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William J. Wagner

The Catholic University of America, Columbus School of Law

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IN SEARCH OF THE MARKET'S MORAL LIMITS: LIBERALISM, PERFECTIONISM, AND "THE BAD MAN" IN CHRISTIAN PERSPECTIVE

*William Joseph Wagner**

In a world of but few moral verities, Judge Richard Posner and others pursuing the economic approach to law have introduced a normative principle into discussions of law and policy that receives very wide currency. They propose that society should always sanction market exchanges, as a means of maximizing wealth, unless some exceptional normative commitment on society's part requires otherwise.¹ Where the principle reigns, nonmarket values are treated as restrictions on individual autonomy requiring special justification.²

As a consequence, the justifiability of restricting market freedom becomes a standard mode of framing normative issues. Disagreements about values are formulated as disputes over whether contracts should be enforced. Arguments are made for and against enforcing contracts for the purchase and sale of votes, the *in vivo* transfer of eyes or kidneys, addictive recreational drugs, enslavement or prostitution, and environmental purity.³

Members of the liberal tradition in one or another of its strands are most at home with this impact of law and economics. Libertarians, like Robert Nozick, glide between descriptive and normative uses of the postulates of neoclassical economics. They would generally limit the market only to save it.⁴ Liberal egalitarians like John Rawls add only equality in distribution of wealth to

* Associate Professor of Law, The Catholic University of America, Columbus School of Law.

1. Anthony T. Kronman and Richard A. Posner, *The Economics of Contract Law* 4 (Little Brown, 1979).

2. *Id.*

3. For example, Elizabeth M. Landes and Richard A. Posner, *The Economics of the Baby Shortage*, 7 *J Legal Stud* 323 (1978); Susan Rose-Ackerman, *Inalienability and the Theory of Property Rights*, 85 *Colum L Rev* 931 (1985); and Robert N. Stavins, "Toward a New Era of Environmental Policy," in Carol Tucker Foreman, ed, *Regulating for the Future: The Critical Balance* 133-173 (Center for National Policy Programs, 1991).

4. Robert Nozick, *Anarchy, State, and Utopia* 155-64 (Basic Books, 1974).

the values of autonomy and efficiency which law and economics generally assumes.⁵

Most liberals, of course, publicly affirm other values in pockets of ad hoc concern. But they are hard put to say why these secondary values should trump liberty, equality and efficiency. Christians, whether liberals or not, profess substantive moral values by reason of their faith which cannot be reduced to this triad of values. Those Christians espousing liberalism find it hard to justify their substantive moral convictions. But the same is, perhaps, equally true of those not personally espousing liberal philosophy.

The normative application of the economic approach to law gains much in general plausibility from a more fundamental paradigm dominating our culture. This often subliminal reality, which may be called the 'paradigm of liberalism,' tilts the normative debate through hidden assumptions in ways generally unfavorable to arguments for the legal sanction of substantive moral values.

The formulation of normative issues in our current legal culture as often as not takes the form of asking whether voluntary transactions of a given kind should be restricted. Assuming that Christians and others concerned with advancing substantive, nonmarket values cannot alter this trend, the question arises how they can participate in the debate, so formulated, without adopting premises dooming their own arguments; or, worse, confusing their moral stance.

To avoid these outcomes, Christians and others must consciously adopt an alternate orientation to law and values as a basis for arguments for or against limiting given kinds of market transactions. That orientation's meaningful statement must include a contrast with liberalism. Because liberalism gains a good part of its energy from the rejection of a sort of antitype of reasoning about law which may be called the 'paradigm of classical perfectionism,' the contrast, to be complete, must describe, as well, the relation of the alternative to classical perfectionism.

The orientation to law and values which can sustain specifically Christian arguments for, and against, the restriction of market exchanges requires reference to authentically Christian theological principles and values. It requires, equally, that such principles and values be set in profile against the assumptions of both liberalism

5. John Rawls, *A Theory of Justice* 302-03 (Harvard U Press, Belknap Press, 1971).

and classical perfectionism. This essay aims to provide such a statement of the relevant Christian orientation to law and values.

METHOD

In order to derive and to contrast the dominant paradigm, its antitype, and the Christian vantage, we can productively use a *literary* device on which three respective authors — Holmes, Plato, and John the Evangelist — rely in parallel fashion, to facilitate a compact imaginative grasp of divergent structures of reasoning. Comparing one recurring image allows the deft alignment of three moral perspectives on law, and at once brings to light the precise nature of the distinctively Christian proviso to the dominant paradigm.

The literary figure I will employ for this purpose is best introduced as it appears in Oliver Wendell Homes, Jr.'s essay *The Path of the Law*.⁶ Holmes is in many ways the archetype of modern American legal consciousness. His essay, published in the Harvard Law Review in 1897, is a classic of American jurisprudence. It offers a vivid statement of the liberal paradigm as it was moving into its full ascendancy in American legal consciousness. The essay relies upon one of the most famous literary devices in American jurisprudence: an invitation to assume the point of view of the 'bad man.'⁷

Plato is Holmes' counterpart as archetype with respect to the perfectionism that troubles liberalism's dreams. Intriguingly, Plato seeks to capture his readers' imaginations for his paradigm of moral reasoning about law in the second book of the *Republic*, with his own invitation to assume the viewpoint of the 'bad man' — the possessor of the Ring of Gyges.⁸ An analogous device, taken from a central exposition of Christian principles to elicit the Christian meaning of the contrast between liberalism and classical perfectionism and establish the distinctively Christian vantage on both, is the woman caught in adultery in the *Gospel of St. John* — the story of the 'bad woman,' as I shall, for equality's sake (however unfairly) call her for now.⁹

6. Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 Harv L Rev 459 (1897).

7. *Id.*

8. *The Republic of Plato* 37 (Basic Books, Allan Bloom trans, 1969). I am grateful to Professor Ron Collins for his insights on the heuristic value of this image drawn from Plato.

9. *John* 8:2-11.

The New Testament, unlike the writings of Holmes and Plato, does not contain a theory of jurisprudence. Still, juxtaposing Holmes and Plato with St. John's tale allows an alignment and contrast of their ideas with core Christian attitudes, values and beliefs, suggesting the stance of Christian thought vis-à-vis the other two paradigms. More concretely, these jurisprudential images offer direction for moral arguments from Christianity for and against legal limits on market transactions.

HOLMES AND THE PARADIGM OF LIBERALISM

In his essay, Holmes champions liberalism over perfectionism, conscious that he is asking the American legal establishment to ratify a transition in paradigms in moral reasoning about law. He inducts the reader into the new paradigm by proposing, in an oft-cited passage, that the reader adopt the viewpoint belonging to a 'bad man:'

If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct, whether inside the law or outside of it, in the vaguer sanctions of conscience.¹⁰

In the context of the argument, the bad man's attention to means and ends, unrelated to broader contexts of meaning or value, functions as an extended metaphor aimed at conveying an imaginative grasp of the efficiency-oriented approach Holmes proposes to substitute for an older duty-centered perspective. The device's "cynical acid"¹¹ strips away conceptions of moral value Holmes holds to be no longer tenable.

Holmes draws two lessons for law from the bad man's mentality. First, the state, like the bad man, pursues ends formally intelligible because they are willed by the power wielder. The law cannot appeal to moral obligation for justification because reliable normative direction does not exist in "oughts" discoverable in the nature of things. The law's instrumental character does not derive as a mere behaviorist response to recalcitrance. It flows from the elective nature of the law's ends. In this view, one reasons normatively about law by simply positing the ends society elects and asking whether the law's benefits and burdens advance them effectively.

10. Holmes, 10 Harv Law Rev at 459 (cited in note 6).

11. Id at 462.

The value of any one end is assessed in relation to its cost for others. Normative reasoning about law is principally about efficiency. Holmes sees "economics" as the future of jurisprudence.¹²

Second, Holmes sees the bad man as modeling individual choice. Holmes himself "much of" the bad man's "mind."¹³ The man turns out not to be reprehensible; far from it, Holmes hints that he is to be emulated, at least within unstated limits. Freed from anxiety about "the vaguer sanctions of conscience," the man can pursue his individual ends as a rational society does, matching means to ends and calculating the opportunity costs of each. When some deliberate ambiguity on Holmes' part is peeled away, the bad man emerges as the rational decision maker.¹⁴

In some of his more cynical moments, Holmes seems to reduce all categories, including moral ones, to a will to power.¹⁵ Yet, he does not mean to say that law and morality are unrelated (in fact, he terms law "the witness and external deposit of our moral life").¹⁶ Holmes grants that the content of law varies with the morality of society. He expects some of the reasons given for societal preferences to have the form of moral conviction. His individual decision maker, moreover, where truly rational, conforms to social expectations for the sake of material benefits under law. These expectations are, at times, moral in nature.

The point relevant here is that Holmes' voluntarism admits such moral content into jurisprudential consideration only in formal terms of state and individual election. Moral convictions, individual or societal, are what we would term noncognitive preferences rationally indistinguishable from any other wishes. Holmes' voluntaristic view of law and values makes the enforcement of market transactions valuable as a means of advancing both society's and the individual's elected goals. For society, human instincts, given empirically, ensure that free and enforceable market exchanges generate wealth, not only for individuals but for the group. For the individual, the market facilitates the acquisition of

12. *Id.* at 472.

13. *Id.* at 461.

14. *Id.*

15. Holmes says, for example, "The object of ambition, power, generally presents itself nowadays in the form of money alone. Money is the most immediate form, and is a proper object of desire. . . . But . . . the most far-reaching form of power is not money, it is the command of ideas." *Id.* at 478.

16. *Id.* at 459.

material advantages towards his or her elected goals, through trades with others.¹⁷

In his famous dissent in *Lochner v. New York*,¹⁸ Holmes denies a fundamental right to contract beyond the power of public restriction. His statement of the liberal paradigm, thus, leaves room for restricting market freedom. Since he reasons that the market's value is only as profound as society's election of it as an end, the law may prefer other goals to the market wherever the public is persuaded a reason exists. The state's preference can preempt the individual's wherever state power dictates. Although liberals often overlook it, statism inheres natively as a potentiality in the liberal paradigm. The sole check Holmes recognizes on this restrictive power of the state is instrumental. Human instincts, seeking market expression as an empirical matter, may create inefficiencies for society's nonmarket goals if they are thwarted. Under foreseeable circumstances, given the instincts typifying modern western society, this reality ensures that the state will allow considerable pragmatic protection for market freedom.

Holmes' frank admission of the legal limitations on market exchanges distinguishes him from libertarians and from law and economics approaches like Judge Posner's. Even so, Holmes and Posner agree that the state does not limit the market to make people perfect in virtue or otherwise to safeguard the human good. It does so only for contingent societal ends that are meaningful because they are elected. All ends can be reduced to preferences of the will, either the individual's or the state's. Christian commitments to substantive values, for example, translate into just another set of willed preferences. Because Holmes, like Posner, grounds the societal value of individual autonomy pragmatically in the legal protection actually received by individual autonomy in this schema is itself more uncertain than most law and economics arguments acknowledge.

THE PLATONIC ANTITYPE

Considered as a matter of broad alternatives, the judges at whose duty-oriented moral paradigm Holmes directs his "cynical acid"¹⁹ may fairly be classed as among those still espousing the par-

17. See Oliver Wendell Holmes, Jr., *The Common Law* 298 (Little Brown 1881).

18. 198 US 45 (1905).

19. Holmes, 10 Harv L Rev at 472 (cited in note 6).

adigm of classical perfectionism which modern liberalism by its nature rejects. In scanning the history of thought, one discovers classical perfectionism's archetypical voice in Plato, that enemy of the liberal order. Curiously, Plato sets out his paradigm of reasoning about law and moral values, in the second book of the *Republic*, through a variant of the same imaginative figure Holmes employs put to an opposing purpose.

Plato, like Holmes, invites us to consider the bad man's viewpoint. The invitation is to be found in the narration by Socrates' interlocutor Glaucon of the story of the Ring of Gyges. Glaucon tells of a shepherd who happens upon a tomb rent by an earthquake. He enters to find a sarcophagus formed like a hollow bronze horse within which an incorrupt body lies wearing a ring. The shepherd returns to the world with the purloined ring where he discovers its power to make him invisible. Seeing the object's use, he negotiates a place in a delegation to the king's household. There, the ring wins him access to the queen whom he seduces. He then murders her husband and takes the throne.²⁰ Here, it appears, is Holmes' bad man who cares not at all for morality or the vaguer sanctions of conscience but only for material consequences, but who is, by chance, immunized against just these consequences.

Whereas Holmes asks principally what the bad man's case says about law, and only secondarily, if at all, what it says about justice, Plato asks what the bad man's case says about justice and then defines law in relation to it. Plato's story of the ring reveals the nature of injustice, and thus of justice, by exposing the end-state that complete freedom from prudential concern with the requirements of morality causes in an evil soul. In satisfying his desire to take from others for himself without limit, the ring's holder violates the human relationships which, if he had respected them, could have given his soul integrity.

In the *Laws*, Plato sets out the character and quality of the essential human relationships whose violation constitutes injustice: reverential ties of origin with the gods and one's parents; bonds of mutuality with other individuals; and links of organic social solidarity in the community as a whole. Conformity with these, rather than with extrinsic legal requirements, makes a man just.²¹ The one who orders his or her desires for the sake of harmony in these

20. *The Republic of Plato* (cited in note 8).

21. Plato, *Laws*, Books IV and V in *The Dialogues of Plato* 484-502 (Random House, B. Jowett trans, 1937).

relationships is truly happy, even if he or she suffers every material disadvantage for doing so.

The purpose of law, Plato believes, is to make citizens virtuous by ordering their desires to what reason discloses that justice requires. The law also aims, he believes, at the due order in social relationships reason reveals as the objective measure of rightly ordered desire. For Plato the just man, not the bad, models rational choice for the state and the reasonable person.²²

When it comes to the role of Contract, Plato virtually reverses the liberal paradigm's presumption for the unrestricted enforcement of market transactions. He assumes that the instantiation of justice and other forms of the good occur primarily through public applications of law, rather than individual election. He clearly subordinates the market to society's organic whole. Even within its sphere, Plato is suspicious of the market's stress on efficient means over intrinsically valuable ends. The enforcement of market transactions will be limited in this scheme as higher aims of governance dictate. Plato believes reasonable insight can apprehend these higher aims by attending to what perfects virtue in society and its citizens.²³

Liberal and Christian readers alike find it significant that Plato says nothing to restrict contracts in slavery or many other activities now conventionally viewed as offending human dignity. He derives the intrinsic requirements of justice limiting individual market freedom from the nature of organic social structures, overlooking personal dignity and individual autonomy as primary considerations.

THE CHRISTIAN RESPONSE: TAKING DIRECTION FROM THE WOMAN CAUGHT IN ADULTERY

Liberals often imply that the liberal and classical perfectionist paradigms are the only alternatives in moral reasoning about law, and that they are mutually exclusive. They suggest that rejecting any particular of liberalism entails opting into all aspects of Plato's perfectionist model. Likewise, they offer that if one finds any aspect of the perfectionist model unacceptable one must capitulate to liberalism. If it can be shown that a distinctively Christian orientation to law and values exists, then perhaps liberalism proposes a

22. *Id.*

23. *Id.*

false dilemma. A distinctively Christian approach would be like and unlike each of the other two options, and perhaps capable of absorbing elements of both. Christian approaches to market freedom would be likewise nuanced.

To explore the issue, one may profitably turn to the New Testament analogue of the "bad man" developed by Holmes and Plato: the "bad woman" as I have called her, whom the Evangelist John describes as caught in adultery. The following reading of this isolated passage, no less than the foregoing readings of passages in Holmes and Plato, of course, presupposes a general set of beliefs about its relation to the body of work from which it arises, which can be acknowledged if not expressly developed in the scope of the present essay.

The story reads as follows:

Then the[y] led forward a woman . . . caught in adultery, and made her stand . . . in front of everybody. "Teacher," they said. . . , "this woman has been caught in . . . adultery. Now, . . . Moses ordered such women to be stoned. But you—what do you have to say about it?" But Jesus . . . said . . . , "The man among you who has no sin—Let him be the first to cast a stone at her." And he . . . started to write on the ground. But the audience went away one by one, starting with the elders, and he was left alone with the woman still there before him. So Jesus . . . said to her, "Woman, where are they all? Hasn't anyone condemned you?" "No one, sir." . . . Jesus said, "Nor do I condemn you. You may go. But from now on, avoid this sin."²⁴

To isolate the story's essence, one may begin by asking what Plato and Holmes might see in the situation the Evangelist describes. It is not unfair to say Holmes would see a woman who cares for only the material consequences of her actions, calculating wrongly that she can engage in adultery without detection, or rightly that, if caught, she can arrange her escape without punishment. He might suggest that the case means that the law on adultery must be recast to state that a conviction will occur, in the legal system in question, only where the accused cannot shame the judge and jurors through counter accusation.

Plato, for his part, logically would see a bad woman who, caught without a Ring of Gyges, has been made visible in the injustice of her adultery. Having destroyed the intrinsic due order of her relationships to others by her choice, she stands to receive a

24. *John* 8:2-11.

sentence calculated to restore that order as far as possible. Jesus' intervention would seem to have the shady purpose of returning her to invisibility. When the crowd disappears, she is again unseen, isolated from social responsibility. Perhaps Plato might suggest that, on the facts of the case, the law should also expand or alter the scope of its sanctions, injustices having apparently been brought to light as well in the souls of the accusers.

The elements in the story which these non-Christian interpretations overlook help to isolate the story's specifically Christian meaning and to expose the two foregoing accounts as misreadings. Although specifically Christian, the meaning which emerges from a consideration of these elements, corresponds in some respects to tenets of liberalism, and in others to beliefs of perfectionism. It can be articulated in terms of neither alone, but, helpfully, can be described by comparison and contrast with both.

First, the apparent parallels with liberalism of the story's distinctively Christian content can be noted. In saying, "Woman, where are they? Has no one condemned you? . . . Neither do I condemn you. Go . . .," Jesus evokes liberalism's core assumption by implying that the freedom from public condemnation entails a sort of internal license as well. The woman is free to "do her own thing" and go her own way.

The dispersal of the woman's accusers following Jesus' words, " 'Let the one among you who is without sin be the first to throw a stone at her,' " establishes the universality of sin, thus further jeopardizing Plato's perfectionist enterprise. The incident introduces doubt, akin in its own way to liberalism's, into the notion that society can enforce inherent requirements of true mutuality and justice. For Christianity, the historical character of human existence creates a prelude to every action, making the equitable assignment of guilt difficult at best. The universality of fault introduces an element of justifiable doubt into the possibility of judging others in good faith. Whether anyone can, in equity, pull the lever on Plato's enforcement of the intrinsics of justice is problematic.

The Gospel account stymies not merely the intrinsic justice of the judgment in the particular case, but even the generic function of executing the laws and perhaps even that of their enactment. Holmes alleges that the natural right to contract cited in *Lochner* masked self-interest and ideology.²⁵ The Gospel writer brings out

25. Holmes, 10 Harv L Rev at 468 (cited in note 6).

a political interest lurking in the woman's accusers' preoccupation with marital rights and duties. The accusers are actually trying to entrap Jesus for the sake of undermining him with the authorities. By analyzing law in terms of the lawmakers' ends, means and reasons, instead of the intrinsic requirements of justice, the liberal paradigm may better lend itself than does the perfectionist, at times, to critiquing such corrupting motives.

Reversing the angle of critique, an important element distances the story from the liberal paradigm and brings it closer to Plato's perfectionist views. When the circle of privacy has closed around the woman at the story's end, she is not alone with a liberal choice of whether, when, with whom, and at what costs to her other goals she will commit adultery again; she is the companion of another who admonishes her not merely to go, but to "go and avoid this sin." The norm, "Thou shalt not commit adultery," found in Plato, thus is present in her story as a norm of natural justice. The several parallels drawn with liberalism falsify the story unless they are offered with an account of this essential departure from liberal assumptions.

In weighing the meaning of this agreement of the Christian story with perfectionism on a key moral norm, it is acutely important to see at least that the mode of application distinguishes the respective views of law and morality. In *John*, the woman grasps the norm not within a circle of human accusers, but veiled from them ("he was left alone with the woman still there before him"). She appropriates it in solidarity with one who refrains from condemnation in an act of grace, love and forgiveness. She is restored through a divine liberation from a past of sin and for a future of grace, rather than by human sentence. Plato calls God "the measure of all things." The Evangelist, convinced of the Incarnation, considers God's love for the human person, fallen but redeemable, that measure.

The principle informing St. John's story, that is relevant to the issues in normative jurisprudence of concern here, is the dignity of the person, transcending the moral failures society may find in him or her. A closely related value is the conviction that such dignity is realized in a history which human institutions cannot fully contain, either with respect to remote causes of behavior or action's transcendent meaning.

Christian awareness of the need to respect God's transcendence, and the human dignity mirroring it, in temporal efforts to

assess and remedy moral fault, is balanced by Christian confidence that moral norms like that prohibiting adultery are, in fact, knowable and morally obligatory aspects of the good of Creation. The acknowledgment of objective moral norms as correlaries of the Gospel message is apparent in the New Testament scriptures. Even respecting a diversity of more specific emphases, New Testament writers share an understanding that such norms figure in the inherited biblical tradition in a way that Old Testament dietary and hieratic elements do not.²⁶ St. Paul, who considers the question, views such norms as accessible to humans generally, apart from the inspired tradition.²⁷ The Christians of the New Testament period and afterwards rejected antinomianism staking out opposing ground.²⁸

In the Christian view, such norms spring from the personal and relational nature of human fulfillment envisioned by the Creator. This is the perspective which Pope John Paul II eloquently renews in his recent encyclical *Veritatis Splendor*.²⁹ Although classical protestant sources offer cautions regarding distortions in the understanding and application of these norms arising from fallen human motivation, and the futility of attempts at rectifying one's relationship with God through autonomous compliance with natural moral norms, they support the existence or accessibility to human knowledge of binding moral norms, preferring, for theological reasons, their biblical over their philosophical articulation.³⁰

When we turn to the ends of the civil law, Christianity, like Plato, finds that its root, at some level of generality at least, is in human nature as reason discloses it. For Christianity, of course, this is reason enlightened and perfected by grace and biblical revelation. Depending on the strand of the tradition, the role of grace and scripture in contrast to reason in this context may be more or less pronounced. In any event, such norms have generally been recognized within the Christian tradition as extending to promise keeping, and thus add a dimension to the meaning of the legal enforcement of contract which liberalism overlooks. The moral obli-

26. This distinction underlies, for example, the apostolic discernment occurring in the evaluation of the practice of circumcision recounted in the Acts of the Apostles. *Acts* 15:1-29.

27. See, for example, *Rom* 2:12-16.

28. See, for example, 1 *Tim* 8:11; 2 *Peter* 2:9-22.

29. 23 *Origins* 18 (Catholic News Service, Oct 14, 1993).

30. Martin Luther, *Secular Authority: To What Extent It Should Be Obeyed* in John Dillenberger, ed, *Martin Luther: Selections from His Writings* (Anchor Books, 1961).

gation flowing from promise remains a necessary proviso to whatever accommodation Christians find they can and should make with the liberal view of contract.³¹

In other ways, however, Christianity's proviso actually runs in the reverse, attaching to uses Christians might wish to make, or even to which some might have made in the past, of the ideas of a Plato who seeks to portray the just society as an organic whole, knowable and attainable by human reason within the scope of temporal human action. Christianity, both as reflected in this Gospel story and in the philosophical and doctrinal traditions associated with it, is properly willing to describe the just society only in reliance on a dynamic and transcendently open concept of the common good, acknowledging that the individual person is a "part" transcending the "whole."³² The destiny and dignity of the person, in the Christian view, both has an essential social dimension and at the same time transcends society and its purposes and obligations.

The Christian story of the woman implies, then, some support for liberalism's skepticism about the intramundane enforcement of ultimate moral values. Comparable in its own way to liberalism, the Christian story says that the individual, for whatever mediation Christians attribute to institutions of church and society, ultimately reasons about his or her concerns good alone before God.

Although Christianity assumes moral norms can at some level be commonly known as binding, it recognizes that even as the good is pursued in common, it is nonetheless pursued from the perspectives of diverse individual stories and histories radically open, separately, and on another plane, both to grace and judgment. In the societal relationships implied by concepts of individual, civil society and the norms of justice, Christianity leaves, then, some scope for the endorsement of pragmatic legal arrangements such as the enforcement of contract, functioning as an essentially liberal device. St. Augustine speaks for the Christian tradition when he emphasizes that the mystery of redemption permits society to go only so far in assuming a common framework of values as it regulates transactions in temporal goods.³³

With respect to limiting the enforcement of contract, whether such enforcement were to be pursued out of "perfectionist" regard

31. Harold J. Berman, *Conscience and Law: The Lutheran Reformation and the Western Legal Tradition*, 5 J L & Relig 177, 196-200 (1987).

32. Jacques Maritain, *Man and the State* (U Chicago Press, 1951).

33. *St. Augustine, City of God*, Book IX (Hafner, Marcus Dods, ed, 1948).

for promise keeping or "liberal" concern for the sake of pragmatic redistribution of resources, the story of the woman does suggest a necessary Christian qualification. The divinely created dignity of the person not only provides reasons for enforcing contract promises, it also establishes moral constraints on doing so, as it does on the coerciveness of law generally. While the Christian approach to law and values declines the organic moral vision of social order found in Plato, it nonetheless entails limits on the enforcement of market transactions and even the voluntary fulfillment of some of these, not simply as society so elects, as liberalism might find acceptable, but wherever any essential aspect of human dignity is at stake either for the person or for society.

Christianity calls for inalienability rules setting outer limits to market exchanges. The Gospel story of the woman suggests, for example, that the enforcement of any transaction depriving a person of the capacity freely to choose and to act responsibly thereafter, that is, to "go and sin no more," whether because of self-enslavement, contracted prostitution or intervivos transplants harmful to the donor,³⁴ would be prohibited.

The contemporary difficulty in finding public validation of restrictions on market transactions offending against individual human dignity or the common good signals the need for Christian independence from the culture's liberal basis. But, the gospel story of the woman caught in adultery suggests that Christian thought ought not unqualifiedly align itself with the perfectionist alternative. Christian theorists should balance valuable elements in both ways of seeing the world.

The perspective of the Christian grasps true human fulfillment, as a possibility "already but not yet" here.³⁵ As between Plato and Holmes, the "already" of Creation, especially where grace and biblical insight enlighten reason, allows especially salutary connections with Plato's way of seeing human reality. The "not yet" of a human story and individual histories open to a dimension transcending human institutions, revealing interpersonal and societal exchange as occurring on a plane necessarily falling short of the *parousia*,³⁶ can sustain explorations of worthwhile connections with the liberalism of Holmes.

34. Rose-Ackerman, 85 Colum L Rev 931 (1985) (cited in note 3).

35. Rudolph Schnackenbrug, *The Moral Teaching of the New Testament* 185-96 (Herder and Herder, 1965).

36. *Id.*

Christians do not see the woman taken in adultery as a "bad woman," but, with compassion, as like themselves, fallen, and capable of redemption. So, too, they might consider whether Holmes, despite his protestations, really is not a bad man, but, along with the system he helped to shape, is yet capable of redemption.

