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BOOK REVIEW SYMPOSIUM: ON PEDAGOGY, PROPHECY, AND PUBLIC ENGAGEMENT: THE RECENT WORKS OF CATHLEEN KAVENY

TEACHING BALANCE, AUTONOMY, AND SOLIDARITY IN LAW: CATHLEEN KAVENY, *LAW'S VIRTUES: FOSTERING AUTONOMY AND SOLIDARITY IN AMERICAN SOCIETY*

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Law's Virtues: Fostering Autonomy and Solidarity in American Society. By Cathleen Kaveny. Washington, DC: Georgetown University Press, 2012. Pp. 320. $29.95 (paper). ISBN: 9781589019324.

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Cathleen Kaveny describes *Law's Virtues* as providing "a new framework through which to view the relationship between troubling 'life issues' and the realm of law in pluralistic liberal democracies such as the United States" (1). She adopts as her starting point a quotation from the seventh century theologian Isidore of Seville: "Law shall be virtuous, just, possible to nature, according to the custom of the country, suitable to place and time, necessary, useful; clearly expressed, lest by its obscurity it lead to misunderstanding; framed for no private benefit, but for the common good" (3). Building on this passage, Kaveny conceives of the project of *Law's Virtues* as a third way that is committed to neither moral neutrality toward abortion and euthanasia nor to an absolutist view of moral enforcement that would ban these life-ending practices and even criminalize them. Kaveny believes that the law can be neither of these because the moral neutrality of law is an illusion and moral absolutism in law is impractical in a pluralistic society. She believes that she is proposing a third way that takes a more nuanced view of law, in which law is a moral teacher that is guided by both the moral norms sought by society and, at the same time, is pragmatic about the limitations of the law for bringing to fruition moral ambitions and fostering moral character. In the course of her argument, Kaveny develops a theory of law that gives high regard to the relation between law and moral virtue in contemporary American society. To do this, she engages two sophisticated moral conceptions: legal philosopher Joseph Raz's conceptions of positive rights and personal autonomy and Pope John Paul II's conceptualization of solidarity.

The tensions between autonomy and solidarity in contemporary thought tend to focus on the modern skepticism about teleological perspectives on human nature that virtue ethics traditionally require. These conceptions of human nature contributed to the robust commitment to the common

good that was essential to medieval political theory. Today, however, rights are viewed as rationally grounded, but metaphysical concepts of human fulfillment are not. A significant challenge facing Kaveny in this project is not only finding a way of navigating the logic of the debates between the pro-life and pro-choice advocates (in itself an achievement) but also considering how the law creates the emotional climate for stability, predictability, and consistency without becoming authoritarian. Is it possible to cultivate a desire for justice and solidarity even when it may require individuals to take on some amount of personal suffering? Can law teach that it is possible to find fulfillment through suffering? For the ancient Christian legal theory of Isidore of Seville or Thomas Aquinas, the answer was a resounding "yes," since they could rely on the fullness of the Christian faith's commitment to support an economy of political emotion that holds redemptive suffering to be a means for being conformed to Christ. But in a contemporary religiously plural liberal democracy, the commitment to sacrificing for the common good is much more difficult to achieve. For Kaveny's project, some understanding of political emotions is needed. But to accommodate the liberal desire for universality, Kaveny looks to secular understandings of justice and solidarity. She draws her conception of justice from Joseph Raz's notions of positive rights and individual autonomy. And while she takes her concept of solidarity from John Paul II, she does so by removing it from the context of theological personalism in which Pope John Paul II developed it. This leaves her theory depleted of the very resources she most needs to understand political issues today, which are often driven by the manipulation of desire for political purposes.

KAVENY'S THEORY OF LAW'S PEDAGOGY AND THE LIFE ISSUES

The book is organized into three parts. In the first part, Kaveny describes her ambitions for the book. In its two chapters, she explains the law's teaching function. She begins by claiming that law teaches what is socially acceptable and what is not. In the contemporary context, John Stuart Mill's liberal ideal of negative liberties limits law's authority by prohibiting behavior that presents a harm to others—what Kaveny calls the "law as police officer approach" (17). Although this is a dominant perspective in law, it lacks adequate resources to respond to challenges posed by complex techno-moral issues and the context of sweeping moral and religious pluralisms that exist now. Kaveny explains that the dominant legal positivist theories of law are inadequate, since they presuppose that individuals are "fundamentally disconnected from each other," and they are "atomistic individuals who above all prize the ability to pursue their own plans without interference from anyone else" (75). But this view of human nature is factually incorrect, Kaveny argues, because it denies the fundamental connectedness of persons, the social function of social and familial networks, and the reality of self-sacrificial altruism. These are the characteristics of solidarity, which is also part of human nature.

Kaveny believes that what is needed is a recovery of a virtue theory for law that can unite the moral values of autonomy. She looks to Joseph Raz's conception, which endorses positive rights, the belief that rights should allow for the cultivation of individual projects of self-fulfillment. After critiquing Joel Feinberg's view of "freedom" for being too limited, she writes, "I think the work of the contemporary Oxford legal philosopher Joseph Raz can be used to develop a powerful critique and corrective of Feinberg's liberal legal theory" (23). Raz's concept of positive rights is secular: autonomy is for personal fulfillment and lives are for self-satisfaction. Kaveny believes that this notion of positive rights is compatible with the virtue of solidarity, which she adapts from John Paul II's description of it as a theological virtue involving, crucially, "a firm and

persevering determination to commit oneself to the common good" (28).[1] Kaveny offers a secularized version that views it in terms of sociality. Her description of it makes a passing reference to persons as unions of body and soul, but she does not describe sociality in theological terms that might include reference to the Holy Spirit, the Eucharist, or the church as traditional theological modalities of sociality. She suggests that although the virtue of solidarity is subverted in political debates, it is nonetheless evident in secular social achievements such as the Civil Rights Act, the American with Disabilities Act, and the Family and Medical Leave Act, which "point holistically toward a society infused with the virtue of solidarity and move incrementally toward its realization" (65). Kaveny argues that the moral goals of law include solidarity and autonomy but that solidarity is often obscured in contemporary legal theory because of its commitments to positivism and its wariness of virtue ethics. She might have added that the theological conceptions of autonomy and solidarity are also rejected by liberal democratic theories for being irrational commitments to metaphysical cosmologies.

In the second chapter, Kaveny takes a cautious look at the pedagogical function of law by considering the limits that lawmakers should recognize in asserting the teaching authority of the law. She views the issue as being a matter of limiting the coercive elements to teaching only the most basic moral lessons. She sees this limitation as practical in the sense that a responsible lawmaker must consider the outcomes of the use of coercive force, the ways that it can undermine the value being sought, and the consequences for the stability of the state. Critically, Kaveny views this approach as being consistent with the Thomistic understanding of law. For Aquinas, she claims, it is related to moral meaning in two ways, which Aquinas calls conclusions (*conclusions*) and determinations (*determinations*). Conclusions are derived from the principles of natural law; and determinations are the practical judgments about applying the natural law to particular instances. Well-formed law reflects both because it must be rooted in the principles of natural law while also acknowledging the particular circumstances of application.

The book's second main part, which examines "life issues," contains the bulk of the arguments alluded to above. Chapters 3 and 4 focus on the jurisprudence of pro-life advocacy. Kaveny argues against negative rights, which deny the significance of the teaching authority of law. Specifically, Kaveny argues, "if law is always and inevitably a moral teacher, then the 'law as police officer' paradigm fails to recognize and take responsibility for this fact" (77). In doing so, the police paradigm misses the opportunity that law poses for building solidarity, even in this conflicted area of law. The impact of *Roe v*. Wade, 410 U. S. 113 (1973), was to institutionalize the police officer approach for reproductive rights. That is, it made the moral teaching of the law simply about securing the right of the mother, and it totally abandoned the moral meaning of the unborn child. This had the consequence of creating an environment that overemphasized the moral value of choice at the expense of all else. The value of the unborn human life was not given consideration in the moral lesson taught by the law. On this point, Kaveny writes, "I submit that the main challenge facing the pro-life movement during (and after) the *Roe* regime is to . . . discern how the law can inculcate a different set of values from . . . the 'law as police officer' approach" (74). She acknowledges that this goal was partially achieved by *Planned Parenthood v. Casey*, 505 US 833 (1992), which allowed for greater consideration of the value of the developing fetus by making abortion a liberty interest rather than a fundamental right—but the *Casey* decision did create law that teaches solidarity. Teaching solidarity can be done, Kaveny argues, following John Paul II in his 1995 encyclical

1 John Paul II, *Sollicitudio rei socialis* [Encyclical on social concern] (December 30, 1987), § 37, http://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis.html.

Evangelium vitae, by transforming the culture. For John Paul II, this transformation is the work of the universal church, which consecrates social union through the sacrifice of the Eucharist. Kaveny's conception of prudence, however, dictates that this be done gradually and with awareness of the practical earthly difficulties involved. The lawmaker's activity involves a careful practical judgment about how to achieve a lasting cultural change for the common good. The books' fourth chapter continues to develop this theme by exploring the jurisprudential issues through the controversies surrounding the Freedom of Choice Act during the 2008 election.

Subsequent chapters exploring the law's moral pedagogy on various issues proceed in much the same way. The fifth chapter takes up legal and moral questions posed by the Human Genome Project. The project had only recently been completed when the book was published, so the chapter is speculative about things like consumer DNA test kits and the promise of genetic medicine, which seemed near at hand at the time. Kaveny speculated that the ability to decode an individual's DNA might create special problems for Razian positive rights, and that due to the unreliability and difficulty in predicting the meaning of the DNA sequences, the sale of commercial DNA test kits should be prohibited.[2] The sixth and seventh chapters consider end-of-life decisions. Chapter 6 examines Cardinal Bernardin's *The Gift of Peace*,[3] which was a personal reflection on his terminal illness. In his slow decline into death, Bernardin lost his capacity for autonomy and became increasingly dependent on the solidarity of others who cared for him. Enabling and allowing others to care for him was his final act of autonomy, contributing to his life project as he moved ever closer to death. Chapter 7 considers the jurisprudence of euthanasia in *Washington v. Glucksberg*, 521 U.S. 702 (1997), and *Vacco v. Quill*, 521 US 793 (1997). Unlike the abortion cases, in these cases the Court preferred to allow for experimentation among the States. In Kaveny's view, this flexible approach strikes a proper balance between autonomy and solidarity because it allows for variations responsive to particular local conditions.

The book's third and final part attempts to connect the jurisprudential concerns of the first two parts with the moral duties of Catholic voters. Chapter 8 develops a theory of voting by examining the practices of actual voters. Kaveny observes that voters do not have the ability to pick preferred outcomes among different issues. They vote for candidates that package issues for greatest strategic advantage. This forces voters to make compromises among different possible preferred outcomes. Chapters 9 and 10 apply this analysis to different voter dilemmas. In Chapter 9, Kaveny discusses the claim that Catholic voters should not vote for pro-choice candidates because abortion is an intrinsic evil. She explains that the concept of intrinsic evil applies to the gravity of the wrong, not the ground of its wrongfulness. Advancing the practice as intrinsically evil does not allow for practical judgment and balancing among the issues that a candidate bundles together. Chapter 10 takes up the particular moral concept of cooperation with evil. Kaveny argues that this concept is misapplied in the case of a supposed moral responsibility to not vote for pro-choice candidates, since the moral interpretation of a vote should not be assessed from an irreconcilable moral divide since that is ultimately destructive of the community. Instead, the law should be a tool to educate for a common community of shared values. Kaveny believes that the harsh rhetoric of the culture war and the endless conflicts to which it refers are damaging to society because they make solidarity impossible. The balance between autonomy and service to the common good is tilted too far toward the former.

2 In retrospect, Kaveny's fears were not warranted. The commercial sale of DNA test kits is now commonplace, and genetic medicine, while promising, seems to have many years before it delivers.

3 Joseph Bernardin, *The Gift of Peace: Personal Reflections* (Chicago: Loyola Press, 1997).

Kaveny's conception of law's virtue, then, is its ability to teach moderation in all things, not unlike the Aristotelian judge, by making practical judgments that balance among competing stakeholders. In this regard, it seems similar to legal process theory. But in doing this, she has immanentized the concepts of solidarity and autonomy, removing them from theological contexts in Catholic thought, particularly the concept of solidarity that was developed as a richly textured theological concept by John Paul II, deeply implicating his theological account of the phenomenology of the person.

LAW'S VIRTUES AND CONTEMPORARY LIBERAL DEMOCRACY

Law's Virtues is intended primarily for Catholics who are concerned about their place in the American democracy and secondarily for non-Catholics who seek to understand how Catholics might understand themselves. Kaveny's project surely holds promise, as continued interest in its themes suggests. It appears to offer a way for Catholics to think about the relation between theological commitments and their commitment to liberal democracy. This is clearly a valuable contribution to both Catholic legal thought and liberal democratic theory.

Nonetheless, a closer consideration of this theology might clarify Kaveny's views and suggest how Catholic thought is relevant to important political questions today, even beyond a Catholic audience. This does require some effort to locate Kaveny's theoretical approach in relation to mainstream secular theories with which she at times appears to disagree. Moreover, a richer theological account would refine the relation between her project and theories of liberal democracy. Kaveny takes her deontic norms from a secular source, her reading of Raz's conception of positive rights, but the aretaic values of the theory come from her reading of John Paul II's conception of solidarity. Kaveny reconciles this dichotomy between secular and religious by de-emphasizing the full richness of John Paul's personalist theology. In this connection, Kaveny might find it beneficial to elaborate her views on the relation of her theory to liberal democratic theories that recognize a legitimate plurality of religious perspectives, but by de-emphasizing the theological, the theory become less distinct and the connection to the Catholic intellectual traditions is obscured.

More importantly, a significant opportunity exists when a closer consideration of the theological meaning of solidarity is presented. It is in its theological dimension that John Paul II's thoughts about the nature of person, the proper function of politics, and the definition of the good come together with interpretive resources for understanding the deformation of earthly desires and the therapy for them offered in Christianity. These are critical issues today, as new technologies are allowing for unprecedented manipulations of political elections by outside actors.

LAW'S VIRTUES AND MAINSTREAM SECULAR THEORIES

Before turning to Kaveny's important theological contribution to the contemporary debates, it is useful to clarify the relation of her theory to mainstream jurisprudence, which typically is positivist in the sense of endorsing a dichotomous separation of fact and value. Hard legal positivists strictly endorse the claim that law is distinct and separate from moral reasoning, and that those who would attempt to relate them commit the naturalistic fallacy. Given that Kaveny's theory views judges as seeking to balance between deontic and aretaic normative values, the question of how she understands her theory in relation to legal positivism remains open. This is, perhaps, easily answered. Although the question is not considered in depth in the book, Kaveny's jurisprudence appears to be a soft positivism that acknowledges that positive law is an objective fact but also allows that

law might be directed toward normative goals. Her theory is similar to Scott Shapiro's "planning theory" of law,[4] which acknowledges H. L. A. Hart's soft positivism while observing that other normative systems might also have primary and secondary rules. Law's essence, for Shapiro, lies in the privileged location of law among normative systems that are interacting within society. Law is privileged, because it is a preplanned set of procedures for handling social disagreements that balances among competing moral norms. As with Kaveny's teaching theory, for Shapiro, the law would include the moral goals that society seeks to promote. They agree that the lawmaker uses the law to achieve societal goals, and that these goals must be achieved if the law is to function optimally. This involves the pragmatic balancing between and among normative goals, recognizing the interests and likely responses of stakeholders. Similarly, Kaveny argues, following the Aristotelian and Thomistic traditions, that politics is the genus of which ethics is the species. Law is an expression of practical political reason, and moral virtue is the habituation to act with moral aspiration. Law is a privileged place for balancing among moral goals, because law has a particularly strong teaching function, in the sense that it habituates the individual to maximal moral perfection. It is under this understanding of law as a plan for handling social tensions and disagreements that Kaveny's contribution to the context of the contemporary challenges to democracy may be assessed.

LAW'S VIRTUES AND POLITICAL EMOTIONS IN THE INFORMATION AGE

When Kaveny wrote *Law's Virtues* in 2012, the information age was new and many of its now commonplace features were nascent. For example, Google became a publicly traded corporation in 2014. The presence of the new technologies was felt mostly in the connectivity that the internet made possible through email and early social media. Facebook, for example, was less than a decade old. Today, new issues have developed, primarily due to the development of vast amounts of data, much more powerful artificial intelligence techniques, and dramatically lower costs for memory. Big Data is a very recent phenomenon. It includes human data, that is, data on and created on human beings; at least 90 percent of all of the data recorded by humans throughout history having been recorded just in the past two or three years. It includes nearly 30 billion devices now interconnected and controlled through the internet. And it includes the form of artificial intelligence called "deep learning," which is only three years old. Deep learning can detect patterns in data too subtle for human beings to discern.[5] The full significance of Big Data for contemporary liberal democratic theory is unknown, but the consequences for recent political discourse are evident in the rise of tribalism and the harsh divisiveness that is growing malignantly throughout the liberal democracies of the world.

4 Scott J. Shapiro, abstract of "The Planning Theory of Law," Yale Law School, Public Law Research Paper no. 600 (2017), https://ssrn.com/abstract=2937990.

5 For a discussion of the amount of data and its rate of growth, see, for example, Jacques Bughin et al., *Notes from the AI Frontier: Modeling the Impact of AI on the Global Economy* (New York: McKinsey Global Institute, 2018), https://www.mckinsey.com/~/media/McKinsey/Featured%20Insights/Artificial%20Intelligence/Notes%20from%20the%20frontier%20Modeling%20the%20impact%20of%20AI%20on%20the%20world%20economy/MGI-Notes-from-the-AI-frontier-Modeling-the-impact-of-AI-on-the-world-economy-September-2018.ashx. See also, Bernard Marr, "How Much Data Do We Create Every Day? The Mind-Blowing Stats Everyone Should Read," *Forbes*, May 21, 2018, https://www.forbes.com/sites/bernardmarr/2018/05/21/how-much-data-do-we-create-every-day-the-mind-blowing-stats-everyone-should-read/#103ce80860ba.

Clearly, the new technology has changed political and legal landscapes in some significant ways. This is due in part to the development of information and computer technologies that influence the ways that desires are cultivated and organized for political purposes.[6] There are several aspects to this transformation, but two come immediately to mind. The first is that despite the enormous increase in the connectivity through the widespread use of the internet in the 1990s, the quality of discourse has been markedly eroded. The use of social media by politicians has done little to improve the quality of political speech. It seems no longer possible to motivate the nation to a common purpose with the soaring rhetoric of a Lincoln or Churchill, who often drew from religious imagery. It is difficult to imagine how, under the current conditions, the pragmatic balancing of positive duties and solidarity could provide the conditions for a therapy of desires that is needed to cultivate the political emotions for a robust democracy.

A more substantive challenge that the new technology poses has to do with its influence on the "political emotions" of the nation. This is an ancient problem for democracy that Plato recognized in the *Republic*, and of which the drafters of the United States Constitution were also critically concerned. It also touches on an issue at the center of Kaveny's project. Plato observed that the unbridled passions of the majority must be moderated in a democracy, but that requires some authoritative force of moral restraint. The republican ideal of the US Constitution, as Madison described in several *Federalist Papers*, sought to moderate the divisive passions of the masses through a system of authoritative representatives who are "appointed, directly or indirectly, by the people, and be reliant on the people for any continuation in office."[7] Representative government tries to filter the "elevated" from the citizenry, in such a manner as to select to public office persons above political ambition, while also creating a plural structure to society that avoids the deadly powers of faction. The goal is not "any Olympian group of purely public-interested statesmen"[8] (or judges) but instead a pluralism of divergent passions achieved in a relatively small legislature that does not allow room for every viewpoint. The political processes at the local level filter the viewpoints that find expression. And this is a way of managing political emotions that might be divisive or dissipating for the polity.

For Kaveny's project, this is an open question. She posits a pathway between autonomy and solidarity through the authority of law to instruct the polity. The passions of individualism will conform to shared passions for the common good through an authoritative statement from the judiciary. This approach, while addressing Plato's concern for the excesses of the majority, differs from the original constitutional plan, which sought to find the morally authoritative voice in small groups of local legislatures with the law playing a more formal role in maintaining the structure of democracy and less involved in divisive moral issues. Issues left open by Kaveny's approach include two questions: How does the law not only teach but also provide a therapy for the desires of the majority to conform to the common good? Will reason alone prove sufficiently persuasive now that many aspects of individual choosing are manipulated by the masters of Big Data?

The ability of artificial intelligence to sort through vast amounts of data in order to identify patterns that map human desires and to coordinate those maps to create new desires is now part of a well-developed field of behavioral science. Deeply rooted in brain science and driven by cunning social policies of "nudging," it is difficult to imagine how an ordinary person can resist. It is not

6 For a discussion of this issue, see generally, Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (New York: Public Affairs, 2019).

7 Bruce P. Frohnen and George W. Carey, *Constitutional Morality and the Rise of Quasi-Law* (Cambridge, MA: Harvard University Press, 2016), 83.

8 Frohnen and Carey, *Constitutional Morality and the Rise of Quasi-Law*, 85.

only music, books, and soap that are the objects of manipulation, but also political campaigns and political ideologies are treated as brands that can be marketed though data manipulation. Recent history has shown that political emotions are also manipulated by private and public actors—sometimes with malicious intent. Therefore, understanding the function of political desires is critical in the era of Big Data. Political theology might assist in this undertaking, given its rich resources for integrating political emotions.

For example, it is now a well-documented fact that social media and other forms of internet communication allow for the formation of the types of divisive factions to form across vast distances and without regard to borders. This challenge to democracies is likely to increase as the formation of factions is exacerbated by the growing oceans of data on individuals that make their predilections and ambitions evident for likeminded searchers. The same type of automated systems that enable a growing number of people to find their music and books also influence graver matters. Today, it is common to find a life partner through online dating. And the same technology on which people rely for such critical life events as finding a partner also allows like-minded political extremists to form deeply cohesive bonds within factions. Information technology is thus altering fundamental political assumptions by changing the possibilities for human social interaction and the means for decision making, and this is interfering with the management of political emotions. Social media, as a communications network, steps over the boundaries of space and time that were intended to keep factions from forming by preventing persons with disruptive passions from finding each other. Now they can and do, and, as a result, social cohesion devolves into a sea of foaming passion. The challenges that lie ahead are foreshadowed by Facebook's role in the 2016 election through the cooperation of Cambridge Analytica and the Russian government.

These new challenges to democracy, the low quality of political rhetoric and the manipulation of political desires all have to do with the psychology of liberal democracy. The new technologies challenge traditional understandings of the emotional structure of the republican form of democratic government. More precisely, they are focused on how the desire for justice, equality, and the common good can be cultivated and maintained. These questions are ones that are not resolved in Kaveny's project and seem to have come to the surface with great force since *Law's Virtues* was published. They are particularly important issues today, since the development of information technology has substantially altered the political landscape, in part through the communicative networks that allow for the collection of data and the sophisticated systems for manipulating political desire.

To take better aim, it is useful to consider Martha C. Nussbaum's timely exploration, *Political Emotions, Why Love Matters for Justice*,[9] in which she notes that modern liberal theories from Locke to Rawls do not contain discussions about this topic. They fail to attend to the role of desire in creating and maintaining a vibrant polity. As social psychologist Jonathan Haidt has noted, to motivate a group of persons to sacrifice for a common cause, it is necessary to reach areas of the brain that are usually only reached by religion, an observation that would gain approval from Rousseau.[10] This observation suggests that a rigorous investigation of the theological account of political desires in Catholic theology might be useful. This is the tradition from which Kaveny draws her theory and to which she speaks. Political emotions played a crucial role for Aristotle, who wrote in the *Nichomachean Ethics*, "The mind itself does not move anything, but the mind

9 Martha C. Nussbaum, *Political Emotions: Why Love Matters for Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 2013).

10 Jonathan Haidt, *The Righteous Mind: Why Good People Are Divided by Politics and Religion* (New York: Pantheon Books, 2012).

that has a purpose and is practical does so."[11] In commenting on this passage, Thomas Aquinas, reading Aristotle into the Christian tradition, argued that choice is a matter of both intellect and appetition.[12] He calls appetite that is directed toward some goal the "intellective faculty of appetition." It is this intellective faculty that determines the moral meaning of an act. But without the desire to bring about good or evil, there is no movement. Given the deep location of these insights in the Catholic intellectual tradition, a discussion of political emotions seems particularly warranted for Kaveny's project, and it may be a place where Catholic theologians can make a particularly insightful contribution to contemporary political theory.

RECLAIMING THE THEOLOGY OF THE PERSON IN THE CONCEPT OF SOLIDARITY

The future development of Kaveny's project might then explore the theology of John Paul II's conception of solidarity that is rooted in his phenomenology of the person. Such a study might bring theological conceptions, rich in emotional content, into close proximity with the rational theories of liberal democracy. It would assist in exploring the ways in which theology informs emotive efficacy and the theological means for morally assessing political desire. More broadly, Kaveny's project might develop as an inquiry into understanding how the desire for justice and the common good are cultivated in a pluralistic liberal democracy, even where political desires are manipulated through cunning technological means. A theological understanding of solidary might, for example, suggest how a citizen can be motivated to personally sacrifice for the goal of justice for others or for the common good. And, critically, it might hold resources for morally assessing the mediating institutions that exist in the state that shape political emotions.

Given the role that the psychology of desire has played in Catholic moral and political thought, Kaveny's project might then benefit from a closer consideration of John Paul II's theological account of solidarity, which is rooted in his conceptualization of the mystery of the person. For John Paul II, solidarity is a theological virtue. It transcends sociality among material beings because it gives moral priority to the unity among persons in the presence of God's love. Viewed in this way, solidarity is about the coming together of persons who bear the image of God (*imagio Dei*) and are brought together in charitable love (*caritas*). As the Catholic hymn teaches, "Ubi caritas et amor Dei, Deus ibi est" (Where there is charity and love of God, God is there). The complex and powerful emotional dimension to solidarity—of charitable love and love for the divine good as it is present in the Other—is essential to its theological meaning.

The transcendent dimension of solidarity is transformative in part due to the modern duality between mind and body, which has tended to focus on reason and clarity of concepts while devaluing the significance of the body and the lived experiences of it, as influences for political thought. For John Paul II, however, the material body is fundamental to the recognition of self and Other since it too shares in the mystery of the person. This is consistent with Christian tradition, which holds the image of the human body to be the alpha and omega of Christian life. It is there from the beginning and calls to the end. It is present in the symbol of the body of Eve, fashioned by God from Adam's rib. It is present in the lashing punishment that human sins inflicted on Jesus on the cross. It is the body of Christ that is sacrificed anew in the liturgy of the Eucharist. And in traditional Catholic thought, the resurrection of the body is a part of the promise of salvation.

11 Aristotle, *Nichomachean Ethics*, Book VI, 2 1139a3.

12 Thomas Aquinas, *Commentary on Aristotle's "Nichomachean Ethics,"* trans. C. I. Litzinger (South Bend: Dumb Ox Books, 1993), 362.

As a Christian symbol, then, the image of the body provokes the realization that human existence is not reducible to either the spiritual or the physical; the body and soul have meanings that exceed being a mere object carried in a vessel since both the physical and the spiritual are part of human essence. Against the modern tendency to dualism, the Catholic tradition has viewed human beings as not simply minds for which the body has no meaning nor as merely physical bodies isolated from each other by time and space. With a more developed theological account, Kaveny's project could draw from these resources.

John Paul II's personalism teaches that humans are unions of the physical and the spiritual. Kaveny emphasizes the material. But for John Paul II material bodies are expressions of spiritual meaning. Even in material existence, the mystery of the individual person is not in isolation: the symbol of the body draws humans together in *communio*. He taught that the calm, prayerful mind can apprehend the inexhaustible depth of the lived experience that is present in the symbol of the body. This awareness is fundamental to the common good because it unites individuals in a common project of living as divine mysteries even to themselves among others with whom they share this awareness. The body teaches that solidarity is not *communio*, since material well-being is a penultimate expression of the common good. To the extent that material well-being is an achievement of this fallen world, it is always proximate to the transcendent fulfillment of the people. And, therefore, it is always subordinated to the perfection that exists only in God. Contemporary information technologies that undermine the significance of the unity of mind and body, that view the mind as connected to the material world only through information, undermine this essential symbol by freeing human desires from the possibilities and limitations of desire as embodied creatures.

Another dimension to solidarity that is relevant to Kaveny's project has to do with the significance of eschatology for politics. The reign of Christ symbolizes more than a chiliastic order. It is also an entry point into a distinctive perspective on the political form of solidarity that finds expression through the Holy Spirit in the consummation of divine providence. A critical locus for thinking about this symbol can be found in Paul's epistle to the Romans 13:4. Referring to the "higher authorities" of Roman rule, Paul writes, "But, if you do evil, be afraid, for it [the higher authority] does not bear the sword without purpose; it is the servant of God to inflict wrath on the evildoer" (New American Bible, Revised Edition). Paul suggests that the authority of the government resides *essentially* in the act of judgment. All government, through all its branches, engages in making judgments about what is just and good for the community. Paul appears to teach that the legitimate acts of those who govern are limited to judging evil. This is implied in Thomas Aquinas's claim that an unjust law is no law at all.[13] The fullness of John Paul II's concept of solidarity suggests that law that seeks after only mundane justice or earthly goods is incomplete and fragmentary. The law must advance justice that respects the dignity of the person who is a divine mystery and seek the common good that is a divine good in the eyes of God.

A third dimension of relevance to Kaveny's project is that the theological context of solidarity includes the concept of original sin. Viewed through this concept, Big Data technology holds indiscriminate power over political emotion. The symbol of the postlapsarian condition of human beings suggest some resources for exploring the deformation of desire that results from Big Data manipulation. The Fall is a symbol of innate human sinfulness that is present from the beginning—the journey out of the Garden, which, as John Paul II puts it, delimits two "diametrically opposed

13 "Human law is law only by virtue of its accordance with right reason; and thus it is manifest that it flows from the eternal law. And in so far as it deviates from right reason it is called an unjust law; in such case it is no law at all, but rather a species of violence." Aquinas, *Summa theologiae*, Part Ia-Ilae, Question xciii, Article 3, Reply 2m.

situations and states: that of original innocence and that of original sin."[14] He taught that it is in the transition from innocence to sin that the human person forgets its interdependence and need for others. He notes that the fall infects all human beings at different moments and in different ways. In particular, all people are all unduly prideful. Compare this to Raz's conception of positive rights, which Kaveny endorses. Raz merely hold that rights should allow persons to contribute to their life plans. But, for John Paul II, the threat of Raz's conception is that people may come to believe that they should have boundless freedom to express their desires in their lives, even if the fabric of life loses its cohesion through the dissipating effect of endless desires. Big Data manipulators exploit this weakness by creating and legitimating individual desires that are ends in themselves. American culture is steeped deeply in this sort of individualism. It takes the form of the blind passion for more that lies like the light at the end of Daisy Buchanan's pier in F. Scott Fitzgerald's novel *The Great Gatsby*, and, like Gatsby, we believe that "to-morrow we will run faster, stretch our arms out a little farther. . . . And one morning—."[15] Or consider the restless spirit of the American West that Wallace Stegner captures so well in his novel, *Big Rock Candy Mountain*: we are always moving on, always looking for the next gold rush. To quote John Paul II, "it is not wrong to want to live better; what is wrong is a style of life which is presumed to be better when it is directed towards 'having' rather than 'being', and which wants to have more, not in order to be more but in order to spend life in enjoyment as an end in itself."[16] Yet, the harder we work to have more, the harder it becomes to find the substance and unity of a coherent existence. We lose our better selves to pleasures of the moment.

The symbol of original sin is a warning to steer away from the sirens of our desires in a consumerist, throwaway culture in which not only the empty promises of advertisements are disposable but ultimately, so, too, are friendships, loyalties, and even Christ once they are no longer useful. It suggests a means for judging the thinned out and flattened conception of community that has resulted from the influence of Big Data, particularly in the aftermath of the 2016 election. That religious communities have been unable to resist the pathologies wrought by consumer culture is perhaps telling of the scope and power of the information revolution in changing the political emotions on which liberal democracy depends. What may be lacking today, even in the church, is the lived experience of the fullness of the traditional Catholic form of life. It may be the case that the experience of Christian life is no longer possible in the age of information technology. What, then, is the prognosis for a therapeutic culture such as ours, where the end of life debates are set out in public discourse in terms of the absolute good of avoiding pain, and even religious leaders speak only about building materially prosperous communities but neglect the potential for redemptive suffering as a vehicle for achieving a fulfilled human life? The hope for achieving an ordered liberty where freedom for personal fulfillment is the norm seems dim. As authoritarian states gather the data and computational power to manipulate political desires on vast scales, and even the Christian faithful lose the ability to find redemption in emulating the suffering of Christ, the future for liberal democracy teeters in the balance. This may require better understanding the full theological meaning of autonomy and solidarity. For Kaveny, including a concept of original sin in her theory would support her theory as neither morally absolute nor without moral content, since

14 John Paul II, "The Boundary between Original Innocence and Redemption" (September 26, 1979), http://w2.vatican.va/content/john-paul-ii/en/audiences/1979/documents/hf_jp-ii_aud_19790926.html.

15 F. Scott Fitzgerald, *The Great Gatsby* (New York: Scribner, 2004), 180.

16 John Paul II, *Centesimus annus* [Encyclical on political, economic, and social justice issues] (May 1, 1991), § 36, http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus_en.html.

the doctrine of original sin counsels cautious striving for the moral good, ever aware of the noetic effects of a fallen human intellect.

CONCLUSION: PROGNOSIS AND INTERVENTION

In sum, then, if Kaveny had a more developed account of John Paul II's conception of solidarity, it would allow her to explore the substantial difference between his conception of sovereignty and that of modern liberal democracy, and it might suggest a way ahead for democracies in the face of the manipulation of political emotions made possible by the new technologies. Liberal democratic theories intend to understand persons as essentially bound together by rational self-interest in an atmosphere of original distrust. But from the perspective of John Paul II's conceptualization of solidarity, communities are understood as owing their existence to the reign of Christ, who is the "desire of the nations," brought into being through the Holy Spirit, and secured by the Eucharist. A community is thus bounded together through the mutuality of God's divine love and human love for God. It denies the efficacy of a social ontology of rational self-interest alone. Paul, the evangelist, confirms this in 1 Corinthians 13:1–3. As Joseph Ratzinger has glossed this passage in Corinthians, "without *caritas* everything else, faith, works, is nothing, absolutely nothing."[17] For Paul, God's judgment is love, and the earthly political authority acts legitimately when it judges in and through love. For John Paul II, the lordship of Christ is an affirmation that guides the church to embrace the fullness of the Catholic intellectual heritage. At its root, the Christian faith is not a philosophy or a theology, and it is not a moral teaching at all. It was a modern project to attempt to view it as such. Catholic thought is an orientation toward the world that holds foundational beliefs for metaphysics, epistemology, moral theory, and political thought. But even more, it is a way of life—a way of orienting to the world and to the problems of life. It is not only true in itself, but it is how Catholics can say that their lives are truly lived.

It may be that without a transcendent conception of the good, desires for autonomy and solidarity will continue to be manipulated by demagoguery into tribal instincts that fearfully protect the advantages of material prosperity. A richer commitment to sacrifice for the goods of the community taken as a whole are lost, and the possibility of finding fulfillment in self-sacrificial devotion to the common good is greatly attenuated. In what might be a prophetic warning for twenty-first-century democracies, John Paul II taught that community is the consequence of the miracle of the quotidian, which he calls the "hermeneutics of the gift."[18] He refers to the everyday acts of kindness and mercy that are the warp and weft of social life. The community is a concrete thing of value. He warned that we risk much in forgetting the limits of the state in manipulating desire. It was one of the features of twentieth century totalitarian regimes, both Marxists and fascists, that they placed little value on cultivating the moral value quotidian acts, such as serving food to a hungry friend or the simple grace of a child's kiss on a parent's cheek. They replaced quotidian miracles such as these with grand displays of power meant to glorify the state. The desire for powerful state action replaced the quotidian desire to serve food to a hungry friend or the grace of a child's gentle kiss on a parent's cheek. They taught against the democratic instinct that the powerful serve rightly when they serve the lowly, rather than the reverse. Armed with a blueprint for history, the

17 Benedict XVI, *Joseph Ratzinger in "Communio,"* vol. 2, *Anthropology and Culture*, ed. David L. Schindler and Nicholas J. Healy (Grand Rapids: Eerdmans, 2013), 177.

18 John Paul II, "Creation as a Fundamental and Original Gift" (January 2, 1980), http://www.vatican.va/content/john-paul-ii/en/audiences/1980/documents/hf_jp-ii_aud_19800102.html.

totalitarian regimes of the 1930s sought to crush the meaning out of everyday acts of kindness and virtue by flattening out the ideal of community and made it possible to view the most horrific things as necessary sacrifices for the future political order.

Crucially, for the challenges of law and politics that Kaveny addresses the Catholic intellectual tradition offers the theological virtue of hope, which refers to honestly taking stock of the future, including taking stock of what is unpleasant. This requires something different from optimism. The optimist looks at the world through rose-colored glasses, seeing the glass half-full instead of half-empty. That kind of tunnel vision can be crippling for dealing with problems in the real world, which can be a hostile place full of evil, wrong-steps, and ill will. The virtue of hope is sturdier than that. Rather than unwarranted optimism, the virtue of hope demands a realistic appraisal of the world, of its potential dangers, of human failing. But it also requires an assessment of the human capacity for good stewardship and decency, for the caring and compassion that calls citizens of the democracy to their better selves. Ultimately, Catholic teaching affirms that hope requires an acknowledgment of God's love. To have hope requires confidence in the divine love (the second person of the Trinity) who took on human flesh and entered into the human spirit. Despite all of the pain, suffering, self-pride, and excessive restlessness, that hope abides for Christians.

Kaveny's project might, then, give more attention to the virtue of hope, and what it means for Catholics involved in advancing the legal and political projects of the life issues. This much seems clear: hope demands trust in God. Although the Catholic pilgrim in this fallen world can only make use of God's gifts with modest goals, in the realization that justice and community are theological gifts that are only achieved proximately and intermittently, still there is hope that this too is God's will. Critical today is a need for a recognition of the harm that can be done by pursuing moral goods through dispassionate reason alone, particularly when it holds in check an authentic engagement with the Other, in which the fullness of the image of God inspires wonder and love. That sort of engagement is necessary to formulate laws that teach empathy and *caritas*. Law and politics in the age of Big Data are more precisely involved in the economy of political emotions than in the past. And the Catholic as political actor must realize that they, too, are guided by the maxim "If you are not paying for the product, you are the product." Catholic votes are organized as a product, delivered by digital marketing and political advising firms to the highest-paying politicians, packaging issues and preferences. In these times, Catholics should give cautious attention to the means for achieving ends, voting with hope and a charity for all, using the many gifts of faith to achieve the divine good.