On the Sophistry of Positive Legal Theory

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On what philosophical precepts is U.S. jurisprudence based? Most legislators,who write the laws, judges, who interpret the laws, law enforcement organizations, who enforce the laws, and lawyers, who argue and sometimes seek to change the laws, have poorly articulated this important question. For if one understands law as solely of human origin, one will have a very different approach to it than will one who views law as of divine origin, and based upon absolute, immutable moral principles.

In this article, I will discuss one of the primary philosophical precepts that inform our contemporary understanding of what law is, i.e., *positive law*, and compare it to what many believe law *ought* to be: informed by moral absolutes, i.e., *natural law*, or "the law of nature," as John Locke and Thomas Jefferson called it. This is/ought dichotomy has been much discussed by legal scholars,[1] and is central to arguments both for and against positive legal theory.

As a philosophical movement, logical positivism (logical *empiricism* in the U.S.) holds that sense-knowledge alone is sufficient to describe phenomena, that metaphysical speculation is largely meaningless, and that all truly meaningful statements are either analytic, or empirically and *conclusively* verifiable. Thus, the simple syllogism, "If it is raining, then it is cloudy. It is raining. Therefore, it is cloudy" would be smiled upon by logical positivists as a sound argument comprised of a series of statements that are empirically verifiable, i.e., truly meaningful. On the other hand, because of its metaphysical grounding, logical positivists would consider a statement such as "God is omniscient" to be nonsense, or more precisely as lacking "sense-content" since metaphysical statements are by definition not amenable to empirical verification.

Positive law simply means law established and recognized solely by governmental authority, without any necessary regard for prevailing moral or religious traditions. Because legal positivists hold that theology and metaphysics are primitive modes of thought, they reject the legal authority of any standard of morality established by authorities other than the political sovereign.

Since the latter half of the nineteenth century, legality and morality have been systematically and artificially pulled apart by scientists, philosophers, and legal theorists. Today, positive law and legal realism are the primary philosophical foundations for U.S. jurisprudence.[2]

The intellectual giants on whose shoulders contemporary legal positivists stand are the British philosophers John Austin[3] and Jeremy Bentham.[4] The common theme throughout their writings is that law *as it is* is not necessarily the same as law *as it ought*

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to be. Bentham and Austin believed that a law, ordinance, statute, or even a constitution, could be perfectly valid apart from any preexisting moral precepts. This insistence on an expressed separation of morality from law was further developed by their philosophical disciples, and became known as the *separability thesis*.

Austin believed that in essence law is a command, i.e., a signification of desire, backed by a credible threat of punishment that, if necessary, can be enforced. Specifically, the command of the "sovereign" is the only certifiable law to Austin. What made Austin's sovereign unique and provocative to the Victorian mores of his day was that it wasn't defined in normative or moral terms, such as "He who has the right to rule," or "He who legitimately rules." Instead, Austin argued that the sovereign is that person or group of persons who have the most people obeying them and, conversely, is generally under no obligation to obey anyone else—the "unobeying obeyed." So, if person or group X is obeyed by the majority of the population and is not compelled to obey anyone else, then that person or group is the sovereign. (Of course, Austin's sovereign must have the ability to enforce his commands, or else he is not truly sovereign and his word is not law.)

In his essay "Positive Law and the Separation of Law and Morality," H. L. A. Hart defended legal positivism against a growing number of critics. Hart's thesis is that the critics of positive law conflate two core positivistic legal precepts: (1) the *separability thesis*, i.e., legality as separate from morality; and (2) Austin's *command doctrine*, i.e., law as a command by a sovereign enforced by a threat. Hart conceded to his critics that Austin's command doctrine was too riddled with inconsistencies to be considered a valid legal theory, calling it "breathtaking in its simplicity, and quite inadequate,"[5] but he retained the separability thesis. Hart's primary concern was with (a) clarifying the essential positivistic elements of the separability of law and morals; and (b) defending the separability thesis against the damaging criticisms of its numerous opponents.

Hart posed the question, Do *all* laws fit the command doctrine? His answer was that in criminal law, *yes*; in contracts, wills, and constitutional law, *no*.[6] If one wishes to enter into a contract with another or to draft a will to benefit a family member, there is no "command" in an Austinian sense that is compelling; rather, the law has procedures and statutes one must follow in order to give effect to the document. Nor does the Constitution expressly command U.S. citizens to obey it under threat of punishment.

Other problems arise with Austin's narrow conception of sovereignty. Who is the sovereign of the U.S.? The President? The Congress? The Supreme Court? "We the people"? If any one of these entities is the sovereign, then what are the others? Would Austin's sovereign allow a modification of his model in place of, for example, a system of government in which the people, both individually and collectively, choose representatives in their stead to be the sovereign, as in Hobbes' social contract theory? A strict reading of Austin's command doctrine would not allow such a modification since the moment a sovereign gave up or lost his power to rule, he would obviously no longer be the sovereign.

Hart cites the law "No vehicles in the park" as a *prima facie* case for a necessary union of law and morality,[7] for one cannot determine whether an automobile, or "bicycles, roller skates, or toy autos" would be prohibited without employing moral judgments. In this case even a legal positivist must concede the necessity of conjoining legality and morality if he agrees that the law is intended to protect people and property at the park from being hurt or damaged, respectively. What the law would prohibit in this case are motor vehicles capable of injuring people or destroying property, which most people consider "wrong." In fact, the vast majority of laws have at their roots moral conceptions such as "right," "wrong," "good," "bad," etc. That legal positivists try to ignore this moral grounding once the law is enacted does not alter the necessity of human law emerging from moral conceptions that inform humanness.

When we try to strip human law of its moral grounding, we lose sight of its very reason for being—we become legalistic. Thus, in a legal sense murder is no longer wrong because it is immoral, but simply because the law prohibits it. Indeed, a murderer can now leave a court room after having been wrongly acquitted of his crime and admit his guilt to the world, yet remain legally "not guilty." He has admitted to *moral* guilt—a concept now completely separate from legal guilt. (This is the reason that in U.S. jurisprudence jurors are limited to verdicts of "guilty" and "not guilty"—innocence is a *moral* judgment.) Furthermore, the legal positivist tendency to prefer legal reification over human signification commits the logical error of *formalism*:[8] the belief that all rules can be clearly applied to any given set of facts with logical precision.

Anticipating these objections, Hart states that one can employ the separability thesis and not use moral precepts to interpret the law without succumbing to a formalistic fallacy by relying on what he refers to as the "social policies, traditions, or customs of the community." Hart seemingly thwarts his critics with this retreat to utilitarianism—looking at laws not from a moral perspective, but from a social one by which a "good" law is determined by its consequences and ultimate effect on the majority of the population in a given community. Ultimately, however, Hart's attempt to defend the separability thesis falls short, for he cannot escape the inescapable historical fact that in every known civilization the "social policies, traditions and customs" are themselves greatly influenced by moral precepts.

In his article "Classical Legal Positivism at Nuremberg,"[9] Stanley Paulson criticizes legal positivism's inability to effectively deal with immoral, yet quite *legal*, regimes such as Nazi Germany. During the Nuremberg trials, the primary defense of the Nazi war criminals was an appeal to Austin's doctrine of the sovereign, holding that where two entities are deemed sovereign (here, the Allied government and Germany), there can be no laws between them with which either entity is obliged to comply. The defense argued that to reason otherwise would be tantamount t challenging the legitimacy of national sover eignty. In addition, the defense argued tha Austin's command doctrine required stric obedience "to censure freely, to obey punc tually,"[10] and that the defendants had n choice but to comply with the orders of thei superiors. Thus, by invoking the positive law doctrine of the sovereign, the defendants tried to escape culpability for their war crimes. In rebuttal to these defenses Charles Jackson, U.S. Supreme Court Justice and lead prosecutor for the U.S. at the trials, voiced a strong natural law sentiment with his rhetorical question, "Does it take these men by surprise that murder is treated as a crime?"[11] In the end, most of the Nazi defendants were executed or imprisoned.

By all accounts the Third Reich was truly an evil empire, yet it had a rule of law (*rechstaat*) under which the German people lived even though it was immoral compared to their past "traditions, customs and socia policies." Legal positivism's theoretical sepa ration of law and morality allowed for th law's easy exploitation by the Nazis. If la has no intrinsic conscience or coherence then political expediency alone gives law conscience. Nazism stripped the law of a rea conscience by replacing God with an ido Hitler. On this point too Hart capitulate agreeing that some sovereign commands a simply too immoral to be legitimately reco nized as law.

Finally, Hart makes a third concessio to what Austin calls a "frequent coinc dence"[12] with natural law. Hart and oth legal positivists cannot ignore the presen of some minimal degree of moral content every legal system. Hart uses as an examp the necessity of laws to protect people again physical violence, acknowledging natur law's superiority in this area.

Austin viewed law in purely coerci terms which Hart called "the gunman situ tion writ large."[13] By distinguishing betwe a law in which, for example, one is oblig to give one's money to a robber in order avoid physical harm, and a law in which o is legally obligated to pay one's taxes by Ap 15 in order to avoid a penalty, Hart ma

the case that *feeling* obligated and *being* obligated are two very different psychological states between which Austin's theory failed to distinguish.

Hart's version of positive legal theory is a system of primary and secondary rules. *Primary rules* govern the way people live and behave, e.g., "No one may drive faster than 55 m.p.h.," and "Pay your taxes by April 15." *Secondary rules* are not concerned with human conduct, but with the rules themselves. For example, "The traffic code is exclusively the jurisdiction of the State," and "Proposed changes in the tax code must be approved by Congress." Hart further develops the differences between primary and secondary rules in his notion of the "rule of recognition," which states that primary rules must be supplemented, supported, and defined by secondary rules. This is what he means by such phrases as "Whatever the chief utters is law" or "Whatever the legislatures enact consistently with the Constitution is law."

In his essay "Positivism and Fidelity to Law—A Reply to Professor Hart," Lon Fuller criticizes Hart's positivism, holding that "law" and "what is morally right" are inseparable.[14] Central to Fuller's natural law analysis is a principle he calls, "fidelity to law,"[15] and which he defines as a law, statute, or ordinance deserving of loyalty and respect by its status as law. Fuller argues that regimes such as Nazi Germany are greatly misunderstood by positivists such as Hart because they assume that the Nazis created law that legitimately deserved respect and obedience. Fuller holds that positive law's inability to distinguish between Nazi "law" and "fidelity to law" renders positive legal theory fatally flawed.

In analyzing the problem of restoring respect for law and justice after the fall of the Nazi regime that respected neither, Fuller cites the so-called "grudge-informer" case in which a disgruntled wife, wishing to rid herself of her husband, falsely accused him of treason to the *Fuhrer* by concocting a story that she heard him speak against Hitler and the Nazi Party while home on furlough. The husband was imprisoned, but instead of being executed, he was sent to the front. After the war, he brought his wife up on charges of false imprisonment. His wife tried to make the case that according to Nazi law, her husband's comments amounted to breaking the law. Fuller maintains that these "grudge-informer" cases were not legitimate "law" because they failed to keep any semblance of legal order and that for any legal system to be legitimate, some degree of moral content must be recognized, e.g., impartial enforcement, fair notice, and due process.

II

In the thirteenth century, Catholic theologian St. Thomas Aquinas codified the natural law philosophies of Aristotle, Plato, and Cicero into a coherent set of principles which were absorbed by the burgeoning European city-states. In his *magnum opus Summa Theologica*, Aquinas held that there are four types of law: *eternal*, *divine*, *natural*, and *human*.[16] Eternal law is God's general plan for all of Creation; divine law is the express commands of God found in the Bible; natural law recognizes man's fallen and sinful nature which needs redemption by a higher law; human law is law uninformed by transcendent or eternal truths. Aquinas believed that only as man subordinated himself to the laws of God could his natural propensities toward selfishness, violence, and anarchy be abated. The Angelic Doctor understood that mere intellect or reason alone is inadequate to allow man to adequately govern himself.

In explicating natural law, Aquinas invoked Aristotle, for it was the Stagirite who first made the distinction between *speculative* and *practical* reason. Speculative reason involves our abstract understanding of universals that we use to formulate theories about certain truths, e.g., our intuitive understanding of the additive, commutative, and distributive properties of mathematics. Practical reason deals with more concrete issues of everyday life—love, family, honor, civility, religion, etc. Both Aristotle and Aquinas held that in speculative and practical reason certain truths are so foundational and immutable as to be "*per se nota*"—known through themselves or self-evident. The logi-

cal principle of non-contradiction is an example of a self-evident principle of speculative reason. "Good is to be done and evil avoided" is an example of a self-evident principle of practical reason.

Every established form of government has a set of speculative and practical foundational precepts that gives it consistency, coherence, legitimacy, and authority.[17] In other words, mankind has had very specific reasons for creating the types of governments that have emerged through the centuries. No government of any significance has ever been established by haphazard or improvisational means. The Framers of the U.S. Constitution, for example, purposely infused clear and coherent natural law precepts into the Constitution. Indeed, during the Constitutional Convention, Benjamin Franklin stated, "We have gone back to ancient history for models of Government, and examined the different forms of those Republics ... And we have viewed Modern States all round Europe."[18]

In their comprehensive study of the Founders' politico-philosophical beliefs, political science professors Donald Lutz and Charles Hyneman read nearly 2,200 books, pamphlets, newspaper articles, and monographs containing express citations of political content printed between 1760 and 1805. Using this material, they rank-ordered the philosophers quoted most frequently by the Framers: (1) Baron Charles Montesquieu; (2) Sir William Blackstone; and (3) John Locke.[19]

Montesquieu's *Spirit of the Laws* (1748) had a tremendous influence on the Framers in their search for the proper type of government for the colonies. As George Bancroft noted in his *History of the United States*, Montesquieu "saw that society, notwithstanding all its revolutions, must repose on principles that do not change."[20] Montesquieu wrote that "The Christian religion, which ordains that men should love each other, would, without doubt, have every nation blest with the best civil, the best political laws; because these, next to this religion, are the greatest good that these men can give and receive."[21] Through their writings on law and politics, Blackstone[22] and Locke[23] lauded natural law as the best philosophy on which a government could be founded. It is in their writings that the Founders discovered a template for the natural law philosophy they would incorporate into the Constitution.

Why does the U.S. Supreme Court, our nation's highest judicial body and final arbiter of Constitutional questions, find itself in the midst of a Constitutional crisis? Essentially, the politico-philosophical precepts that undergird the Supreme Court's decision-making process are too far removed from those that informed the work of the Framers. Positive law and a manifestly natural law document such as the Constitution of the United States represent radically different legal-theoretic paradigms. Our present Constitutional crisis is evidenced by the fact that a sitting Court one year can rule an action constitutional, only to rule it *un*constitutional a few years later. Do Supreme Court justices simply make up their jurisprudence as they go along? Do words and phrases such as *stare decisis*, *original intent*, *Framers*, *natural law*, or *judicial review* mean anything to them? Unfortunately the answer is *No*. As aptly stated by Robert H. Bork, in his best-selling *Slouching Towards Gomorrah*:

> The parochial morality of an arrogant intellectual class cannot sustain a democratic consensus about the legitimacy of law. As one abstract theory after another collapses in intellectual shambles, we head towards constitutional nihilism. No one knows what will happen if Americans see the judiciary for what it is, an organ of power without legitimacy either in democratic theory or in the Constitution.[24]

The radical judicial activism of the Warren Court (1954-1969), and to a still greater extent the Burger Court (1969-1986), deviated from the original intent of the Framers, and substituted positive legal theory for the Constitution's original natural law grounding.

Religion generally, and Christianity specifically, more than any other Constitutional issues have been the subject of the liberal activist Courts' wrath and their justification for an artificial separation of legality and morality. Beginning with *Emerson v. Board of*

Education,[25] the Court announced to a bemused American public its "discovery" of a new Constitutional doctrine: Justice Frankfurter and his plurality suddenly found in the First Amendment "a great wall of separation between Church and State," that had theretofore eluded such great jurists as Marshall, Story, Holmes, and Cardozo.

Positive legal theory generally, and the separability thesis specifically, achieved Constitutional legitimacy through the doctrine of the separation of Church and State. Armed with this doctrine, the ACLU, atheists, agnostics, and other special interest groups openly hostile to America's Judeo-Christian heritage began to systematically erase all vestiges of our historical religious practices and symbols on State-owned property, especially in the public schools.

In *Engel v. Vitale*,[26] the Court held verbal prayer offered in a public school to be unconstitutional, even if the prayer were both voluntary and denominationally neutral. In *Collins v. Chandler Unified School District*,[27] freedom of speech and press were guaranteed to students *unless* the topic were religious. In *Stone v. Graham*,[28] the Court held it to be unconstitutional for the Ten Commandments to hang on the wall of a public school classroom "since the students might be led to read them."

On the issue of profanity, the Court has likewise deviated from the view held by the Framers. In *Cohen v. California*

> [The] appellant was ... wearing a jacket bearing the words, "Fuck the Draft" in a corridor of the Los Angeles Courthouse. The [California statute] infringed his rights to freedom of expression guaranteed by the First and Fourteenth Amendments of the Federal Constitution .... That the air may at times seem filled with verbal cacophony is, in this sense not a sign of weakness but of strength.[29]

Compare the above positive law rationalization with the Court's decision in *People v. Ruggles* (1811),[30] in which the Court condemned a book that referred to Jesus Christ as a "bastard": "Nothing could be more offensive to the virtuous part of the community, or more injurious to the tender morals of the young, than to declare such profanity lawful."[31]

Regarding blasphemy, the modern Court's rulings are equally at odds with those of the Framers. In *Grove v. Mead School District*,[32] the Court refused to remove the book *The Learning Tree* that a high school sophomore was required to read for her literature class, and which contained several offensive passages such as one declaring Jesus Christ to be a "poor white trash God," and a "long-legged white son-of-a-bitch." Once again, this ruling differed markedly from the natural law jurisprudence in *Ruggles*,[33] in which a certain book called Jesus Christ a "bastard, and his mother must be a whore." "Such words," said the Court "tend to corrupt the morals of the people, and to destroy good order. Such offenses ... are treated as affecting the essential interests of civil society."

One can now enjoy a right to free speech protection to use the word "God" in a public forum as long as it is hyphenated with profanity, but this constitutional protection stops when using "God" in a respectful manner. In the *State of Ohio v. Whisner*,[34] the Court held: "To include reference to God ... in State Board of Education minimum standards relating to operation of schools would violate the establishment clause of the First Amendment." This sentiment was further underscored in *Reed v. van Hoven*[35] in which the Court held that "During the regular school day ... no themes will be assigned on such topics as 'Why I believe ... in religious devotions.'" This artifact of positive legal theory lends further prescience to President Lincoln's aphorism: "The philosophy of the schoolroom in one generation will be the philosophy of government in the next."[36]

Natural law theory had been largely absent from American jurisprudence until an unusual incident occurred that catapulted it back onto the scene. The incident concerned no trial, case, lawyer, or judge directly, but would later affect them all: Martin Luther King's "Letter from Birmingham Jail,"[37] in which he dramatically utilized Aquinas' natural law philosophy in demanding civil and political rights for Black Americans. In 1963, King was arrested in Birmingham, Alabama for unlawfully demonstrating

against that city's *de jure* segregation laws. In his jail cell, King penned a passionate response to the scathing criticisms of his policy of civil disobedience by a largely white clergy, justifying his lawbreaking by appealing to a higher law (natural law), and asking a seminal question: Can we as God's creation be under any obligation to obey laws that contravene God's immutable laws? King's answer was an emphatic *No!* He argued further, as Aquinas, Locke, and Blackstone had before him, that any human law that contravenes natural law is void because it is immoral.

The United States presently has more laws, statutes, and ordinances on the books than at any other time in its history, yet our society has never been so chaotic. This is the fatal weakness of positive legal theory: it seeks to fashion laws to address the infinite multiplicity of human circumstances and situations rather than to create laws based on immutable moral principles that can serve as a unitary reference for civilized living.

Classical man understood all law to be derived from God. Natural law is based on moral principles such as not committing murder, theft or adultery. Now, many lawyers, judges, philosophers, and scientists maintain that these crimes have no connection to the transcendental realm of human absolutes.[38] In place of laws based on religion, we increasingly employ the utilitarian standard of the greatest perceived good for the greatest number. Certainly no social order is achievable if people do not value moral order.

NOTES

1. Arnold Brecht, "The Myth of *Is* and *Ought*," *Harvard Law Review*, vol. 54 (March 1941), pp. 811-831; H. L. A. Hart, "Positivism and the Separation of Law and Morals," *Harvard Law Review*, vol. 71, no. 4 (February 1958), pp. 593-629.

2. Positive law was greatly influenced by the eighteenth century moral philosophy of utilitarianism, on which Austin and Bentham based their legal speculations.

3. John Austin, *The Province of Jurisprudence Determin* Library of Ideas ed. (New York: Noonday Press, 1954), 185-186.

4. See Jeremy Bentham, "An Introduction to the Princip of Morals and Legislation," "A Fragment of Government "Principles of Penal Law," "Principles of the Civil Code etc., in *The Works of Jeremy Bentham*, ed. John Bowring, vols. (London: Simpkin, Marshall & Co., 1843), vol I.

5. Hart, p. 602.

6. Ibid., p. 604.

7. Ibid., p. 607.

8. Ibid., p. 608.

9. Stanley L. Paulson, "Classical Legal Positivism at Nuremberg," *Philosophy & Public Affairs*, vol. 4, no. 2 (Winter 1995), p. 132.

10. Jeremey Bentham, "A Fragment of Government," The Works of Jeremy Bentham, vol. I, p. 230.

11. David M. Adams, *Philosophical Problems in the Law* (Belmont, CA: Wordsworth Publishing Co., 1992), p. 12.

12. Hart, supra note 8, p. 598-99 ("It is not in fact always easy to trace this historical causal connection, but Bentham was certainly ready to admit its existence; so too Austin spoke of the 'frequent coincidence' of positive law and morality and attributed the confusion of what law is with what law ought to be to this very fact.")

13. H. L. A. Hart, *The Concept of the Law* (Oxford: Oxford University Press, Clarendon Press, 1961).

14. Lon L. Fuller, "Positivism and Fidelity to Law—A Response to Professor Hart," *Harvard Law Review*, vol. 71, no. 4 (February 1958), pp. 630-672.

15. Ibid., p. 632.

16. See Saint Thomas Aquinas, *Summa Theologica*, Treatise on Law, in *Basic Writings of Saint Thomas Aquinas*, ed. Anton C. Pegis, 2 vols. (New York: Random House, 1945), II: 742-978.

17. Alexander Hamilton, *The Papers of Alexander Hamilton*, ed. Harold C. Syrett, 27 vols. vol I: *1768-1778* (New York: Columbia University Press, 1961), p. 86.

18. Max Farrand, ed., *The Records of the Federal Convention of 1787*, 3 vols. (New Haven: Yale University Press,

1911), I: 451.

19. John Eidsmoe, *Christianity and the Constitution: The Faith of Our Founding Fathers* (Grand Rapids, MI: Baker Book House, 1987), pp. 51, 53.

20. George Bancroft, *History of the United States from the Discovery of the American Continent*, 10 vols. (Boston: Little, Brown & Co., 1859-1875), V: 24.

21. Baron de Montesquieu, *The Spirit of the Laws*, 2 vols. (Worcester, MA: Isaiah Thomas, 1802), I: 125-126.

22. See John Wingate Thornton, "Introduction," in John Wingate Thornton, ed. *The Pulpit of the American Revolution: or, The Political Sermons of the Period of 1776* (Boston: Gould & Lincoln, 1860), p. xxvii (Nearly as many of Blackstone's *Commentaries* have been sold in the U.S. as in England).

23. Supra note 24, p. 61. Locke's ideas on government were greatly influenced by the English theologian and writer, Richard Hooker.

24. Robert H. Bork, *Slouching Towards Gomorrah: Modern Liberalism and American Decline* (New York: HarperCollings, 1996), p. 321.

25. 330 U.S. 1, 18 (1947).

26. 370 U.S. 421 (1962).

27. 644 F. 2nd 759 (9th Cir. 1981), cert. denied, 454 U.S. 863.

28. 449 U.S. 39 (1980).

29. 403 U.S. 15, 18, 20, 25, (1971).

30. 8 Johns 545, 547 (Sup. Ct. N.Y. 1811).

31. 422 U.S. 205, 207 (1975).

32. 753 F. 2d 1528, 1540 (9th Cir. 1985), cert. denied, 474 U.S. 826.

33. Supra note 34, pp. 545-46.

34. 361 N.E. 2d 750 (Sup. Ct. Ohio 1976).

35. 37 F. Supp. 48, 56 (W.D. Mich. 1965).

36. Mark A. Beliles and Stephen K. McDowell, *America's Providential History*, Providential ed. (Charlottsville, VA: Providence Foundation, 1988), p. 95.

37. Martin Luther King, Jr., *Why We Can't Wait*, (New York: Harper & Row, 1964).