state which successfully synthesized the morality of the master and the morality of the slave.”<sup>60</sup>

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<sup>57</sup> *Id.* at 204 (referring to “[t]he universal and homogenous state”), 200, 211-12, 337 (referring to “rational recognition”). For a more detailed description of the “universal and homogenous state,” see *id.* at 200-04.

<sup>58</sup> *Id.* at 200.

<sup>59</sup> *Id.* at 190. One striking manifestation of this *isothymia* is the granting and protection of individual rights as *ends in themselves*. *Id.* at xviii, 202-03.

<sup>60</sup> *Id.* at 200-01, 203. The three parts of the soul or psyche—reason, *thymos*, and desire—can perhaps be viewed as psychological functionalities that reflect distinctive attributes of human biology and underpin various types of ethic. For fascinating and suggestive discussion, see, e.g., Darcia Narvaez, *Wisdom as Mature Moral Functioning: Insights from Developmental Psychology and Neurobiology*, in TOWARD HUMAN FLOURISHING: CHARACTER, PRACTICAL WISDOM, AND PROFESSIONAL FORMATION 28-31 (Mark L. Jones, Paul A. Lewis, & Kelly R. Reffitt, eds. 2013) and the further references therein (describing three ethical orientations—the ethic of security, the ethic of engagement, and the ethic of imagination—that are rooted in neurobiological capacities and unconscious emotional systems shaped by experience) [hereinafter Narvaez, *Mature Moral Functioning*]. See also Darcia Narvaez, *The Neurobiology of Moral Functioning and Moral Formation* 1-8 [on file with author] (same) [hereinafter Narvaez, *Neurobiology*]; KAREN ARMSTRONG, TWELVE STEPS TO A COMPASSIONATE LIFE 13-14, 17 (2010) (discussing our “old brain” inherited from reptilian ancestors and predisposing to an interest in “status, power, control, territory, sex, personal gain, and survival;” the mammalian limbic system that generates “positive emotions of compassion, joy, serenity, and maternal affection;” and our “new brain,” the neocortex, home of the reasoning powers that enable us to reflect on the world and on ourselves, and to stand back from . . . instinctive, primitive passions”).

Expressions of *thymos*, especially of *megalothymia*, seem to be related to our human tendency to form groups and to seek our identity through membership in such groups. For an illuminating discussion of how our instinct to form groups likely evolved through the natural selection of those groups whose members practiced “reciprocal altruism,” is reinforced in larger groups by organized religion’s creation of “moral communities” that establish trust between strangers, and can easily and naturally lead to violence and war between the in-group (Us) and rival out-groups (Them) in the competition for scarce resources and for power, territory, and glory, see SACKS, *supra* note 6, at 27-39 (2015). For Sacks, the source of much of the violence between groups, as between individuals, is “mimetic desire” born of “sibling rivalry” in which one

In other words, instead of a master sitting on a throne and the slave groveling at his feet, each of them now sits in his own chair.

I'm sorry but I think I have been "lecturing" you. I do tend to get carried away because I find all this so absorbing. I hope you don't mind.

**Dirty Harry:** Hey, I don't have anything better to do. And some of this stuff is really good. I mean—first, capitalism and "job creators." And now, aristocratic masters and *megalothymia*—sounds like just what we need to deal with the punks. I particularly liked the way the slaves submitted to save their lives in the bloody battle for pure prestige—just like the punks who submitted to me outside the bank and in the coffee shop. They understood who was in charge. And as for those punks who didn't, well, they're dead.<sup>61</sup> But, this really isn't helping me with my problem. I am not seeing a better way yet.

**Professor Logie** (*concerned that Dirty Harry seems to be missing the point and that he will have to be more explicit*): Okay, well in that case I think we need to talk more specifically about the problem of violence. The Anglo-Saxon liberal tradition, represented by Hobbes and Locke, and the Continental European liberal tradition, represented by Hegel-Kojève, agree that violence is a central problem, both among the first men in the state of nature and in history, and that it originates in what we have been calling the thymotic part of the soul. In their various "experiments in thought" depicting the situation of the "first men" in the state of nature,<sup>62</sup> for example, Hegel-Kojève talk about the bloody battle for pure prestige; Hobbes famously talks about the war of "every man against every man" fueled by pride and vanity; and

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sibling wants to have what the other sibling has or to be what the other sibling is. *Id.* at 87-90. For further discussion, see *infra* notes 63, 102.

<sup>61</sup> *Cf.* FUKUYAMA, *supra* note 11, at 147 (discussing three possible outcomes of the primordial bloody battle for pure prestige: "the death of both combatants, . . . the death of one of the contestants, . . . [o]r . . . the relationship of lordship and bondage, in which one of the contestants decides to submit to a life of slavery rather than face the risk of violent death").

<sup>62</sup> *Id.* at 146 (claiming that Hobbes, Locke, Rousseau, and Hegel all undertook "a kind of experiment in thought" portraying "the First Man, that is, man in the 'state of nature,'" even though Hegel resisted such terminology himself, their goal being "to strip away those aspects of the human personality that were simply the product of convention . . . and to uncover those characteristics that were common to man as man" and thus "that existed prior to the creation of civil society and the historical process"). However, in contrast to Hobbes, for example, Hegel intended his account to depict an actual historical stage. *Id.* at 365 n.2.

Locke also agrees that the state of nature potentially degenerates into war or anarchy.<sup>63</sup> Moreover, both traditions converge on liberal democracy as the solution. However, they get there in very different ways.

As we have seen, Hegel-Kojève accept the necessity and indeed the value of *thymos* and the struggle for recognition. By contrast, for Hobbes and Locke, *thymos* and the “prideful quest for recognition” must be suppressed, or at least strongly subordinated, to the desire for self-preservation (Hobbes) or to the desire for self-preservation and material comfort (Locke).<sup>64</sup> Thus the first men in the state of nature set up a government to maintain social peace and achieve these purposes, through a social contract founded upon “enlightened self-interest—desire combined with reason.”<sup>65</sup> This also means, of course, that although the Anglo-Saxon liberal tradition helps to explain why human beings would favor economic liberalism, or capitalism, it

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<sup>63</sup> *Id.* at 146-52 (Hegel), 154-56 (Hobbes), 158 (Locke). According to Rabbi Jonathan Sacks, our natural tendency towards group identity and resulting violence and war between rival groups, *supra* note 60, can take a “mutant form, pathological dualism, that divides the world into two—our side, the children of light, and the other side, the children of darkness.” SACKS, *supra* note 6, at 100-02. This simplistic division of humanity into good versus evil is rooted in the tendency to reduce complexity through dualism and the need to forestall potential violence within the group by projecting it onto outsiders as scapegoat (as, for example, in anti-Semitism), and produces a “threefold defeat of morality” whereby people dehumanize and demonize their enemies (which destroys empathy and sympathy), see themselves as victims (which deflects moral responsibility by blaming outsiders), and commit “altruistic evil” (which “turns ordinary human beings into murderers in the name of high ideals,” especially religious ideals, that is, in the name of an “altruistic cause”). *Id.* at 44-86. These processes of pathological dualism “activate the most primitive part of the brain . . . with its instant and overwhelming defensive reactions . . . that, under stress . . . can entirely overwhelm the slower-moving prefrontal cortex.” *Id.* at 56, 86.

<sup>64</sup> FUKUYAMA, *supra* note 11, at xviii, 156-59, 184-85.

<sup>65</sup> *Id.* at xviii, 156-60, 184-85, 200, 203 (explicating the differences in the terms of the respective social contracts—the absolute government of Hobbes and the limited government and majority rule of Locke—and observing that government protects individual rights not so much as “ends in themselves” providing recognition but “to a large extent . . . as a means of preserving a private sphere where men can enrich themselves and satisfy the desiring parts of their souls”). The typical result, then, is “a new type” of human being, the bourgeois private individual, who is selfishly concerned with his own self-preservation and material well-being and is “neither public-spirited, nor virtuous, nor dedicated to the larger community.” *Id.* at 145, 160, 185.

cannot in fact adequately explain why human beings favor political liberalism and democracy, even though it champions these things as well. The reason, it bears repeating, is because “the striving for liberal democracy . . . ultimately arises out of *thymos*, the part of the soul that demands recognition.”<sup>66</sup>

Consequently, a full account of liberal democracy, and of the relatively peaceful situation of the “last men” who inhabit liberal democracies, requires the integration of both traditions, and in fact this is what has occurred. Thus, “while the Anglo-Saxon democracies may have been founded on explicitly Lockean grounds, their self-understanding has never been purely Lockean.”<sup>67</sup> As a result, “[w]hen people in contemporary America talk about their society and form of government, they frequently use language that is more Hegelian than Lockean,”<sup>68</sup> as emphasis upon the concept of “human dignity” in the language of the civil rights movement clearly attests.<sup>69</sup>

By integrating the two traditions, then, we can understand more readily why the particular economic and political arrangements of liberal democracy optimally satisfy all three parts of the soul.<sup>70</sup> In turn, this means that we can also more readily understand why these arrangements conduce to social peace and why there is such emphasis upon compassion and “a steadily decreasing tolerance for violence, death, and suffering.”<sup>71</sup> Similarly, these arrangements also conduce to *international* peace. Thus, with the demotion of aristocratic masters and with the gains from economic development, liberal democracies—or perhaps one should rather say, *mature* liberal democracies—are not

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<sup>66</sup> *Id.* at xviii, 159-61, 199-200. *See supra* notes 31-34 and accompanying text (noting that “Man is more than ‘Economic Man;’ he is also ‘thymotic man’”).

<sup>67</sup> FUKUYAMA, *supra* note 11, at 203.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 203-04. For perhaps two of the most striking recent examples at the time of latest writing (July 2015), see *e.g.*, *United States v. Windsor*, 133 S. Ct. 2675 (2013) (ruling Article 3 of the Defense of Marriage Act (DOMA) unconstitutional under the Fifth Amendment of the U.S. Constitution and containing at least ten explicit references to human dignity and several additional allusions to such dignity in Justice Kennedy’s majority opinion); *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (ruling that the Fourteenth Amendment of the U.S. Constitution requires recognition of the validity of same-sex marriages and containing at least eleven explicit references to human dignity and, again, several additional allusions to such dignity in Justice Kennedy’s majority opinion).

<sup>70</sup> FUKUYAMA, *supra* note 11, at 136, 200, 206, 337.

<sup>71</sup> *See id.* at 259-61.

interested in megalothymotic, imperialistic attempts to dominate other countries militarily; and they especially have no interest in dominating one another in this way, as is evidenced by the fact that “there have been few, if any, instances of one liberal democracy going to war with another.”<sup>72</sup>

So, there you have it, as they say—one very important way to reduce violence and conflict both within and between societies is for them to become liberal democracies. I wonder if my friends have anything to add to what I have said.

**Professor Roe:** I really like the arguments in favor of liberal democracy as the best way to organize society. But, speaking as an historian, your historical account seems highly general and abstract. So, I wonder just how accurate and balanced it can be. I suspect the devil is in the details.

**Professor Logie:** Well, you are right that such a Universal History omits a great deal. But it does so in order that we will not fail to see the wood for the trees. Instead, it tries to reveal the rational pattern in events and the general direction in which humanity is moving. I should also mention that Fukuyama’s more recent work does explore the historical details in considerable depth, examining what specifically is required for societies to be able to attain liberal democracy (namely, functioning states, the rule of law, and accountable government) and the concrete obstacles that must be overcome to achieve it.<sup>73</sup> However, despite the existence of such obstacles, Fukuyama does not seem to have abandoned the historical determinism that underpins *The End of History and the Last Man*.<sup>74</sup> It should be remembered, too, that this

<sup>72</sup> *Id.* at xx, 260-65, 271-72. Of course, liberal democracies may still fight defensive wars with states that are not liberal democracies. *Id.* at 263, 267. On the nationalist excesses of immature liberal democracies, see *infra* note 102.

<sup>73</sup> See generally FRANCIS FUKUYAMA, *THE ORIGINS OF POLITICAL ORDER: FROM PREHUMAN TIMES TO THE FRENCH REVOLUTION* (2011); FRANCIS FUKUYAMA, *POLITICAL ORDER AND POLITICAL DECAY: FROM THE INDUSTRIAL REVOLUTION TO THE GLOBALIZATION OF DEMOCRACY* (2014).

<sup>74</sup> See Francis Fukuyama, *At the ‘End of History’ Still Stands Democracy*, WALL ST. J. (June 6, 2014), <http://www.wsj.com/articles/at-the-end-of-history-still-stands-democracy-1402080661> (“In the realm of ideas . . . liberal democracy still doesn’t have any real competitors. . . Even as we raise questions about how soon everyone will get there, we should have no doubt as to what kind of society lies at the end of History.”); see also, e.g., Ian Morris, *How to Get to the End of History*, SLATE (May 2, 2011), [http://www.slate.com/articles/arts/books/2011/05/how\\_to\\_get\\_to\\_the\\_end\\_of\\_history.html](http://www.slate.com/articles/arts/books/2011/05/how_to_get_to_the_end_of_history.html); Glen Austin Sprovier, *Beyond the End of History: Fukuyama’s Myopic Vision*, THE U. BOOKMAN (Mar. 24, 2013), <http://www.kirkcenter.org/index.php/bookman/article/beyond->

earlier book has more of the character of political philosophy, whereas the recent books are more political history and political science.

**Professor Hope:** I would like to ask about something you said towards the end. You suggested that because liberal democracy optimally satisfies all three parts of the soul we can more readily understand why it conduces to social peace. This reminded me of the expression “No peace without justice.”

**Professor Logie:** Now that is very interesting. I like where I think you’re going with it, but perhaps you can explain more exactly where you see the connection between justice and peace with regard to the soul so I can be sure.

**Professor Hope:** Well, it seems that the historical process you describe can be regarded as a search for justice and the overcoming of various types of injustice. But whatever specific issues may have been the focus of particular claims for justice during the historical process, those claims have also necessarily involved the thymotic part of the soul and the struggle to tame the *megalothymia* of aristocratic societies and transform it into the *isothymia* of liberal democracies. Couldn’t one say, therefore, that this transformation of *megalothymia* into *isothymia* represents a rebalancing and more just redistribution of thymotic value or thymotic energy *between* the souls of masters and slaves—which one can picture, as you have done, by each citizen now sitting in his or her own chair instead of the master sitting on the throne and the slave groveling at his feet—resulting in greater harmony, or peace, between their souls? And by the same token, doesn’t that redistribution also produce a rebalancing and more just distribution of thymotic energy *within* each of their souls, resulting in greater harmony, or peace, within those souls? Indeed, doesn’t Plato himself regard justice within the soul as being a condition in which all the parts of the soul are in harmony or proper balance? And couldn’t this achievement of peace as a result of a more just distribution of *thymos* between and within souls be described as achieving peace through a type of “spiritual” or psychic justice? Moreover, isn’t there an important link between such *internal* “spiritual” justice and *external* acts of justice, so that the more of the former there is, the more of the

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the-end-of-history-fukuyamas-myopic-vision/; Glenn C. Altschuler, ‘*Political Order and Political Decay*’ by Francis Fukuyama: review, SFGATE (Oct. 29, 2014), <http://www.sfgate.com/books/article/Political-Order-and-Political-Decay-by-5856742.php> (book reviews).



latter there is likely to be too—and indeed vice-versa, at least over time once resentments on the part of those who lost have diminished?

**Professor Logie:** This is where I thought you were going. Those are excellent thoughts. And you are absolutely right about Plato, of course. Interestingly, at the very end of his book, Fukuyama does seem to connect his thesis to the idea of justice in the soul when he says that for Plato “[t]he just city was one in which all three parts of the soul were satisfied and brought into balance under the guidance of reason,” and “it would seem that liberal democracy gives fullest scope to all three parts. If it would not qualify as the most just regime ‘in speech,’ it might serve as the most just regime ‘in reality.’”<sup>75</sup> Thus, specifically with regard to *thymos*, for example, he observes that not only is *thymos* present in the form of *isothymia*, but all healthy and stable liberal democracies “must permit some degree of safe and domesticated *megalothymia*, even if this runs contrary to the principles they profess to believe in.”<sup>76</sup> It is simply natural for some people to want to excel and be recognized as superior to others rather than just being one of a mass of “last men” engaging in “rational consumption.”<sup>77</sup> And indeed liberal democracies provide several outlets for *megalothymia*—business, science and technology, politics (especially foreign policy), sports, artistic culture, and so on.<sup>78</sup> In this way, then, each of the human types receives what is “spiritually due” to it, and the various parts of the soul within each of those types receive what is “spiritually due” to *them*. However, Fukuyama does not then explicitly make the additional connection between this idea of “spiritual justice”—of justice in the soul—and the idea of peace as you have done, although surely he would not disagree with putting the matter that way.

Father Pope, do you have any comments about what I have said? And then I would be really quite interested to know what *you* think about it all, Inspector Callahan.

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<sup>75</sup> FUKUYAMA, *supra* note 11, at 337.

<sup>76</sup> *Id.* For further discussion of this point, see *id.* at 315, 320-21.

<sup>77</sup> *Id.* at 313-15. For an extended discussion of Nietzsche’s critique of liberal democracy as representing not “a synthesis of the morality of the master and the morality of the slave” but “an unconditional victory of the slave” resulting in a society of “last men” who are “without [c]hests” and “[without] a certain horizon, that is, a set of values and beliefs that are accepted absolutely and uncritically” within which they can live, see *id.* at 300-12.

<sup>78</sup> *Id.* at 315-21. See also *id.* at 223-34 (discussing the thymotic origins of work and the work ethic, including standards of professionalism, and the thymotic elements in economic liberalism).

## II. LIBERAL DEMOCRACY AND ITS DISCONTENTS: SITTING APART AND “PUNKIFYING” OTHERS

**Father Pope:** I must confess to wondering about the notion that the economic and political arrangements of liberal democracy, as you have described them, are completely satisfying to human beings.

**Professor Logie:** Well, Fukuyama does ask whether there might be some remaining “contradictions” in liberal democracy that make it less than completely satisfying to human beings. Here he considers challenges from both the “Left” and the “Right” that essentially center on the tension between liberty and equality. The challenge from the Left is that “the promise of universal, reciprocal recognition remains essentially unfulfilled.”<sup>79</sup> Using our metaphor of the chairs, I suppose one could say that this challenge focuses on differences between everyone’s chairs—differences in their height, size, appearance, and comfort—and tries to reduce or eliminate those differences. The more serious challenge, for Fukuyama, comes from the Right, which rejects “the goal of equal recognition itself . . . because human beings are inherently *unequal*.”<sup>80</sup> I suppose one could say here, then, that some individuals might again seek a throne, with everyone else dispossessed of their own chairs and groveling at their feet. However, in the final analysis, Fukuyama does not seem overly concerned that either type of challenge could defeat the idea of liberal democracy, provided we remain clear about what is really at stake.<sup>81</sup> But I get the sense that you were thinking of something else.

**Father Pope:** That’s right. It seems that Fukuyama is basically providing a *secular* justification for liberal democracy. Even assuming his teleology is not flawed because God does not intervene in history to influence such matters, I question whether secular liberal democracy *alone* can be completely satisfying to human beings. So, I think Hegel-Kojève may be onto something very important when they say that “[t]he Christian God *recognizes* all human beings universally, recognizes their individual human worth and dignity,” although, at least as you have described it, they then seem to dismiss Christianity, and religion generally, too easily.<sup>82</sup> Of course, it may seem paradoxical to talk about “recognition” by God, since recognition is associated

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<sup>79</sup> *Id.* at 289.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 314-15, 336-38.

<sup>82</sup> *Supra* notes 52-53 and accompanying text.

with pride, which is regarded as a sin. However—and without trying to solve the knotty problem of the relationship of the psyche to the immortal soul<sup>83</sup>—perhaps it is not so paradoxical on a proper understanding of Christian humility, and of the difference between unhealthy pride and a healthy sense of self-worth that comes from knowing one is valued and loved by God. Thus, there may still be a place for a healthy form of *thymos* in the divine economy. Perhaps we should think of it as *thymos* undergoing a type of transformation in which we acknowledge that we have received the world, ourselves, and one another, as Gift that is entrusted to us as stewards.<sup>84</sup> I may want to revisit all this later if there is an opportunity. For now, let me just say that it is a great blessing that we live in a system that respects and protects religious freedom.

**Professor Hope:** So, at least in that formal sense, Father, I suppose you could say that liberal democracy *might* be completely satisfying to human beings, because it does allow their “restless hearts” to seek God in their own way.<sup>85</sup>

**Father Pope:** In that formal sense, yes, I agree with you.

**Professor Logie:** And now, Inspector Callahan—finally—what do you think about all this? Doesn’t living in a liberal democracy, and

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<sup>83</sup> Here, Father Pope acknowledges that when we speak about the tripartite soul or “spiritual justice,” we are basically talking about the human psyche, and about psychological conflict and well-being and its relationship to economic and political arrangements, and not necessarily about the immortal soul of Christianity. For the Roman Catholic teaching on the soul, see CATECHISM OF THE CATHOLIC CHURCH §§ 362-368 (1994, 1997) [hereinafter CATECHISM].

<sup>84</sup> Cf. 1 Peter 4:10 (New Am. Rev. ed. 2011) (“As each one has received a gift, use it to serve one another as good stewards of God’s varied grace.”).

<sup>85</sup> Here Professor Hope has in mind the beginning of Saint Augustine’s *Confessions*:

“Great art thou, O Lord, and greatly to be praised; great is thy power, and infinite is thy wisdom.” And man desires to praise thee, for he is a part of thy creation; he bears his mortality about with him and carries the evidence of his sin and the proof that thou dost resist the proud. Still he desires to praise thee, this man who is only a small part of thy creation. Thou hast prompted him, that he should delight to praise thee, *for thou hast made us for thyself and restless is our heart until it comes to rest in thee.*

THE CONFESSIONS OF SAINT AUGUSTINE Book One, 1.1 (Albert C. Outler, trans., 1955) (referencing Ps. 145:3, Ps. 147:5), <http://www9.georgetown.edu/faculty/jod/augustine/conf.pdf> (emphasis added). For further discussion on religion’s place in liberal democracies, see *infra* note 99.

encouraging its spread around the globe, offer a “better way to a better world,” as you put it—one with much less conflict and violence—for the reasons we have explored?<sup>86</sup>

**Dirty Harry:** Is that it? That’s your big point? You people really crack me up. I’ve been listening to you yakking away about your grand theories—yak, yak, and more yak. I’m beginning to understand why they say that academics live in an “ivory tower.” You sure as hell don’t live in the *real* world, *my* world, Sorry about the language, Father; and I don’t mean you so much anyway because you haven’t bought into all this crap uncritically; sorry again.

But in case you other pointy heads hadn’t noticed, we *do* live in a liberal democracy; and there are a *lot* of problems. The place is *full* of punks: criminals I have to deal with every day; other losers who haven’t done an honest day’s work in their lives but just want a handout; unions demanding higher wages and extorting employers, the job creators; millions of illegal aliens; “victims” who keep squealing for new “rights”; baby killers. And that’s just *us*. What about the rest of the world? What about those countries that aren’t liberal democracies? They’re killing *each other*—Syria anyone? Egypt? Yemen? And they’re attacking *us* as well, like those crazy Muslim terrorists did on 9/11/01, or when they stormed our embassies and consulates over some stupid movie exactly eleven years later, or when they bombed the Boston Marathon in April 2013. Now we’ve got the

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<sup>86</sup> Fukuyama’s “end of history” thesis has been subjected to various critiques, including Samuel Huntington’s notorious “clash of civilizations” counter-thesis (stressing especially the clash between Muslims and non-Muslims). See SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1996). Although detailed discussion of these critiques is beyond the scope of this Article, it should perhaps be noted that many of the critics seem to have misunderstood the nuances of Fukuyama’s argument and/or to be impatient in failing to take the very long-term view. As discussed *supra* note 74 and accompanying text, Fukuyama still seems to adhere to his “end of history” thesis despite the dramatic events that have occurred during the quarter century since he first articulated it. Fukuyama himself now sees the greatest danger to the future of liberal democracy in biotechnological advances that might make it possible for humans to control their own evolution and thus alter what it means to be a human being. See FRANCIS FUKUYAMA, *OUR POSTHUMAN FUTURE: CONSEQUENCES OF THE BIOTECHNOLOGY REVOLUTION* (2002). Although an architect of neoconservatism, and at one time a supporter of the Bush Administration’s neoconservative agenda, Fukuyama subsequently distanced himself from that agenda. See Francis Fukuyama, *After Neoconservatism*, N.Y. TIMES MAG., (Feb. 19, 2006), [http://www.nytimes.com/2006/02/19/magazine/neo.html?ex&\\_r=0](http://www.nytimes.com/2006/02/19/magazine/neo.html?ex&_r=0).

ISIS crazies too. And then, even though liberal democracies may not fight one another, we have to go and sort *them* out. Iraq anyone? Afghanistan? Not to mention the Democrats and other liberal types like *you*, who go all weak at the knees and fall over themselves to molly coddle all of them. *What* a bunch of punks!

So I see lots of problems, lots of conflicts and divisions, and lots of punks. So what's all this "Kumbaya" peace and harmony, spiritual justice, and God knows what else, at the "end of history" crap? Give me a break.

**Professor Logie** (*somewhat taken aback at the forcefulness and passion of Dirty Harry's response and not quite sure whether he has just been called a punk*): Well, there's definitely a lot there, and I'm sorry you're upset that we haven't been much help. Fukuyama is certainly aware of the problems, conflicts, and divisions you mention, and he tries to give us a way to think about them within the framework of his general thesis.

With regard to liberal democracies themselves, in addition to acknowledging the many social problems that exist, including crime,<sup>87</sup> Fukuyama wants us to understand how the kinds of conflicts and divisions you mention are often (not always, to be sure) *thymotic* conflicts involving the desire for recognition, in addition to being, or sometimes even instead of being, a clash of economic interests implicating the desiring part of the soul.<sup>88</sup> Thus, *thymos* may operate autonomously or as "an ally of desire,"<sup>89</sup> depending on the type of claim and conflict involved. He says, for example, that "[v]irtually the entire civil liberties and civil rights agendas, while having certain economic components, are essentially thymotic contests over recognition of competing understandings of justice and human dignity."<sup>90</sup>

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<sup>87</sup> See FUKUYAMA, *supra* note 11, at 288 ("Liberal democracies are doubtless plagued by a host of problems like unemployment, pollution, drugs, crime, and the like").

<sup>88</sup> For examples, see *id.* at 171-72 (feminism and racism), 172-74 (wage claims and economic justice), 176 (abortion, racism, poverty, and civil liberties and civil rights generally), 187 (abortion rights, school prayer, freedom of speech), 190 (anti-abortion protests, animal rights advocacy), 203-04 (civil rights, right to vote), and 277-78 (immigration). See also *supra* note 79 and accompanying text (discussing the challenge to liberal democracy from the "Left").

<sup>89</sup> FUKUYAMA, *supra* note 11, at 177.

<sup>90</sup> *Id.* at 176.

*Thymos* is involved in so much human conflict because “[i]n a world of thymotic moral selves, they will be constantly disagreeing and arguing and growing angry with one another over a host of questions, large and small.”<sup>91</sup> This means that the “factions” that concerned Founders such as Madison “result not just from the clash between the desiring parts of different men’s souls (i.e., economic interests) but between their thymotic parts as well.”<sup>92</sup> We could say, therefore, that these kinds of thymotic conflicts are present-day instances of the continuing “struggle for recognition” within liberal democracies themselves.<sup>93</sup>

Also, if I may say so, your examples of thymotic conflict between the citizens of liberal democracies seem a little tendentious and one-sided. They imply that the sources of conflict are provocations from the “Left.” Wouldn’t it be more balanced to acknowledge that “it takes two to tango” and that many of these conflicts are provoked, or also provoked, by over-reaching *megalothymia* on the “Right”—often combined with excessive desire, that is, greed? For example, what about the “masters of the universe” who played such a significant part in the global financial meltdown from which we are still recovering,<sup>94</sup> or business owners who exploit their workers or are reckless about the safety of their products or about the harm to our environment caused by their hubris, or politicians who mislead us into futile foreign wars by *their* hubris, or misogynistic or homophobic religious fanatics who try to force their oppressive morality on women or gays? What about our growing police state? Not to mention the heartless Republicans and Ayn Rand types who don’t seem to care about anyone else.

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<sup>91</sup> *Id.* at 181-82.

<sup>92</sup> *Id.* at 187. For further discussion of the Founders, see *id.* at 203-04.

<sup>93</sup> Of course, the health, and perhaps even the very survival, of liberal democracies depend on their citizens’ “irrational recognition” in some important respects. See *supra* notes 24-25 and accompanying text (virtues); FUKUYAMA, *supra* note 11, at 218-19, 222 (civil associations and communities), 229-34 (work ethic and its supporting communities), 215, 219, 222 (pride in liberal democracy); see also *supra* note 78 and accompanying text (outlets for *megalothymia*). For my own attempt to use ideas derived from the philosopher Alasdair MacIntyre to suggest a link between the health of modern liberal democracies and the pursuit of excellence and virtue in communities of professional practice, see Mark L. Jones, *Fisherman Jack: Living in “Juropolis”—The Fishing Village of the Law*, 66 MERCER L. REV. 485 (2015).

<sup>94</sup> See generally SATYAJIT DAS, *EXTREME MONEY: MASTERS OF THE UNIVERSE AND THE CULT OF RISK* (2011).

I'm sorry; now I really *am* getting my knickers in a tangle. It seems like our *thymos* is definitely showing, doesn't it?<sup>95</sup> I need to regain my philosophical composure. (*Professor Logie takes a deep breath*). Of course, these kinds of political disputes and social divisions in stable liberal democracies rarely generate large-scale physical violence. By contrast, in those societies which are not yet stable liberal democracies, that is, that are not yet part of the "post-historical world," but are still "stuck in history," as Fukuyama puts it,<sup>96</sup> often such conflicts do result in large-scale violence—and many tragic deaths—as these societies tear themselves apart, or fight with one another, or do both simultaneously; and liberal democracies may be dragged into the conflicts too. The reasons are varied but two of the major ones are religion and nationalism, both of which are manifestations of the culture of a people<sup>97</sup> and involve "irrational" forms of *thymos* and "irrational recognition."<sup>98</sup> Although neither one of these factors is "inherently incompatible" with liberal democracy and international peace, because both can be "defanged" and become tolerant,<sup>99</sup> each is

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<sup>95</sup> Dirty Harry and Professor Logie's use of stereotyping and highly derogatory language in characterizing those groups they find distasteful is symptomatic of the apparent deterioration in the quality of our political conversation in the United States in recent years and of the deep political, economic, and religious divisions that are reflected in this deteriorated conversation. See *Citizenship and Civility in a Divided Democracy: Political, Religious, and Legal Concerns—A Symposium of the Mercer Law Review*, 63 MERCER L. REV. 793 (2012) (providing one example, among many, of an effort to address this problem).

<sup>96</sup> FUKUYAMA, *supra* note 11, at 276-77.

<sup>97</sup> *Id.* at 212-14.

<sup>98</sup> *Id.* at xix, 207, 234, 266. For Fukuyama's discussion of several "cultural" factors that can impede the transition to liberal democracy, see *id.* at 212-19; see also Fareed Zakaria, *The Rise of Illiberal Democracy*, 76 FOREIGN AFF. 22 (1997) (exploring the distinctions between liberalism and democracy); Robert Cooper, *Why We Still Need Empires*, OBSERVER (April 7, 2002), <http://www.theguardian.com/observer/worldview/story/0,11581,680117,00.html> (calling for a new "postmodern imperialism" in a world made up of postmodern states, modern states, and pre-modern states). On the provocative question regarding the extent to which the United States is (not yet) part of the "post-historical" world, see Francis Fukuyama, *The History at the End of History*, GUARDIAN (Apr. 3, 2007), <http://www.theguardian.com/commentisfree/2007/apr/03/thehistoryattheendofhist>.

<sup>99</sup> See FUKUYAMA, *supra* note 11, at 216, 270-71 (religion), 215, 268-75 (nationalism). For the argument that liberal democracy, with its freedom of conscience, pluralistic toleration of a diversity of beliefs, and separation of religion and political power, is the best political arrangement for "defanging" religion, see SACKS, *supra* note 6, at 228-30; see also JOHN MICKLETHWAIT &

also viciously capable of revealing the “dark side” of *thymos*.<sup>100</sup> In Fukuyama’s sobering words “[o]nly *thymos*, searching for ‘justice,’ is capable of true fanaticism, obsession, and hatred.”<sup>101</sup> We see the potential in the Islamic world today.<sup>102</sup>

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ADRIAN WOOLDRIDGE, *GOD IS BACK: HOW THE GLOBAL REVIVAL OF FAITH IS CHANGING THE WORLD* 367-73 (2009) (extolling the American “solution” embodied in the First Amendment of the U.S. Constitution). Given the current conditions in today’s world, however, Sacks considers that it is now imperative to grapple with the theology that led to religious conflicts in the first place:

As Jews, Christians, and Muslims, we have to be prepared to ask the most uncomfortable questions. Does the God of Abraham want his disciples to kill for his sake? Does he demand human sacrifice? Does he rejoice in holy war? Does he want us to hate our enemies and terrorize unbelievers? Have we read our sacred texts correctly? What is God saying to us, here, now?

SACKS, *supra* note 6, at 19-23.

<sup>100</sup> FUKUYAMA, *supra* note 11, at 181-82, 201, 214, 255-56, 259, 266-68 (discussing the replacement of dynastic and religious imperialism by nationalistic imperialism).

<sup>101</sup> *Id.* at 214.

<sup>102</sup> For Europe’s own historical excesses, see *id.* at 259-60, 271 (religion), 266-68, 330-32 (nationalism); see also *id.* at 268-75 (potential for renewed nationalist excesses in Europe and elsewhere). For an overview of religiously motivated violence and “altruistic evil” in our own time and possible responses, see SACKS, *supra* note 6, at 3-26. For further extended discussion of the challenges posed by antagonisms and conflicts rooted in religion in our own time (including both literal wars and culture wars) and various responses, see generally MICKLETHWAIT & WOOLDRIDGE, *supra* note 99, at 297-367. Sacks considers that pathological dualism and violence have marked the relationship of the three Abrahamic religions (Judaism, Christianity, and Islam) for so much of their history because “[b]uilt into their self-definitions are a series of sibling rivalries drawn from the early narratives of the Hebrew Bible” that are “fraught with mimetic desire . . . for the same thing, Abraham’s promise [and] the most precious gift of all: God’s paternal love.” SACKS, *supra* note 6, at 98-102. For Sacks’ elaboration of these self-definitions, see *id.* at 90-98. For earlier discussion of sibling rivalry and pathological dualism, see *supra* notes 60, 63 respectively.

Sacks offers a radical re-reading of the relevant narratives from *Genesis* (Cain and Abel, Isaac and Ishmael, Jacob and Esau, Joseph and his brothers, Rachel and Leah), identifying counter-narratives that reject the various elements of pathological dualism and progressively overcome sibling rivalry, culminating in reconciliation among siblings and their realization that mimetic desire is misconceived because they each have their own blessing and are loved by God for what and who they are. SACKS, *supra* note 6, at 102-73. For Sacks’ discussion of what else is needed, in addition to such re-interpretation, for Jews, Christians, and Muslims (and also different groupings within each faith) to live



**Dirty Harry:** Like I said, there are punks everywhere—in liberal democracies and in other countries—and it seems you agree with me. And the only way I know to deal with punks is to use force and violence, physical or otherwise. So, I still don't see a better way—even after all your yakking. Do you always talk so much and say so little?

### III. UNDERSTANDING ONE ANOTHER: SITTING TOGETHER AND “RECOGNIZING” OTHERS—SPIRITUAL JUSTICE PART TWO

**Professor Hope:** May I make a suggestion based on something we have already talked about. I wonder if the problem is that you are too easily labeling those you regard as antagonists as just “punks.” Before you conclude that they are punks, shouldn't you at least listen to them, and try to hear what they are saying or asking for? Instead of—or at least before—you “rope an' throw an' brand 'em,” as one might say, shouldn't you “try to understand 'em”? (*Dirty Harry smiles on being reminded of one of his favorite T.V. shows from his youth: “Rawhide”*<sup>103</sup>). In other words, shouldn't *understanding* precede *judgment* and any decision or any action flowing from it?

Aren't we all familiar with the experience that listening to someone, and being listened to, can help defuse conflict? After all—

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together in peace, and of how these additional elements also find warrant in interpretations of the Hebrew Bible, see *id.* at 177-88 (loving the stranger through a role reversal that imagines oneself as, and puts oneself in the place of, the Other), 189-206 (honoring human commonalities by honoring the dignity of every Other as the image and likeness of God, as well as human diversity by honoring differences among persons and cultures and accepting that their relationship with God may be different from one's own), 207-19 (rejecting fundamentalism and re-interpreting “hard texts” in love in the direction of spiritual maximalism and military minimalism in accordance with traditional rules of interpretation and structures of authority), 220-37 (relinquishing political power and the imposition of religious truth by force, especially through “apocalyptic politics,” relying instead on exerting influence through strength of argument and example, preferably in liberal democracy that makes space for difference), 238-51 (letting go of blame, hate, and the desire for revenge, instead achieving freedom by forgiving past wrongs and taking responsibility for building a better future), 252-67 (fostering cooperation among Jews, Christians, and Muslims to recover, defend, and implement the humanizing values of Abrahamic monotheism, to apply the principle of reciprocal altruism in their mutual relations, and to reject the altruistic evil of terrorism).

<sup>103</sup> See *Frankie Laine—Rawhide Lyrics*, COWBOYLYRICS.COM, <http://www.cowboylyrics.com/lyrics/laine-frankie/rawhide-12547.html> (last visited Feb. 15, 2016) (lyrics to theme song); Frankie Laine, *Rawhide*, YOUTUBE (July 10, 2010), <http://www.youtube.com/watch?v=5upqY0uH0jQ> (theme song).

actually, I don't know about you, I suppose, and maybe you're different—but speaking for myself anyway: When I am in an argument, if I feel I am really being listened to and taken seriously, and that I am being valued and respected at least in *this* regard, then I begin to feel less angry. But the opposite is true if I feel I am not being listened to and taken seriously; then I become more frustrated and indignant because I feel disrespected. I bet that anyone who is married or in another type of close relationship knows *exactly* what I mean. And if I and the other person both feel that we are listening to and taking one other seriously, doesn't that in turn make our underlying conflict easier to deal with as well? Isn't it then easier to find a mutually acceptable solution, or at least to agree to disagree on a more amicable basis?

Well, if this is true—and accepting, for the sake of argument, that it is—what is going on here psychologically? Don't our feelings of frustration, humiliation, and resentment, when we feel devalued and treated dismissively, and of support, self-worth, and goodwill, when we feel valued and taken seriously, have their seat in the thymotic part of the soul? Moreover, isn't taking another person seriously by truly listening to them another way to *recognize* that person? Indeed, don't our “struggles for recognition” involve, at least initially, the struggle to be heard and to be understood? First, we struggle to have our claims heard and understood, to be “recognized” in this *procedural* sense; then we continue to struggle to persuade others that our claims should be accepted on the merits, and thus “recognized” in this second, *substantive* sense.

And, going back to what we were discussing earlier about justice<sup>104</sup>: If we are truly heard and understood—if we are “recognized” in the first, procedural sense—isn't that another important aspect of justice? Isn't it part of giving someone their “due,” not just that they have a chair to sit in and from which they can speak in the conversation but that they are given a proper hearing by others sitting in their own chairs? By contrast, isn't a refusal to listen and to try to understand another's point of view a refusal to “recognize” them and a denial of justice by not giving them their “due”? Isn't it, in fact, a type of *megalothymia*, an assertion of superiority, to say in effect: “Why should I listen to you; you are just a “fill in the blank (inferior lazy Black person, Muslim, benighted religious bigot)” whereas I am a “fill in the blank (superior hard-working White person, Christian,

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<sup>104</sup> See *supra* notes 74-78 and accompanying text.

member of the enlightened intelligentsia)? But if, instead, I am able to overcome my irrational pride and say, with humility: “You are worthy of being listened to,” then isn’t this an additional acknowledgement of *isothymia*? And doesn’t this type of “procedural justice” therefore also represent, and indeed bring about, a redistribution of thymotic value from me to you? Consequently isn’t this yet another way in which we can achieve “spiritual justice” between, and within, our two souls? And doesn’t this help to explain why, when we do this to and for each other, we have the more positive—or, one could say, more “peaceful” or harmonious—feelings we just talked about? And why, when we do not do this to and for each other, the opposite is true and we have the negative, more “hostile” or disharmonious feelings instead? In other words, isn’t this another important aspect of “No peace without justice”?

Moreover, isn’t this part of the genius behind the Rule of Law? Don’t we help to defuse anger and disarm conflict that might otherwise result in violence by giving people their “day in court” when they can be assured of being heard in accordance with the rituals and forms of the law? So, in the Anglo-American legal tradition we say that hearing the other side (*audi alteram partem*) is part of “natural justice.”<sup>105</sup> But, of course, when the judge does “procedural justice” by listening to and trying to understand each side of the case in the legal conversation, it does not guarantee, during the continuing struggle by the parties to have their claims accepted, that there will in fact be a just outcome on the merits. Similarly, when we do “procedural justice” by listening to and trying to understand one another in our particular conversations, whatever they may be (political, religious, personal, and so forth), it also does not guarantee, during the continuing struggle to have our claims accepted, that the outcome will be just. However, just as in the law, doesn’t such listening and understanding make it much more likely both that the outcome is in fact a just one and, perhaps even more important, that we will both agree that it is just—that our respective chairs are of appropriate relative height, size, appearance, and comfort?<sup>106</sup> Furthermore, if the outcome is indeed just and agreed

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<sup>105</sup> *Audi Alteram Partem*, BLACK’S LAW DICTIONARY ONLINE, (2d ed. 1910), <http://thelawdictionary.org/audi-alteram-partem/>; H.L.A. HART, THE CONCEPT OF LAW 160 (3d ed. 2012) (part of principles of Natural Justice).

<sup>106</sup> On “justice” in the law, see ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION 335 (1993) (“Doing justice to the parties that appear before one means honoring the rights and enforcing the duties that the law assigns them.”). On agreement that the outcome is a just one, see *id.*

to be so, so that each receives and is acknowledged to have received their “due” on the merits, then won’t this achieve even more “spiritual” justice and peace between and within our souls? But my main focus here is on the importance of doing justice by listening and trying to understand.

**Dirty Harry:** Great: more crap about “spiritual justice” He *talks* a lot (*gesturing towards Professor Logie*), and you ask a lot of questions, and neither of you seems to have a clue. So, tell me—just exactly *why* should I waste my time “doing justice” to *punks* by listening to them and trying to understand them? I don’t need to listen to them; I already know they’re punks. “Spiritual justice” for punks! Whatever next? Oh yeah, I know—let’s give the *criminal* punks lots of rights and protections under your precious “Rule of Law” and no rights and protections to the victims. By the way, that’s where I come in; I give them “justice” alright—I give ‘em a .44 Magnum. Now *that’s* justice. Oh, and in case you’re wondering about it, no, I don’t feel any great need to get “spiritual justice” and “peace” in my *own* “soul” because some other kind of punk I disagree with has “recognized” me by listening to me and trying to understand me.

**Professor Hope:** Putting the criminal justice system aside—although I *do* think it might be interesting to know just exactly how people come to *be* criminals in the first place—you continue to resist the idea that you should first try to listen and understand someone you disagree with, because otherwise you are pre-judging, or judging without understanding. You continue to assume that the other person is just a “punk.” I could, of course, suggest that you might appear to be just a punk to that other person as well, but that probably wouldn’t get us very far. Let’s see if there is a way for you to see things differently, to see that once you have listened and tried to understand, then the other person really might not seem to be such a punk after all. Perhaps an example or a little exercise might help get us started. And, since we have already mentioned the law—Professor Roe would you tell Inspector Callahan about the animal trials you talked about at the conference today.

**Professor Roe:** I would be happy to. It’s one of my favorite subjects. Let me begin by describing an animal trial that took place in early sixteenth century France. One of the scholars who have studied

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at 340-42 (discussing the judicial statesmanship that tries to create agreement and preserve political fraternity between the parties through the judge’s “rationalizing” and “commensurating” opinion even though the conflict between the parties may involve “incommensurable” values).

these sorts of trials, William Ewald, gives a good description of the trial in an article he wrote in 1995:<sup>107</sup>

In 1522 some rats were placed on trial before the ecclesiastical court in Autun. They were charged with a felony: specifically, the crime of having eaten and wantonly destroyed some barley crops in the jurisdiction. A formal complaint against “some rats of the diocese” was presented to the bishop’s vicar, who thereupon cited the culprits to appear on a day certain, and who appointed a local jurist, Barthélémy Chassenée . . . to defend them. Chassenée, then forty-two, was known for his learning, but not yet famous; the trial of the rats of Autun was to establish his reputation, and launch a distinguished career in the law.

When his clients failed to appear in court, Chassenée resorted to procedural arguments. His first tactic was to invoke the notion of fair process, and specifically to challenge the original writ for having failed to give the rats due notice. The defendants, he pointed out, were dispersed over a large tract of countryside, and lived in many villages; a single summons was inadequate to notify them all. Moreover, the summons was addressed only to some of the rats of the diocese; but technically it should have been addressed to them all.

Chassenée was successful in his argument, and the court ordered a second summons to be read from the pulpit of every local parish church; this second summons now correctly addressed all the local rats, without exception. But on the appointed day the rats again failed to appear. Chassenée now made a second argument. His clients, he reminded the court, were widely dispersed; they needed to make preparations for a great migration, and those preparations would take time. The court once again conceded the reasonableness of the argument, and granted a further delay in the proceedings. When the rats a third time failed to appear, Chassenée was ready with a third argument. The first two arguments had relied on the idea of procedural

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<sup>107</sup> William Ewald, *Comparative Jurisprudence (I): What Was It Like to Try a Rat?*, 143 U. PA. L. REV. 1889 (1995), *partially reprinted in* VIVIAN GROSSWALD CURRAN, *COMPARATIVE LAW: AN INTRODUCTION* 59-78 (2002). Ewald draws substantially upon two earlier studies of animal trials. See EDWARD P. EVANS, *THE CRIMINAL PROSECUTION AND CAPITAL PUNISHMENT OF ANIMALS* (1906); Walter Woodburn Hyde, *The Prosecution and Punishment of Animals and Lifeless Things in the Middle Ages and Modern Times*, 64 U. PA. L. REV. 696 (1916).

fairness; the third treated the rats as a class of persons who were entitled to equal treatment under the law. He addressed the court at length, and successfully demonstrated that, if a person is cited to appear at a place to which he cannot come in safety, he may lawfully refuse to obey the writ. And a journey to court would entail serious perils for his clients. They were notoriously unpopular in the region; and furthermore they were rightly afraid of their natural enemies, the cats. Moreover (he pointed out to the court) the cats could hardly be regarded as neutral in this dispute; for they belonged to the plaintiffs. He accordingly demanded that the plaintiffs be enjoined by the court, under the threat of severe penalties, to restrain their cats, and prevent them from frightening his clients. The court again found this argument compelling; but now the plaintiffs seem to have come to the end of their patience. They demurred to the motion; the court, unable to settle on the correct period within which the rats must appear, adjourned on the question *sine die*, and judgment for the rats was granted by default.<sup>108</sup>

**Dirty Harry:** Well, if that ain't the craziest, damnedest thing I ever heard (sorry again Father)! I thought these two were pretty weird (*gesturing towards Professor Logie and Professor Hope*), but that's not just weird; it's insane. (*After a pause*) Okay, I get it; you're kidding me, right? It's a joke.

**Professor Roe:** No, it's no joke. The trial really happened, and apparently it really did establish Chassenée's reputation as a criminal defense attorney.<sup>109</sup> Moreover, over the course of his career it seems that Chassenée worked on several other cases involving animal prosecutions.<sup>110</sup> And ten years after the trial in Autun he wrote a treatise about putting insects on trial that was reprinted several times in which he "discusses the full range of issues that can have been expected to arise during a trial of 'insect animals': the jurisdiction of the lay and ecclesiastical courts, the proper form of the complaint, the issues of notice and of adequate representation by counsel, the procedures to be followed at trial, and the passing and execution of sentences."<sup>111</sup>

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<sup>108</sup> Ewald, *supra* note 107, at 59-61.

<sup>109</sup> *Id.* at 61.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

As the need to reprint Chassenée's book suggests, he wasn't alone. In fact, Ewald tells us that "[f]rom the ninth century to the nineteenth, in Western Europe, there are over two hundred well-recorded cases of trials of animals, with the majority falling in the fifteenth, sixteenth, and seventeenth centuries;" and those were just the recorded cases—there were doubtless many more.<sup>112</sup> As Ewald explains:

The animals known to have been placed on trial during this period include: asses, beetles, bloodsuckers, bulls, caterpillars, chickens, cockchafers, cows, dogs, dolphins, eels, field mice, flies, goats, grasshoppers, horses, locusts, mice, moles, pigeons, pigs, rats, serpents, sheep, slugs, snails, termites, weevils, wolves, worms, and miscellaneous vermin.<sup>113</sup>

As a general rule, wild animals were tried in the ecclesiastical courts and domestic animals were tried in the ordinary criminal courts. When vermin like rats were tried, because they were destroying crops for example, the prosecution sought to deter them by seeking the spiritual remedy of anathema or excommunication to eliminate the infestation.<sup>114</sup> But when domestic animals were tried because they had killed someone, the prosecution sought to condemn and punish the animal by seeking the temporal remedy of execution, sometimes preceded by imprisonment.<sup>115</sup> And occasionally the animals won, like the rats of Autun effectively did in 1521; or like the snout beetles infesting the plaintiff's vineyards in St. Julien did in 1546 when the court issued a proclamation, before the case ever got to trial, observing that the fruits of the earth were intended for insects as well as humans and that it would be better for the plaintiffs "to implore the mercy of heaven, and to seek pardon for their sins, than to proceed rashly against the beetles;"<sup>116</sup> or like the six piglets did in Savigny-sur-Etang

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<sup>112</sup> *Id.* at 64.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 64-65.

<sup>116</sup> *Id.* at 63. The infestation then disappeared. When it returned in 1587, and the beetles were brought to trial, the plaintiffs proposed a compromise, setting aside a field for the beetles in perpetuity and agreeing that "the insects had a legal right to life, and to an adequate share of the earth's bounty." However, the attorneys for the beetles rejected the offer because the land was in fact barren and because they objected to various rights over the land reserved by the plaintiffs, although it seems that some bugs or rats ate the final pages of the extensive court records, so the final outcome is unknown. *Id.* at 63-64.

in 1457, when they were acquitted of the crime of murdering and partly devouring an infant although their sow mother had been found guilty of the crime and hanged a month earlier.<sup>117</sup>

**Dirty Harry:** And I thought giving all those “due process” rights to criminal punks was bad enough. Now you’re telling me they used to give the same kinds of rights to animals as well. Next thing you’ll be telling me they had to “Mirandize” them when they got arrested. I guess they must have had a bunch of liberals running around then too.

**Professor Roe:** I don’t know about *that*, Inspector. Some of the executions were pretty gruesome, and sometimes the animal was tortured beforehand.<sup>118</sup> And let’s not forget that heretics were also being executed during the same time period as the cases involving the rats, the beetles, and the piglets—and not necessarily after getting a hearing.<sup>119</sup>

**Dirty Harry:** So, let me get this straight. They put some animals on trial, with lots of due process protections, but some humans didn’t even get a trial before they were burned at the stake or whatever because they didn’t believe right. And then, even though they’d been real nice to the animals by giving them a trial, when they did punish them, they were often real cruel. Now that doesn’t make much sense, does it? Sounds like a lot of superstitious and primitive medieval mumbo-jumbo to me. I’d say they must have been real punks.

**Father Pope:** Before you continue, let me just make it clear that the Church doesn’t execute heretics any more, and we don’t put animals on trial either—just in case you were wondering.

**Professor Roe:** Well Inspector, that’s the sixty-four-dollar question, isn’t it: Just what were they thinking? Of course, we can never really know, can we, because they are long dead and the historical materials and what we can infer from them are limited. However, the important thing is to *try*. We must try to enter their point of view, their worldview, to see things through *their* eyes, not ours. Only in this way can we hope to “make sense” of what might seem like “nonsense” to us.<sup>120</sup> To do this we must first acknowledge our

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<sup>117</sup> *Id.* at 65. The piglets were acquitted “[b]ecause of their youth, because their mother had set a bad example, and because the evidence was not sufficient to convict.” *Id.*

<sup>118</sup> *Id.* at 65, 72.

<sup>119</sup> *See id.* at 62-63 (discussing Chassenée’s own involvement in such an episode involving the extirpation of Waldenses in the villages of Cabrières and Merindol in 1540-41).

<sup>120</sup> *See id.* at 70 (identifying the problem as being “to make sense” of things).



own situatedness in a particular time and place and set of circumstances,<sup>121</sup> how our “perceptual prisms” and “substructural categorizations” shape our perceptions and understanding,<sup>122</sup> and how those perceptions and that understanding are also influenced by many different kinds of cognitive biases.<sup>123</sup> Once we have done this, which of course requires a significant degree of epistemological humility,<sup>124</sup> we are then in a better position to try to understand what at first might seem so strange, unfamiliar, or even absurd to us, as the animal trials undoubtedly do, by trying to see matters through the prisms and categorizations of the culture that produced those trials. Karen

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<sup>121</sup> See, e.g., Günter Frankenberg, *Critical Comparisons: Re-Thinking Comparative Law*, 26 HARV. INT’L. L.J. 411 (1985), partially reprinted in VICKI C. JACKSON & MARK V. TUSHNET, *COMPARATIVE CONSTITUTIONAL LAW* 151, 186 (1999) (emphasizing the importance, in the context of comparative law, of becoming aware of, and making the effort to transcend, “subjectivity, . . . the observer’s perspective and experience,” that is an inevitable part of growing up in a particular culture). For a good sense of the situatedness of modernity and of its mechanistic and reductionist Cartesian-Newtonian worldview, see Fritjof Capra, *Turning Point: A Science of Living Systems*, <http://www.earthandspiritcenter.org/assets/Meditation%203%20readings%20fall%202015/3-2%20Turning%20PointA%20Science%20of%20Living%20Systems%20-%20Fritjof%20Capra.pdf> (discussing the emergence of a new, ecological and holistic worldview involving a systems approach to the understanding of living biological and social systems); see also RICHARD TARNAS, *COSMOS AND PSYCHE* 16-25 (2006) (discussing the trajectory of human consciousness from the participating consciousness of the primal worldview to the differentiated and alienated consciousness of the Cartesian-Newtonian worldview); Narvaez, *Neurobiology*, *supra* note 60, at 8 (discussing “[d]etached [m]orality in Western [c]ivilization”).

<sup>122</sup> Vivian Grosswald Curran, *Cultural Immersion, Difference and Categories in U.S. Comparative Law*, 46 AM. J. COMP. L. 43 (1998), partially reprinted in VIVIAN GROSSWALD CURRAN, *COMPARATIVE LAW: AN INTRODUCTION* 40-41 (2002) (discussing “cultural immersion” in comparative law).

<sup>123</sup> See ANDREW NEWBERG & MARK WALDMAN, *WHY WE BELIEVE WHAT WE BELIEVE: UNCOVERING OUR BIOLOGICAL NEED FOR MEANING, SPIRITUALITY, AND TRUTH* 253-58 (2006) (identifying twenty-seven “cognitive biases” that represent various “assumptions, generalizations, oversights, and mistakes” in our perceptions and interpretations of perceptual information during the “reconstruction of reality [that] is the foundation from which we construct all our beliefs about the world”).

<sup>124</sup> See, e.g., DINESH D’SOUZA, *WHAT’S SO GREAT ABOUT CHRISTIANITY?* 167-78 (2007) (chapter entitled *The World Beyond Our Senses: Kant and the Limits of Reason*); RICHARD TARNAS, *THE PASSION OF THE WESTERN MIND: UNDERSTANDING THE IDEAS THAT HAVE SHAPED OUR WORLD VIEW* 395-402 (1991) (discussing postmodernism).

Armstrong would call this expansion of our moral imagination the “science of compassion”<sup>125</sup> and say that it also requires us to apply the same “principle of charity” applicable to the translation of texts written in a foreign language, that is, “when we are confronted with discourse that is strange to us, we seek an ‘interpretation which, in the light of what it knows of the facts, will maximise truth among the sentences of the corpus.’”<sup>126</sup>

**Professor Hope:** And comparatists like Vivian Curran who do comparative law and try to understand foreign legal cultures would call it “cultural immersion.”<sup>127</sup> They would also agree with the analogy to language—more than just an analogy in fact, because comparative law often requires working with foreign languages—and point out that the challenge is essentially one of translation.

Can we ever fully succeed at this? Of course not—as the well-known saying goes, something is always “lost in translation.” Thus “the comparatist will fail to grasp a foreign legal culture completely from within.”<sup>128</sup> But that doesn’t mean we should not try to come as close as we can by “trying to understand foreign legal cultures in an untranslated form; *i.e.*, through the prisms that shape perceptions in the target legal culture.”<sup>129</sup>

<sup>125</sup> See ARMSTRONG, *supra* note 60, at 116-17 (describing the “‘science of compassion’ that should characterize the work of a religious historian” as “a method of acquiring ‘knowledge’ (Latin: *scientia*) by entering in a scholarly, empathetic way into the historical period that is being researched” and thereby “mak[ing] place for the other”). Armstrong takes the phrase “science of compassion” from Louis Massignon, *Les Nusayris, in L’ELABORATION DE L’ISLAM* (Claude Cahen, ed. 1961). *Id.* at 207 n.1.

<sup>126</sup> *Id.* at 138-39 (quoting N.L. Wilson, in IAN HACKING, WHY DOES LANGUAGE MATTER TO PHILOSOPHY? 148 (1975)).

<sup>127</sup> Curran, *supra* note 122, at 38-41.

<sup>128</sup> *Id.* at 41.

<sup>129</sup> *Id.* at 40. Curran elaborates as follows:

The immersion approach rejects the absolutist mentality. It contemplates a slow pushing against cultural barriers towards an ideal of mutual comprehension, a striving to approach comprehension, and a recognition that some distances will remain. Rather than failure, it implies the need to accept that others have different truths. The more deeply one gains insights into the particularities of foreign legal cultures, influenced by the flavors of each country’s habits, history, language, preoccupations, and social circumstances, the more aware the comparatist becomes of irreducible incomparables.

*Id.* at 123.

And we do need to make this kind of effort to understand the Other—whether that Other is something “foreign” among our own ancestors, such as the animal trials, or something “foreign” among people in another part of the world, such as Islam, or even something that seems “foreign” to us among people in our own country, such as an opponent’s position on same-sex marriage or abortion.<sup>130</sup> Moreover, with immigration from other countries, we encounter more and more “foreign” things from other parts of the world among people in this country as well. Of course, when we make the effort to understand other people who are alive today, we have a great advantage in that we can actually talk to them in person.

**Dirty Harry:** Why do I get the feeling that you are ganging up on me? But, you see, that’s where you’ve lost me. *Why* should I make this kind of effort to understand “punks”?

**Professor Hope:** Because, as I said before, once you have listened and tried to understand, then the other person really might not seem to be such a “punk” after all.

**Professor Roe:** Let’s go back to the animal trials again. Remember, our challenge is to try to “make sense” of what might seem to us to be “nonsense.” And let’s assume, with Fukuyama, that human nature and fundamental cognitive capacities are basically the same whatever the time period or place, even though they will be modulated in distinctive cultural patterns—for example, some cultures may be highly religious, while others may not be, as in the case of

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<sup>130</sup> Regarding the similarities in trying to understand the “foreign” Other in these different contexts, Curran explains:

Since accepting the idea of human plurality and difference also applies to differences within legal cultures, the obstacles to successful immersion and to successful comparison are different in degree, but not in kind, among different communities within a single nation’s legal culture, and among legal cultures of different nations. Comparative law, when conducted effectively, should thus be an instructive model for all legal analysis.

*Id.* See also KRONMAN, *supra* note 106, at 93-101 (discussing the value of “political fraternity” and defining it as “a kind of statesmanship *in pianissimo*” whereby every member of the political community displays an attitude of “sympathetic detachment,” meaning that, especially where the alternatives are incommensurable, they will endeavor “to place [themselves] imaginatively in the position of others and to entertain their concerns in the same affirmative spirit they do, while remaining uncommitted to the values and beliefs that give these concerns their force” yet also being open to revising their preliminary views and making a more informed choice among the alternatives).

modern Europe.<sup>131</sup> Now, clearly the participants themselves—lawyers like Chassenée, for example—did not consider that the animal trials, or even the trials or execution of heretics, were “nonsense.” Such things made perfect “sense” to *them*; and we should assume, applying the “principle of charity,” that they had “good reasons” for doing what they did—that doing these things seemed “reasonable” to them within their worldview. *We* may think that they were not good reasons, or even that they were in fact very *bad* reasons, but that is another issue. That has to do with *judgment*.

The point is that, before we reach a *judgment* about the worth of the animal trials and about the views and beliefs of the participants, we should first try to *understand* those practices and those views and beliefs from within. We should try to grasp their *reasons* and the worldview that informs them. Otherwise we risk an “unwarranted imposition of judgment emanating from a certainty of possessing objective truth.”<sup>132</sup> And we don’t want to do that; instead, we want to reach an “informed” judgment. But we can only do *that*, if we first understand. Then, once we understand, we may change our original view of the matter; or maybe we won’t. As Curran says, we still have to “struggle over whether and when normative judgments are applicable or desirable.”<sup>133</sup>

**Dirty Harry:** So, you’re saying they still might be “punks.”

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<sup>131</sup> See *supra* note 20 and accompanying text (discussing “a trans-historical concept of man”); see also ARMSTRONG, *supra* note 60, at 138 (maintaining that “when making an effort to understand something strange and alien to you, it is important to assume that the speaker shares the same human nature as yourself”).

<sup>132</sup> Curran, *supra* note 122, at 121.

<sup>133</sup> And then, of course, there is the vexing question regarding the normative standards that will form the basis of judgment. Regarding the relationship between cultural immersion (*i.e.*, understanding) and judgment, Curran offers the following insights:

There are no theoretical formulas for engaging in both simultaneously. The answer, if one can call it an answer, lies in what Nussbaum refers to as natural human practices of compassion and ethical commitment. If the latter are practiced in a context of cultural immersion, perhaps the resulting judgments can better avoid or mitigate some of the excesses that historically have been associated with a certainty of possessing truth, while also avoiding an abdication of political action on behalf of oppressed minorities.

*Id.* at 122 (referencing Martha Nussbaum, *Valuing Values: A Case for Reasoned Commitment*, 6 YALE J.L. & HUM. 197 (1994)).

**Professor Roe:** Well, if you insist on putting it in those terms, yes, I suppose I am. But remember, they might not be. And you won't know unless you first try to understand. That's the point.

**Professor Hope:** What's more, you may even discover when you do this with people today, that there are far fewer "punks" than you thought—that most people, in fact, are not "punks."

**Dirty Harry:** You're ganging up again. But back to these animal trials—I still don't get it. Those people still seem like punks to me.

**Professor Roe:** As I said, we must try to understand their *reasons* for doing what they did, which means we must try to understand their views and beliefs about things, which means, again, trying to see things through their eyes, through their own prisms and categories. So, that is what several scholars have tried to do. I won't go into all the different theories and speculations here, because I don't need to do that to make my point. It will be enough just to consider how Ewald tries to do this. So, Ewald examines six or seven different explanations that have been put forward for the animal trials over the centuries—that their purpose was to make sure the incident would be forgotten, to make sure it would *not* be forgotten, to deter other animals, or to deter humans; or to punish demons possessing the animals, Satan using them as instruments, or the animals themselves (because they are rational creatures who should be held responsible for their actions).<sup>134</sup> Apart from the specific problems Ewald identifies with these individual explanations, the basic problem with all of them is that although they can explain the remedy or the punishment, for various reasons they cannot ultimately explain, or fully explain, the trial.<sup>135</sup> And so Ewald searches for the explanation that can. He concludes that Chassenée himself accepted Thomas Aquinas's view that the animals were "the guiltless instruments of Satan" and that the remedies granted and punishments inflicted were "an indirect way of cursing the Devil."<sup>136</sup> But, despite sometimes cruel punishments, the trial itself was "a sign of moral respect."<sup>137</sup> Thus "[w]here we see in a rat or a pig either useless vermin or a reservoir of animal protein, [Chassenée] saw fellow creatures who enjoyed certain basic rights that can be vindicated at law."<sup>138</sup>

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<sup>134</sup> Ewald, *supra* note 107, at 65-69.

<sup>135</sup> *See generally id.*

<sup>136</sup> *Id.* at 68-69.

<sup>137</sup> *Id.* at 73.

<sup>138</sup> *Id.*

Consistently, Ewald rejects the notion that the animal trials and punishments were simply brutal and inhumane by modern standards. Although some of the punishments were indeed brutal, he reminds us that sometimes the animals won and that the parties in the snout beetle case even recognized that the beetles had a right to live, observing that this “contrasts markedly with the modern attitude” and noting that according to one estimate about 27,000 species of animals, mostly insects, are going extinct each year due to human activity.<sup>139</sup> He considers that “[w]e are horrified by the brutality of the animal trials; but it does not take much imagination to see that Chassenée would be equally horrified by our wanton extermination, without trial, of God’s creation.”<sup>140</sup>

In this regard, I should note that Ewald identifies two worldviews that “still jostled” with one another at the time of Chassenée. The medieval worldview, held by Chassenée, “counseled humility, resignation, and the insignificance of all things merely human” (given humanity’s fallenness), recognized “human beings and animals as being alike God’s creatures,” and divided the world into godly humans and animals, on the one hand, and ungodly humans and animals, on the other.<sup>141</sup> The newer, humanist worldview of the Renaissance, which set the trajectory for modernity, “saw humanity as participating in aspects of the divine” and tended towards dividing the world “between the brutal and the humane, with all animals falling in one category, and most humans in the other.”<sup>142</sup> These differing worldviews generated quite different “sensibilities” or “emotional responses to the world.”<sup>143</sup>

Perhaps Ewald’s explanation of these trials is correct; perhaps it is not. My own view is that the trial was not just “a mark of moral respect” for the animals but may have had a very practical purpose. Thus, a trial may have been held to determine not just the mundane facts of the case (did the insects in fact destroy the plaintiff’s crops; did the pig in fact crush the child?) but whether or not the animal was, in fact, simply the instrument of Satan or, instead, somehow an instrument of God, as the snout beetles appeared to be.<sup>144</sup> It is

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<sup>139</sup> *Id.* at 72-73.

<sup>140</sup> *Id.* at 73.

<sup>141</sup> *Id.* at 73-74.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 74.

<sup>144</sup> *See supra* note 116 and accompanying text (discussing the snout beetle case).

important to know this before pronouncing a “curse” because it would be blasphemous to pronounce a “curse” if the animals were God’s instruments.<sup>145</sup> Whatever the correct explanation and understanding might be, however, Ewald is surely correct when he observes that

[T]he differences between ourselves and Chassenée exist, not just at the level of cognition, but also in the very constitution of our moral sentiments. To put the point another way: what separates us from Chassenée—what makes the animal trials both so elusive and so revealing—is not just a shift in a single concept, but in an entire frame of reference. We set out to study these strange legal proceedings of our ancestors; and at every turn we have been brought face-to-face with alien sensibilities, alien metaphysics. And by “metaphysics” here I mean metaphysics in its most full-blooded sense—the subject that addresses such questions as: What is a person? What is an animal? What is the essence of freedom? What is justice? How is reality constituted, and to what ends? To understand Chassenée, it seems, we need to recapture lost images, a forgotten range of experience: an entire way of thinking and feeling about the world.<sup>146</sup>

So, you see, to understand what was really going on with these animal trials, and to understand the people involved in them, we need to enter a world with a quite different metaphysics, epistemology, and morality than our own. And, in light of all that, do you still think those involved in these trials were “punks”?

**Dirty Harry:** Okay, I guess I can see that maybe they weren’t quite as crazy as I first thought now that you’ve explained what might have been going on in their minds. It’s still pretty weird, though. But why did you tell me about all this again? I’m still not sure I get the point of it.

**Professor Roe:** Well, as Professor Hope mentioned earlier, just as we needed to try to get into the minds of those ancestors involved in the animal trials, so we need to do the same thing when we are dealing with other people today, whether they are here in this country or in other parts of the world, before we make judgments about them or decide on actions and policies based on those judgments. That way, our judgments will be better, and so will our actions and policies, just as our judgment about the animal trials was better once we had a better

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<sup>145</sup> See Ewald, *supra* note 107, at 68 (discussing the views of Thomas Aquinas).

<sup>146</sup> *Id.* at 74.

understanding of what might have been going on with them. So we first need to listen to others and try to understand them.

**Professor Hope:** Karen Armstrong puts it this way in her book *Twelve Steps to a Compassionate Life*:

The “principle of charity” and the “science of compassion” are both crucial to any attempt to understand discourse and ideas that initially seem baffling, distressing, and alien; we have to re-create the entire context in which such words are spoken—historical, cultural, political, intellectual—question them deeply, and . . . drive our understanding to the point where we have “an immediate grasp of what a given position meant.” With this new empathetic understanding of the context, we will find that we can imagine ourselves, in similar circumstances, feeling the same. In other words, we have to see where people are coming from. In this way, we can broaden our perspective and “make place for the other.” We can ignore this compassionate imperative only if we do not wish to understand other people—an ethically problematic position.<sup>147</sup>

Moreover, when we do this, we may well discover that instances of the “dark side” of *thymos* manifested by others are rooted in various kinds of emotional pain and suffering, such as frustration, humiliation, despair, and fear, and perhaps even a sense of betrayal and atrocity.<sup>148</sup> Of course, remember that developing such empathetic *understanding*

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<sup>147</sup> ARMSTRONG, *supra* note 60, at 139 (citing and quoting MARSHALL G.S. HODGSON, 1 THE VENTURE OF ISLAM: CONSCIENCE AND HISTORY IN WORLD CIVILIZATION 379 (1974)); *see id.* at 116-17, 207 n.1. For the phrase “science of compassion,” *see supra* note 125 and accompanying text. For the phrase “principle of charity,” *see supra* note 126 and accompanying text. *See also* SACKS, *supra* note 60, at 152-53, 158, 168-69, 172, 179-80 (the importance of role reversal in *Genesis* in creating empathy and sympathy and thus in humanizing the other and defeating dualism).

<sup>148</sup> For discussion of some examples illustrating this point, *see* ARMSTRONG, *supra* note 60, at 137 (Jewish, Christian, and Islamic religious fundamentalism), 140 (terrorists and their sympathetic co-religionists), 146-47 (inhabitants of and immigrants from former colonies), 187-88 (our enemy). *See also* FUKUYAMA, *supra* note 11, at 235-37 (Islamic fundamentalism), 237 (self-segregation of African Americans). Such instances may also be part of a bigger picture. *See, e.g.,* Bob Dylan, *Only a Pawn in Their Game*, on THE TIMES THEY ARE A-CHANGIN’ (Columbia Records 1964), <http://www.bobdylan.com/us/songs/only-pawn-their-game> (song about the 1963 murder of a civil rights activist). I am indebted to my good friend and colleague, Gary Simson, for this thought and Dylan reference.



does not preclude *judgment*; thus “[w]e can never condone cruelty, ruthless violence, terrorism, or systemic injustice.”<sup>149</sup> However, as Armstrong reminds us, we also need to remember that “in a threatening environment, the brain becomes permanently organized for aggression”<sup>150</sup> and that we have our own “dark side” as well.<sup>151</sup> And we should always be mindful that every human being is a “numinous mystery.”<sup>152</sup>

An acknowledgement of “mystery” is also at the heart of my good friend and colleague Jack Sammons’s proposal for reinvigorating and restoring civility to our democratic political conversation in the United States.<sup>153</sup> Sammons laments “the dead language of an exchange of concepts understood as prejudices and interests” that reflect and constitute our current “false and incomplete” identities and wants us to

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<sup>149</sup> ARMSTRONG, *supra* note 60, at 140, 186.

<sup>150</sup> *Id.* at 186 (discussing our “enemy”); *see also* Narvaez, *Mature Moral Functioning*, *supra* note 60, at 31 (“Situations can promote one ethic or another. Fearful situations activate the security ethic, whereas nurturing situations are likely to activate the engagement ethic.”); Narvaez, *Neurobiology*, *supra* note 60, at 7-8 (discussing “bunker security” and “vicious imagination,” with particular reference to religious fundamentalism).

<sup>151</sup> ARMSTRONG, *supra* note 60, at 186 (suggesting that “you, your own nation, and your own tradition also have flaws and, in all likelihood, have committed serious crimes against others in the past or, perhaps, even in the present” and that, “[given] the ‘shadow’ in your own mind . . . [p]erhaps in different circumstances, you too would be capable of evil actions”).

<sup>152</sup> *Id.* at 128. Armstrong is here referring to those “we encounter during the day” but the point is surely a more general one.

At their most insightful, the religions have insisted that the core of each man and woman eludes our grasp and is transcendent. . . . Yet most of us fail to express . . . reverence for others in our daily lives. All too often we claim omniscience about other people, other nations, other cultures, and even those we claim to love, and our views about them are frequently colored by our own needs, fears, ambitions, and desires. . . . Instead of discoursing confidently on other people’s motives, intentions, and desires, we should recall the essential “mystery” and realize that there is a certain sacrilege in attempting to “pluck out” its heart to serve an agenda of our own.

*Id.* at 125-27 (referencing Rosencrantz and Guildenstern’s attempt to “pluck out the heart of [Hamlet’s] mystery”).

<sup>153</sup> Jack L. Sammons, *Some Concluding Reflections—Recovering the Political: The Problem with Our Political Conversations*, 63 *MERCER L. REV.* 899 (2012).

“go beyond [it] to the point of judgment.”<sup>154</sup> However, such judgment can only be attained if we prepare for and engage in “repeated, long, face-to-face talks with opposing others about matters that [are truly] serious.”<sup>155</sup> Here I take him to be proposing that we need to listen to and try to understand one another as we simultaneously seek to persuade.<sup>156</sup> Thus:

[We need to] talk more. We need to talk, face-to-face, with those we oppose; talk about political matters far more serious than what level of taxation is optimal, or how to deliver health care, or more serious than abortions, gay rights, immigration, race, or what to do about various other social inequalities. Pick the issue you care most about right now, ask why anyone, you included, should care about it at all aside from self-interest; take your most thoughtful answer to that question and ask why anyone, you included again, should care about the value(s) upon which it rests; take your most thoughtful answer to that question and ask what the words you just used to describe these value(s) mean, where they come from, and why and how they prompt your caring. Now offer this thought in as persuasive and as personal a manner as you can in a face-to-face political conversation with someone with whom you typically disagree, someone about whom you might now say you do not understand how he could hold the views he does.<sup>157</sup>

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<sup>154</sup> *Id.* at 901-02, 912. Sammons observes that our current “false and incomplete” identities are “extremely hard to resist, providing as they do a certain security and stability.” However,

Rather than the comfort of a truer identity, these identities produce only constant apprehension, defined as they are against others we do not understand and over whom we have no real possibility of control. A people so defined feel the constant, unrelenting tug of the impossible demands of needing to master the wills of difficult others. They feel the fear that if this tug is not acted upon, the others, who feel the same need, will master them.

*Id.* at 902.

<sup>155</sup> *Id.* at 911-12.

<sup>156</sup> *Id.* at 906 (observing that our political conversation “is no longer a rhetorical one,” meaning that “speakers in it no longer seek means of persuasion”).

<sup>157</sup> *Id.* at 905-06. Sammons stresses the importance of the last question “for the idea is to get to the openings that language, and only language, can provide.” *Id.* at 906 n.25. Sammons emphasizes what he does *not* envisage:

Such “serious” conversations will take us to the place where the conversation will point beyond itself to the “ordinary mystery and silence that surrounds us,” to the “mysteriousness of our being” which is “not us but defines us,” to the “imagined community” or “polity” that constitutes our truer, more authentic identity and that informs our judgments.<sup>158</sup> By engaging in such conversations with humility before this mystery and with faith in, and hope for, what it might reveal to us,<sup>159</sup> we will discover more of the truth about ourselves, recover the art of rhetoric, and find our way to an honest and genuine civility.<sup>160</sup>

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I am not intending to describe a dialectic [seeking objective truth]. Nor do I mean to be saying that participation in the political conversation requires openness to opposing positions, or that all beliefs are to be held tentatively, or that expressed beliefs be capable of a publicity of reason or, if religious, equally motivated by secular reasons before being offered in political conversation.

*Id.* at 907, n.29. However, Sammons concedes that the conversation does require “openness,” albeit “not the openness that dialectic requires.” *Id.* at 908 n.31. The openness envisaged, then, seems to be directed towards ensuring listening and understanding of an opponent’s position, but not necessarily acceptance of that position or modification of one’s own.

<sup>158</sup> *Id.* at 903, 908, 912 (mystery), 904 (not us but defines us), 904 and n.18 (imagined community or polity), 901, 902, 912 (inauthentic identities, truer identity), 904 and n.18, 908-09 (informing judgments). Regarding the meaning of “mystery” as used here, see *id.* at 903 n.15 (explaining “mystery” not as “something that is a mystery to us” but as “something that is mystery, something that could not be approached in the way of explanation at all without utterly destroying it”).

<sup>159</sup> *Id.* at 905 (humility), 903-04, 910 (faith), 906-07 (hope).

<sup>160</sup> *Id.* at. 908-09 (truth about ourselves), 906-07, 909-12 (art of rhetoric), 911 (civility). Sammons also considers that this will also “bind us to one another despite our differences,” including by “providing the motivation to listen to speech that seeks (only!) to persuade us.” *Id.* at 910 and n.35.

By including discussion of Jack’s position here I do not mean to imply that he considers there is necessarily a *moral obligation* to understand one’s opponent. As Jack explains in a comment on a draft of this Article:

My argument begins with the one speaking. It is he who must take those steps you quoted and he does so to open himself in a way in which listening to others, among other things, does not require some external moral motivation for justification. It is an attempted practical turn to an appreciation of our grounding in mystery which makes any true conversation possible. . . . The key to it . . . is the turn to language itself. . . . The “imagined community” to which I refer is the one opened

Karen Armstrong's "science of compassion" is broader than Jack Sammons's "serious" conversations, both in its intended range of application (it is not restricted to democratic political conversation) and in the range of considerations to be taken into account in trying to understand others.<sup>161</sup> However, to recur to our metaphor of the chairs, both of them seem to be suggesting that we should pull our chairs closer together, lean forward, and listen attentively to what others are saying (sometimes, as Armstrong envisages, even when others are not speaking to us in actual dialogue).<sup>162</sup>

Moreover, Armstrong and Sammons both acknowledge the presence and importance of mystery. And here I should point out that part of the "mystery" is how we may be *transformed* ourselves by coming to understand others, whether or not our ultimate judgment is changed as a result of achieving that understanding. Armstrong's approach tends to the cultivation and exercise of empathy,<sup>163</sup> and Sammons's approach tends to the acquisition of a more authentic identity, although the "serious" conversations he envisages would surely also tend to the cultivation and exercise of empathy. Related,

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through this process of self-questioning through language. It is the same, one might say, as the imagined community of music.

Email from Jack Sammons to Mark Jones (Dec. 18, 2013) (on file with author). This said, I hope Jack will accept that if Dirty Harry is still not motivated to listen to those he considers "punks" after reading Jack's lovely article (through appreciating the intrinsic value of the conversation and the imagined community that it reveals), then perhaps he may be so motivated after reading this one.

<sup>161</sup> This said, there would seem to be no reason why Sammons's approach could not be adapted, *mutatis mutandis*, to other types of dialogue envisaged by Armstrong, in addition to democratic political conversation.

<sup>162</sup> Where there is actual dialogue, of course, listening skills will be critical. For a sampling of the literature on listening skills, see, e.g., PERSPECTIVES ON LISTENING (Andrew D. Wolvin & Carolyn Gwynn Coakley, eds. 1993); Mark Weisberg & Jean Koh Peters, *Experiments in Listening*, 57 J. LEG. ED. 427 (2007); Neil Hamilton, *Effectiveness Requires Listening: How to Assess and Improve Listening Skills*, 13 FLA. COASTAL L. REV. 145 (2011-12).

<sup>163</sup> As the title of her book suggests, Armstrong describes many practical steps, methods, and resources designed to cultivate the qualities of empathy and compassion. Moreover, in 2008 she announced a major international initiative that was launched in 2009—a Charter for Compassion "that would be written by leading thinkers from a variety of major faiths and would restore compassion to the heart of religious and moral life." ARMSTRONG, *supra* note 60, at 5-6, 8. For the text of the Charter, see <http://www.charterforcompassion.org/index.php/charter>. For further information on the Charter, see <http://charterforcompassion.org/>.

where there is actual dialogue (as will often be the case with Armstrong and always with Sammons) the parties may give one another the gift of a more “authentic,” because more rational, recognition and do “spiritual justice” to one another resulting in more “spiritual peace” in their souls. Even in the absence of dialogue, just the effort to understand another person, to move beyond our own preconceptions and prejudices, is likely to effect a thymotic “spiritual adjustment” in our souls. Moreover, under both approaches the potential for a modification of pre-existing views and positions would seem to be considerable and thus our ultimate judgment is indeed likely to be different, or certainly more nuanced, in the light of greater understanding.<sup>164</sup> We may even approach a point, as we learn more about others, where we could say, with the Roman playwright Terence, “nothing human is foreign to me.”<sup>165</sup>

In other words, Inspector Callahan, you are less likely to conclude that other people are “punks” once you have come to understand them better, and why they believe what they believe and do what they do.

**Dirty Harry:** Okay, well let’s assume, for the heck of it, that if I tried to understand those people I now think are punks, then I might see that they’re not *really* punks. Why should I do that? What do I actually get out of it? This Karen Armstrong person seems to be suggesting I will become more empathetic and compassionate. And this Sammons guy says I will acquire a “more authentic identity” if I do this in political conversations. And you say that I will get a more “authentic recognition” through dialogue in which another person listens to and tries to understand *me* as well, and that that this will give me “spiritual justice” and “spiritual peace” in my *own* soul too, which is along the lines of what you said before, and now you say that I will get some “spiritual adjustment” even in the absence of dialogue. Well, even if the other person isn’t really a punk, why should I *care*? Suppose all those things don’t really grab me as a motivation? Suppose I can get much more of what I want—more material things

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<sup>164</sup> The CIA employs this kind of approach “to teach its intelligence-gathering analysts to think more wisely and open-mindedly,” although one suspects that achieving “spiritual justice” and “spiritual peace” is not uppermost among their purposes. See NEWBERG & WALDMAN, *supra* note 123, at 258-60 (describing eight strategies used by the CIA in its “[w]ar against [b]iases”).

<sup>165</sup> KRONMAN, *supra* note 106, at 159 (quoting the “old Roman motto” from Terence); see also Curran, *supra* note 122, at 123 (“Such bridging of distances as we are likely to realize [through cultural immersion] will entail mutual transformations in the process of comprehension.”).

and more thymotic satisfaction—by and even violence, especially if “my gun is bigger than the other guy’s” (which, as you know, it is)? I already told you I didn’t feel the need for any “recognition” from punks. And quite frankly, I don’t feel the need to be more empathetic and compassionate, to acquire some “authentic identity” from our shared “mystery,” or to get “recognition” and “spiritual justice” and “spiritual peace” even from those who aren’t punks. I’m just fine as I am thank you.

**Father Pope:** Are you really, Inspector? That’s not what you told us before: You said you were looking for a “better way to a better world” because your old way was getting you down. Quite honestly, I think you have identified a real problem, maybe even the biggest problem. The problem is that the way we are made—or perhaps I should say, the way we are made in a fallen world—we are all naturally selfish. Sure we can be altruistic and selfless too sometimes, but it is a constant battle for us.<sup>166</sup> Even if things like justice and peace, listening and understanding, empathy and compassion, authentic identity and authentic recognition sound good in theory, it is so hard to do the things necessary to achieve them in practice because we are broken people living in a broken world. So the challenge is not only to find ways to achieve these things; it is finding ways to help us overcome our natural selfishness in order to *want*, or desire, them strongly enough in the first place.

Perhaps what we need to do, then, is to try to see through the surface appearances of all our divisions to the reality of our underlying common humanity. When asked to pray at a mixed gathering with people of different religions and no religion, I like to use an inclusive prayer that says “We pray as children of a common Father.”<sup>167</sup> But

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<sup>166</sup> See CATECHISM, *supra* note 83, at § 1707 (“[Man] still desires the good, but his nature bears the wound of original sin.”); CATHOLIC CHURCH, PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD: GAUDIUM ET SPES 13 § 2 (1965) (“[M]an is split within himself. As a result, all of human life, whether individual or collective, shows itself to be a dramatic struggle between good and evil, between light and darkness.”) [hereinafter GAUDIUM ET SPES]; see also *supra* note 60 (discussing neurobiological aspects of moral functioning, and our “old” brain, limbic system, and “new” brain). Moreover, even our altruism may become corrupted and turn into “altruistic evil” in which, while altruistically beholden to our own in-group, we do evil to out-groups in the name of an “altruistic cause.” See *supra* notes 60, 63 (discussing reciprocal altruism and altruistic evil respectively).

<sup>167</sup> This prayer form was used for many years by Father Thomas Healy, distinguished alumnus of Mercer University and Mercer Law School and a priest in the Roman Catholic diocese of Savannah, when he offered prayers at

what does this mean? I think it means two things, First, it means that each of us is of immeasurable worth and dignity in the eyes of the God who created us and who loves us.<sup>168</sup> Remember how, on Fukuyama's account, Hegel-Kojève stressed that "[t]he Christian God *recognizes* all human beings universally, recognizes their individual human worth and dignity."<sup>169</sup> I think that this understates the position because our worth and dignity in the eyes of God are "immeasurable." That is what it *means* to be a "child of God" who is created "in the image and likeness" of God.<sup>170</sup> Think how you feel about your own children.<sup>171</sup> And we must avoid the temptation to get caught up in a numbers game. Numbers may mean something at the merely human level but

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various Law School events in the 1980s. I think it fair to say that Father Healy's prayers touched everyone who heard them.

<sup>168</sup> See CATECHISM, *supra* note 83, at §§ 219-21 (on God's love).

<sup>169</sup> FUKUYAMA, *supra* note 11, at 197 (quoted *supra* note 52 and accompanying text).

<sup>170</sup> See, e.g., CATECHISM, *supra* note 83, at § 222, § 225 (stating that believing in and loving the One God "*means knowing the unity and true dignity of all men: Everyone is made in the image and likeness of God*") (emphasis added). Section 1700 states: "The dignity of the human person is rooted in his creation in the image and likeness of God; . . . it is fulfilled in his vocation to divine beatitude . . . . It is essential to a human being freely to direct himself to this fulfillment." Section 1730 states that "God created man a rational being, conferring on him the dignity of a person who can initiate and control his own actions," and that "[m]an is rational and therefore like God; he is created with free will and is master over his acts." Early in his pontificate, Pope Francis emphasized that everyone, without exception, is a "child of God." See *Pope at Mass: Culture of Encounter is the Foundation of Peace*, VATICAN RADIO (May 22, 2013), [http://en.radiovaticana.va/news/2013/05/22/pope\\_at\\_mass:\\_culture\\_of\\_encounter\\_is\\_the\\_foundation\\_of\\_peace/en1-694445](http://en.radiovaticana.va/news/2013/05/22/pope_at_mass:_culture_of_encounter_is_the_foundation_of_peace/en1-694445):

The Lord created us in His image and likeness, and we are the image of the Lord . . . The Lord has redeemed all of us, all of us, with the Blood of Christ: all of us, not just Catholics. Everyone! . . . Even the atheists. . . . And we all have a duty to do good. And this commandment for everyone to do good, I think, is a beautiful path towards peace. . . We are created children in the likeness of God . . . [W]e are all children of God, all of us, all of us! And God loves us, all of us!

For a discussion of analogous sensibilities in all the major religious and wisdom traditions, emphasizing the cultivation and exercise of empathy and compassion, see ARMSTRONG, *supra* note 60, at 29-64, 116-30.

<sup>171</sup> Cf. *Matthew* 7:11 (New Am. Rev. ed. 2011) ("If you then, who are wicked, know how to give good gifts to your children, how much more will your heavenly Father give good things to those who ask him.").

when we are talking about God, who is infinite, numbers are meaningless. To think in terms of numbers in some utilitarian fashion with regard to God is, quite simply, a fundamental category mistake.<sup>172</sup> Second, the prayer means that we are related to one another *as* children through our common Creator; that we are, then, in a very real sense—in a spiritual, not a biological, sense—sisters and brothers to one another. And if we were able to see one another in this way, as such brothers and sisters who all have immeasurable worth as God’s children, wouldn’t that be a strong motivation for trying to overcome our natural selfishness and for making the effort to be empathetic and compassionate in order to seek justice and peace?

But, you will ask, how *can* we come to see each other this way, not just cognitively, which is inadequate, but also affectively? How can we, in other words, develop the necessary “sensibilities”? Well, wouldn’t the knowledge that *we* are of immeasurable worth in the sight of God, that *we* are valued and loved by the Creator of the universe, provide the greatest and most authentic thymotic satisfaction of all? Remember that we distinguished earlier between unhealthy pride and a healthy sense of self-worth, a *healthy* pride if you will, that comes from knowing one is valued and loved by God.<sup>173</sup> And we said it was a paradox because pride is regarded as a sin.<sup>174</sup> However, it is only an *apparent* paradox because we have to remember the other side of the equation—humility before God. In other words, as I said before, *thymos* has to undergo a type of transformation in which we acknowledge that we have received the world, ourselves, and one another as Gift that is entrusted to us as stewards.<sup>175</sup> In this way, there may still be a place for a healthy form of *thymos* in the divine

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<sup>172</sup> See, e.g., ARMSTRONG, *supra* note 60, at 53-54 (explaining that in the Talmudic view of creation “all human beings were made in God’s image,” murder and even humiliation of another was “a sacrilege,” and “God had created only one man at the beginning of time to teach us that destroying a single human life was equivalent to annihilating the world, while to save a life redeemed the entire human race”); SACKS, *supra* note 60, at 194, 201 (“God . . . has set his image in each of us. That is why every life is sacred and each life is like a universe.”), 266 (“Islam, like Judaism, counts a single life as a universe”).

<sup>173</sup> *Supra* note 83 and accompanying text.

<sup>174</sup> *Id.*; see Outler, *supra* note 85 (Saint Augustine: “[God] dost resist the proud”).

<sup>175</sup> See *supra* note 84 and accompanying text; CATECHISM, *supra* note 83, at § 224 (believing in and loving the One God “*means living in thanksgiving*: if God is the only One, everything we are and have comes from him”) (emphasis added); see also § 299 (“creation as a gift addressed to man” and “a spirit of humility and respect before the Creator and his work”).



economy. In fact, I think that this is how it is supposed to work in Christianity and religion more generally (or at least in the monotheistic religions)—and although Hegel-Kojève seem to have understood this at some level, ultimately they seem to miss the point. They seem to suggest that Christianity was not really concerned with our earthly lives and therefore needed to be secularized before we could expect any real improvement in those lives.<sup>176</sup> However, as you know, the two great commandments of Christianity are to love God and to love your neighbor as yourself,<sup>177</sup> and loving your neighbor as yourself means more than caring about the fate of their immortal soul. Although that is important, it certainly does not justify being indifferent to their circumstances here on earth.<sup>178</sup>

And I would say that awareness that *we* are valued and loved by the God in whose eyes we, like others, have immeasurable worth, and that we have received one another (and everything else) as Gift—and this means the chairs in which we all sit and the human beings who sit in those chairs—would engender such gratitude that it would *demand*, in turn, that we recognize the same immeasurable value of *others*. That would be *irresistible* surely—at least it would be if we truly believed it.<sup>179</sup> And this would then give us the motivation for making the effort

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<sup>176</sup> See *supra* note 53 and accompanying text.

<sup>177</sup> *Matthew 22: 34-40, Mark 12: 28-34, Luke 10:25-28* (New Am. Rev. ed. 2011); see ARMSTRONG, *supra* note 60, at 29-64 (discussing these commandments in Christianity and the analogous positions in other religious and wisdom traditions).

<sup>178</sup> See CATECHISM, *supra* note 83, Part Three (Life in Christ), especially Section One, Chapter Two, Article 3 (Social Justice) and Section Two, Chapter Two (“You Shall Love Your Neighbor As Yourself”). For example, the Article on Social Justice states, in Section 1929, that “[s]ocial justice can be achieved only in respecting the transcendent dignity of man” . . . in Section 1930, that “[r]espect for the human person entails respect for the rights that flow from his dignity as a creature” . . . in Section 1931, that “[r]espect for the human person proceeds by way of respect for the principle that ‘everyone should look upon his neighbor (without any exception) as *another self*, above all bearing in mind his life and the means necessary for living it with dignity’” . . . in Sections 1932-1933, that “[t]he duty of making oneself a neighbor to others and actively serving them . . . extends to those who think or act differently from us” . . . *Id.* (quoting GAUDIUM ET SPES, *supra* note 166, at 27 § 1).

<sup>179</sup> Of course, to reach this point of belief, we have to overcome the mimetic desire of our various sibling rivalries by recognizing that God’s love is inexhaustible and that being loved by God is not a zero-sum game. See SACKS, *supra* note 60, at 102, 141-43, 203-04, 266. Thus “[t]he truth that shines through the Genesis texts is that we are each blessed by God, each precious in his sight, each with

to try to understand one another, and for exercising the empathy and compassion we need to do that. *Pace* Hegel-Kojève, then, perhaps the problem with Christianity, as has been famously remarked by others, is not that it has been “tried and found wanting” but that it has never actually been “tried.”<sup>180</sup>

**Dirty Harry:** Well, I suppose it might provide the motivation if, as you say, we truly believed in that kind of inclusive, loving God. But suppose I don’t even believe in God? Then what?

**Professor Hope:** May I jump in here, Father? Of course, there are philosophers who have sought to provide non-religious accounts of inherent human dignity; and here one thinks especially of philosophers in the Kantian tradition. However, there is a problem in finding and justifying a secular foundation for such dignity.<sup>181</sup> Instead of trying to grapple with the thorny issues raised by this problem, which are beyond my expertise anyway—and at this hour, I suspect that Professor Logie does not want to get into them either—let me see if I can take something Father Pope has just said in a different direction by putting it together with something Professor Logie told us about.

Specifically, Professor Logie explained that Hobbes, Locke, and Hegel all proposed “experiments in thought” to get at the essence of human nature by positing the situation of the “first men” in the state of nature.<sup>182</sup> For Hegel, you will recall, it was a bloody battle for pure prestige at the very beginning of history.<sup>183</sup> Well, I would like to propose another “experiment in thought”—an apocalyptic one focused on the *end* of history. Let’s assume that there has been a cataclysm of some kind and you are the last human being left alive on the planet, or so it seems. I am sure you are familiar with the idea from various sci-fi movies.<sup>184</sup> Fukuyama entitles his book *The End of History and the Last*

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our own role in his story, each with our own song in the music of humankind.” *Id.* at 266.

<sup>180</sup> G.K. Chesterton famously said: “The Christian ideal has not been tried and found wanting. It has been found difficult and left untried.” G.K. CHESTERTON, *WHAT’S WRONG WITH THE WORLD* Part I, Chapter 5 (1910).

<sup>181</sup> *See, e.g.*, MICHAEL J. PERRY, *THE IDEA OF HUMAN RIGHTS: FOUR INQUIRIES* (1998) (especially chapter 1).

<sup>182</sup> *See supra* notes 62-63 and accompanying text.

<sup>183</sup> *See supra* notes 45-50 and accompanying text.

<sup>184</sup> For an illustrative listing, see <http://blogs.indiewire.com/theplaylist/the-10-best-last-man-on-earth-movies-20130418>; *see also* <http://www.google.com/#sclient=psy-ab&q=apocalyptic+and+post-apocalyptic+fiction+movies> (providing an extensive list of apocalyptic and post-apocalyptic fiction).

*Man* and his “last man” refers to the paradigmatic type of human being that lives in liberal democracy at the end of History.<sup>185</sup> But I am proposing that we imagine a literal last man (or woman).

Imagine, then, that you find one other human being alive. How have things changed? Unless the other person is really insane or psychopathic, wouldn't you be ecstatically grateful to have found someone to be your companion? And would it matter any longer if that person was of a different religion, or a different race, or if they had supported the other political party, or had accepted same-sex marriage and you had not, or vice-versa? Indeed, would it even matter if they had been one of the enemy with whom your country had been at war? In other words, would any of those things that used to divide you from one another be of any importance? If not, doesn't that show that these causes of division are all social constructions—and even if you didn't believe this and believed instead that at least some of those divisions were rooted in some transcendent truth, would that really matter any longer? Instead of caring about all those things that used to divide you, wouldn't you cherish the other person? Wouldn't that other person now be the most important thing in the world to you? Indeed, wouldn't they be of *immeasurable worth* to you? Wouldn't you want to listen to them and really get to know them and to work with them so you could help one another face your post-apocalyptic world together?<sup>186</sup> And if *you* would feel that way, isn't it likely that the other person would feel the same? Your chairs are gone. All you have is each another.<sup>187</sup>

So, if you are unable to see the other person, your antagonist in conflict, or people more generally, as another child of God or as having special human dignity for other reasons, *and even if you can*, perhaps you could try to see them in *this* way, imagining that they were the only other human being left alive on the planet. And perhaps this could supply the motivation, or the additional motivation, you need to make the effort to be empathetic and compassionate and to try to achieve justice and peace between you.<sup>188</sup>

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<sup>185</sup> See *supra* note 77 and accompanying text.

<sup>186</sup> The movies of which I am aware that come closest to addressing such issues in this imagined situation are *The World, the Flesh, and the Devil* (Metro-Goldwyn-Mayer 1959) and *Enemy Mine* (20<sup>th</sup> Century Fox 1985). It is my recollection of the latter movie that first inspired this thought experiment.

<sup>187</sup> We often see something of this spirit, I think, in the way people pull together in the wake of a natural disaster.

<sup>188</sup> Let me be clear here. I am far from suggesting that we can simply wish away all our differences, divisions, and conflicts through this simple “experiment in

And before you answer that you have told people you wouldn't want to be around them "even if you were the last person on earth," I am not talking about some flippant expression you use to dismiss and hurt someone who hurt *you* and whom you may even think you hate. I am talking about the real deal. You have to try to imagine this *really happening*. If you like, you can even imagine it being the same person who hurt you or whom you think you hate. Perhaps in their case, you would not have to get to know them because you already do, or at least you think you do. But even so . . . even in *their* case . . . think hard, Inspector . . . think very, very hard before you answer.

**Dirty Harry** (*after a very long and thoughtful pause*): Yeah, but suppose they really *are* insane or a psychopath? Wouldn't they just be a punk?

**Professor Hope, Professor Logie, Professor Roe, and Father Pope** (*in unison*): I think we all need another drink.

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#### AFTERWORD

Then, as I probed them, one sprang up, and stared  
 With piteous *recognition* in fixed eyes,  
 Lifting distressful hands as if to bless

"I see you"<sup>189</sup>

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thought" (or even by seeing the other person as another "child of God"). After all, we do not in fact live in such a post-apocalyptic world—at least not yet. My goal is a much more modest one, yet quite ambitious enough. It is that we try to treat one another better and achieve at least some increase in peace and justice, as we seek to address and work through our differences, divisions, and conflicts, by stimulating our moral imagination to "see" one another more clearly. Perhaps then our clashing *thymoi* will not be quite as noisy, or as violent. If you would like another movie reference, I suggest *Avatar*. See *Avatar* (20<sup>th</sup> Century Fox 2009) ("I see you"), [http://james-camerons-avatar.wikia.com/wiki/I\\_See\\_You](http://james-camerons-avatar.wikia.com/wiki/I_See_You). For the scene, see <https://www.youtube.com/watch?v=-u5SiCCmVv0>.

<sup>189</sup> Emphasis added. Cf. SACKS, *supra* note 60, at 133-34, 203-04 (seeing the "face" of the Other and of God), 159-60 ("Genesis is about recognition and non-recognition in the deepest sense, about the willingness to accord dignity to the other rather than see the other as a threat."). In discussing "faces," Sacks acknowledges the work of Emmanuel Levinas. *Id.* at 278-79 n.6. For a concise discussion of Levinas' work addressing our ethical need to encounter the "face" of the "infinite other" in order to receive the world we are given, see LINDA ROSS MEYER, *THE JUSTICE OF MERCY* 39-41 (2010).

In a comment on a draft of this Article Jack Sammons suggests that instead of my decontextualizing thought experiment we might see each other more

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clearly and be more motivated to honor the human in the other if we imagined the other in a richer and more realistic human context:

[F]or example, imagin[e] that the asshole at the checkout counter just lost someone dear to him or her, someone who mattered most in his or her life. Or, another example, imagine the person you are hating at home, alone, praying. Or, my favorite, imagine him or her as creative in a way that moves you, i.e., imagine that he or she has carved a small, delicate, and truly beautiful sculpture, or composed a nocturne, or imagine him or her playing a chaconne on the guitar, and so forth.

Email from Jack Sammons, *supra* note 160. I am certainly not opposed to such an approach. Perhaps both can be offered and readers can then choose either to try both approaches or alternatively to try the one they think would work better for them (and these choices may be different for different readers).