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PHANG, Andrew B.L.. Lord Denning and the Influence of William Temple. (1999). *Law and Justice*. 1-13.
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LORD DENNING AND THE INFLUENCE OF WILLIAM TEMPLE

ANDREW PHANG

Introduction

Lord Denning is probably one of the most influential English judges in the twentieth century,¹ and is certainly its most colourful. He recently celebrated his one hundredth birthday,² and a symposium to honour this occasion and celebrate the life of this remarkable man was held at Buckingham University.³ Lord Denning himself was too frail to attend this symposium, although a separate (and quieter) celebration was also held in his honour at his home at the Lawn in Whitchurch. I was deeply saddened to learn that Lord Denning passed away a few weeks after, on 5th March 1999.

The symposium itself was a wonderful occasion. In addition to the actual presentation of the papers themselves, most of the presenters (including the present writer) had their own 'Denning stories' to tell: stories which demonstrated in no uncertain terms the deep warmth and love that Lord Denning exhibited towards everyone: not simply towards his brother judges or even lawyers, but (literally) to everyone of both high and low position in society. This was, in and of itself, a testimony to the greatness of Lord Denning himself — of his love towards his fellow human beings, regardless of status, culture or nationality. However, Lord Denning will also be remembered for his many judgments: many of them seminal

1. In addition to the many books by Lord Denning himself (of which *The Family Story* (Butterworths, 1981) and *The Discipline of Law* (Butterworths, 1979) are especially recommended, see also the following biographies: E. Heward, *Lord Denning — A Biography* (2nd ed., Barry Rose Law Publishers Ltd., 1997) and I. Freeman, *Lord Denning — A Life* (Hutchinson, 1993). Reference may also be made to the following collections of essays: P. Robson & P. Watchman (eds.), *Justice, Lord Denning and the Constitution* (Gower, 1981) and J.L. Jowell & P.W.B. McAuslan (eds.), *Lord Denning: The Judge and the Law* (Sweet & Maxwell, 1984). The former collection is far more critical although the latter does not pull its punches either.
2. On 23 January 1999.
3. The proceedings will soon be published in the *Denning Law Journal*, which is in fact published by the Faculty of Law at Buckingham University. An excellent overview of the symposium by the Honourable Justice Kirby of the High Court of Australia has just been published: see 'Judicial activist and moral fundamentalist', *The New Law Journal*, 12 March 1999, pp.382-383.

and path-breaking.⁴ Indeed, in this symposium, most of the papers presented focused on his judgments. However, I attempted, in my own paper, to focus on the Christian foundations of Lord Denning's thought and work.⁵ Part of that paper alluded to the influence of the late Archbishop of Canterbury, William Temple, who studied at Balliol College, Oxford, was a Fellow in Philosophy at the University of Oxford, Bishop of Manchester and Archbishop of York before assuming his position as Archbishop of Canterbury (interestingly, his father had also been Archbishop of Canterbury): Temple was truly a man of God with immense talents.⁶ However,

4. Perhaps the most oft-cited in his judgment on promissory or equitable estoppel in *Central London Property Trust Ltd. v. High Trees Houses Ltd.* [1947] K.B. 180. Another, albeit a dissenting judgment (in the context of liability for negligent misstatement) in the Court of Appeal decision in *Candler v. Crane, Christmas & Co.* [1951] 2 K.B. 164), was ultimately vindicated by the House of Lords in *Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.* [1964] A.C. 465.
5. See A. Phang, 'The Natural Law Foundations of Lord Denning's Thought and Work' (forthcoming in the *Denning Law Journal*).
6. See generally F.A. Iremonger, *William Temple, Archbishop of Canterbury — His Life and Letters* (Oxford University Press, 1948); A.M. Suggate, *William Temple and Christian Social Ethics Today* (T & T Clark, 1987); C.W. Lowry, *William Temple — An Archbishop for All Seasons* (University Press of America, Inc., 1982); and J. Kent, *William Temple — Church, state and society in Britain, 1880-1950* (Cambridge University Press, 1992). Reference may also be made to the introductory essay on Temple by Canon A.E. Baker in *William Temple, Religious Experience and other Essays and Addresses* (James Clarke & Co. Ltd., 1958), pp.1-31 as well as to the 'Introduction' by R. Preston to the re-issue (in 1976 by Shephard-Walwyn) of Temple's *Christianity and Social Order* (*infra*. n. 27): see *ibid.*, pp.5-26.

But cf. J.D. Carmichael & H.S. Goodwin, *William Temple's Political Legacy — A Critical Assessment* (A.R. Mowbray & Co. Ltd., 1963). However, the authors, while not unsympathetic to a Christian approach (and may appear even, at parts, to adopt it) espouse, in the main, liberalism (see especially *ibid.* at p.vii). It is no wonder, then, that they are highly critical of what they perceive as 'bad politics and sociology' on the part of Temple, although they think his philosophy and theology to be strong. It is suggested, with respect, that Temple attempted to adopt (and quite correctly at that) an *holistic and integrated* approach. Many of the problems Carmichael and Goodwin find with Temple's political and sociological approach disappear when one views his approach from a Christian perspective. One good example relates to their critique of Temple's emphasis on natural law (see Carmichael & Goodwin, *supra* at pp.82-86; see also *infra*. n.36 for a flavour of Temple's views on this topic) which, again with respect, fails to see that the purported subjectivity is actually mythical if one accepts Temple's Christian approach since the values embodied therein are supposed to be objective in the first instance. Indeed, Preston, *supra* at p.10 is of the view (with respect to Carmichael and Goodwin's book) that 'the effect of their book is lessened by their naïve enthusiasm for liberalism in the narrow sense of *laissez-faire* and free competition; and the large number of economists who are also castigated by them leaves the reader feeling that Temple is in good company'; though cf. Preston's own views on Temple's use of natural law: see *ibid.* at pp.12-14.

In similar vein, Kent, *supra* at p.54, is of the view that '[o]ne of Temple's weaknesses as a Christian philosopher of religion was that he could not conceive of a serious religious alternative to Christianity'. It is suggested again, with respect, that Temple was aware of it and that his confidence was not misplaced: see generally the discussion in the concluding section of this essay entitled 'Further Issues and Conclusions', *infra*.

owing to constraints of space, the reference to William Temple's influence on Lord Denning was indeed just that: a mere three brief paragraphs. The present essay attempts to fill that gap by a further elaboration of this influence. In some ways, however, this essay still leaves much more scope for further research and elaboration, simply because the body of William Temple's own work was substantial. But it is hoped that this essay will be useful in as much as it demonstrates the tangible linkages between the thought of two of this century's most brilliant thinkers in the field of law and religion, respectively.

The influence of William Temple

It is apposite from the outset to note that Lord Denning does consistently refer to the work of the late Archbishop of Canterbury, William Temple.⁷ Indeed, Denning once described Temple as 'one of the greatest thinkers of the present century'.⁸

In one instance, Denning recounts how Temple, in an address at the Inns of Court, commenced his message by saying, 'I cannot say that I know much about the law, having been far more interested in justice'.⁹ Denning opines that '[t]he rebuke was well merited',¹⁰ as the hearers (all lawyers) 'had been brought up in the philosophy of John Austin'¹¹ and '[t]hose who believe in that philosophy regard the law as something separate and apart from justice'.¹² Denning challenges what he terms 'this facile assumption',¹³ not least because lawyers are *responsible* for the law and, hence, any injustice that occurs.¹⁴ Further, he is of the view that it is simply 'a great mistake'¹⁵ because '[i]t overlooks the reason why people obey the law':¹⁶ '[t]hey obey the law because they know it is a thing they *ought* to do';¹⁷ in other words, they 'obey the law simply because they recognise it to be *obligatory* on them. They *recognise* that they are under a duty

7. See e.g., A.T. Denning, 'The Traditions of the Bar' (1955) 72 *S.A.L.J.* 43 at p.43 and, by the same author, *The Road to Justice* (Stevens & Sons Limited, 1955) at pp.1 and 34.

8. See Sir Alfred Denning, 'The Influence of Religion' in Denning, *The Changing Law* (Stevens & Sons Limited, 1953), pp.99-122 at p.107 (hereafter cited as 'Influence'; see also *The Influence of Religion on Law* (Canadian Institute for Law, Theology & Public Policy, 1997), which appears to be a reprint of this lecture).

9. See Denning, *The Road to Justice*, *supra*, n.7 at p.1.

10. *Ibid.*

11. *Ibid.*

12. *Ibid.*

13. *Ibid.*

14. *Ibid.*

15. *Ibid.* at p.2.

16. *Ibid.*

17. *Ibid.* (emphasis in the original text).

to obey it.’¹⁸ Denning argues that this ‘sense of obligation’¹⁹ arises ‘from the habits of the people which have grown up in their history’;²⁰ above all, however, is the factor of ‘moral obligation’, which goes beyond mere habit.²¹ And this ‘moral obligation’ arises because of ‘the moral quality of the law itself’;²² ‘[p]eople will respect rules of law which are intrinsically right and just and will expect their neighbours to obey them, as well as obeying the rules themselves’,²³ and that the law must therefore ‘correspond with what they think to be right and just, or, at any rate, must not unduly diverge from it. In other words, it must correspond, as near as may be, with justice’.²⁴ Denning then proceeds to define ‘justice’,²⁵ viz., that ‘it is what the right-minded members of the community — those who have the right spirit within them — believe to be fair’.²⁶

Another instance where Temple is cited by Denning centres on the duties of lawyers. The passage by Temple occurs in his *Christianity and Social Order*,²⁷ and reads as follows:

‘Love, in fact, finds its primary expression through Justice — which ... means in practice that each side should state its case as strongly as it can, before the most impartial tribunal available, with determination to accept the award of the tribunal. At least that puts the two parties on a level and is to that extent in accord with the command “Thou shalt love thy neighbour as thyself.”²⁸

18. *Ibid.* (emphasis added).

19. *Ibid.*

20. *Ibid.*

21. *Ibid.* at p.3.

22. *Ibid.*

23. *Ibid.*

24. *Ibid.* (emphasis added). See also Lord Justice Denning, ‘English Law and Moral Law’ (1954) 51 *The Listener* 332. But cf. the late Professor H.L.A. Hart who (particularly in the ‘Postscript’ to the second edition of his classic work, *The Concept of Law* (2nd Ed., Clarendon Press, 1994)) adopted a descriptive (as opposed to a prescriptive) approach in support of his basic positivistic thesis; but cf. A. Phang, ‘“The Concept of Law” Revisited’ [1995] *Tydskrif Vir Die Suid-Afrikaanse Reg* 403.

25. See also Lord Denning, ‘The Freedom of the Individual To-day’ (1977) 45 *Medico-Legal J.* 49 at p.55 (address to the Medico-Legal Society; emphasis added):

‘Justice is not a temporal thing; it is eternal; a thing of the spirit; and the nearest approach to a definition that I could give is that justice is *what the right-thinking members of the community believe to be fair. Simply that. You and I, representing the right-thinking members of the community, doing, as best we can, what is fair — and, in these days, fair not only between man and man but between man and state.*’

26. See Denning, *The Road to Justice*, *supra*, n.7 at p.4. See also the preceding note.

27. Penguin Special, 1942; Reprinted in the Pelican Series, 1956. This is, in fact, a very perceptive work that contains much food for thought — which, unfortunately, cannot be canvassed here owing to constraints of space.

28. See *ibid.* at p.76. Cf. also Lord Denning, ‘An Address by the Right Honourable Lord Denning, Master of the Rolls, given at the Annual Service of the Lawyers’ Christian Fellowship on the 8th October 1970’ (on file with the Hampshire Record Office).

Denning points out that the reference in the preceding quotation is to the advocate, the judge and the ordinary man and, in fact, epitomises the adversary system which, in turn, is an integral part of the common law system.²⁹

Yet another instance of citation, also from the same book by Temple, occurs in the following (very similar) passage:

‘It is axiomatic that love should be the predominant Christian impulse, and that the primary form of love in social organisation is justice.’³⁰

In another instance, Denning states, in the context of freedom of religion, that ‘[i]t was William Temple who pointed out that there is a tendency for religions and for religious denominations to claim to have a monopoly of light, when in fact each has only a few rays of that light’.³¹

In yet another instance, Denning, in advocating a Welfare State governed by Christian principles was, again, influenced by William Temple’s views; he observed that ‘William Temple, Archbishop of York and later of Canterbury, pointed out time after time the troubles and difficulties which arise in a society which is excessively capitalistic’.³² In a related vein, but on another occasion, Denning again quoted

29. See Denning, *The Road to Justice*, *supra*, n.7 at p.34. See also Lord Denning in ‘Valedictory Speeches upon the Impending Retirement of the Master of the Rolls’ [1986] *Denning L.J.* 7 at pp.12-13.

30. See *supra*, n.27 at p.55, cited in Denning, ‘Influence’, *supra*, n.8 at p.107. See also a message given to the Quarterly Meeting of the Lawyers’ Christian Fellowship held at the Law Society on 22 May 1950, entitled ‘The Influence of Religion on Law’ (published in pamphlet form (Bletchley Printers Ltd., 1950)) at p.2.

31. See Lord Denning, *Freedom of Religion* (William Ainslie Memorial Lecture, delivered at St. Martin-in-the Fields on 17 November 1955; The Cranbourn Press, 1955) at p.16.

32. See Sir Alfred Denning, *The Christian Approach to the Welfare State* (The 17th Shaftesbury Lecture, The Chaseton Press of H. Williams & Son, Ltd., 1953) at p.10. See also Denning, ‘Influence’, *supra*, n.8 at p.120. See, further, Temple himself, *supra*, n.27 at p.17, where he refers to ‘the principle that economics are properly subject to a *non-economic criterion*’ (emphasis added). See also *ibid.* at p.78, where he observes thus:

‘[I]n the economic field, the reason why goods are produced is that men may satisfy their needs by consuming those goods. Production by its own natural law exists for consumption. If, then, a system comes into being in which production is regulated more by profit obtainable for the producer than by the needs of the consumer, that system is defying the natural Law or the Natural Order.’

See also *ibid.* at pp.98-99 and Temple, *The Hope of A New World*, *infra*, n.300 at p.51. And see, in this regard, Denning’s own treatment, *e.g.*, of exception clauses *vis-a-vis* consumers (in particular, the doctrine of fundamental breach as a rule of law which was, however, finally rejected by the House of Lords in *Photo Production Ltd. v. Securicor Transport Ltd.* [1980] A.C. 827; but Denning could take more than scant consolation in the enactment, in 1977, of the Unfair Contract Terms Act 1977 (see Lord Denning, ‘This is My Life’ [1986] *Denning L.J.* 17 at p.25); see also P.S. Atiyah, ‘Contract and Tort’ in Jowell & McAuslan, *supra*, n.1 at pp.40-45).

Temple with regard to the importance of respect for the individual, in particular the fact (in Temple's words) that '[t]he person is primary, not the society; the State exists for the citizen, not the citizen for the State'.³³

Further Issues and Conclusions

There is, as mentioned at the outset of this essay, insufficient space and time to deal in any detail with William Temple's philosophy. But it is important to at least state that his philosophy was very consistent with Denning's: both were based, as we have seen (albeit cursorily), on Christian principles and it is no wonder, therefore, that Denning constantly cited from Temple's work and philosophy.³⁴ Indeed, I would add that Temple's work and philosophy is very close (as I recently discovered) to the principles that I endorse: in particular, with respect to the pervasively real (yet seemingly intractable) problem of how one is to reconcile the universal with the particular.³⁵ This problem is best (and perhaps most simply) stated in the question as

33. See Denning, 'Influence', *supra*, n.8 at pp.116-117. See also generally Suggate, *supra*, n.6 at Ch.9, entitled 'Economics'.

34. And both Temple and Denning were prolific writers. Denning's many extrajudicial writings are in evidence throughout this essay. And as for Temple, Lowry (*supra*, n.6 at pp.49-50) had this to say:

'One of the phenomenal things about William Temple was his literary output. He published in his lifetime not less than 35 books and Heaven knows how many tracts, single sermons or lectures, and articles in learned and popular journals, to say nothing of the leaders and other pieces he wrote for the periodicals he edited.'

35. See e.g., W. Temple, *Mens Creatix* (MacMillan and Co. Ltd./St. Martin's Street, London, 1st Ed., 1917; Reprint, 1949) at pp.36, 318-320 and 364-366 and, by the same author, *Christus Veritas* (MacMillan & Co. Ltd., 1924) at pp.ix and 243-244; *Nature, Man and God* (MacMillan and Co. Ltd./St. Martin's Street, London, 1st Ed., 1934; Reprint, 1953) at pp.184-245, 296-297, 299-300, 306-307, 318 and 354-355; *Christian Faith and Life* (Student Christian Movement Press, 1931) at pp.24, 53 and 110; *The Hope of A New World* (The MacMillan Company, 1942; Reprint 1943) at p.121; 'Christmas: I' in Ch.XIII of Temple, *The Church Looks Forward* (The MacMillan Company, 1944) at pp.98-101; as well as 'My Point of View' in Temple, *Religious Experience*, *supra*, n.6, pp.97-106 especially at p.106. Reference may also be made to Suggate, *supra*, n.6 at pp.50-51. Temple adopted, following his mentor Edward Caird, a dialectical approach: see e.g., Suggate, *supra*, n.6 at pp.xiii, xiv-xv and 17; Lowry, *supra*, n.6 at pp.3, 21, 57-58, 88 and 97; Iremonger, *supra*, n.6 at 39; as well as Baker, *supra*, n.6 at p.4 (and on other significant influences see Suggate, *supra*, n.6 at Ch.2, entitled 'Temple's Education'). And see Temple himself in *Nature, Man and God*, *supra* at p.x, where he observed that '[s]uch method in thought as I possess, and especially such grasp of the principles of Dialectic as I have acquired, I believe myself to owe to my Master at Balliol, Edward Caird'; see also *ibid.* at pp.ix and 57 *et seq.* See also his 'Theology To-day' *Theology*, November 1939, pp.326-333 at p.328, where he referred to Caird as '[t]he teacher who most influenced me'; indeed, *Nature, Man and God*, *supra* was dedicated to the memory of Caird. And see Kent, *supra*, no.6 at pp.166-167, where he disagrees with Suggate, *supra*, n.6 (see, in particular, Ch.6), that Temple had, by the late 1930s, moved away from his Hegelian optimism into a neo-orthodox pessimism. This argument is not wholly persuasive, given a close perusal of Temple's later works. It is of course true that Temple did not give up as such, although he did appear to move away from a purely idealistic approach, but there is nothing in this that is inconsistent with Christianity, which does not

to how we can achieve an objective truth-theory that can universally guide all particular (and seemingly disparate and subjective) actions in particular circumstances. And one has only to state this to realise the enormity (and even apparent impossibility) of the task itself. Another significant (and closely related) point Temple deals with is the role of the Holy Spirit in the life of the individual.³⁶

Very briefly put, my own views on the issues raised in the preceding paragraph are as follows. Christianity enables the seemingly abstract and universal concept of God to be objectively real, thus integrating the universal and the particular. This occurs in at least two related ways. First, as Jesus Christ claimed to have come from God the Father, to be the Son of God, indeed God Himself, but in the form of man (in order to die for sinners and to be thereafter resurrected from the dead and to ascend to heaven), we find that, if this claim be established, there is the confluence (indeed, unity) of both the infinite and particular in one Person. In addition, the universal and the particular meet inasmuch as the divinity of God (in Jesus Christ) is

envisage a perfect world until the Second Coming of Jesus Christ. However, on a more general level, Temple's methodology must necessarily overlap with the next point, *viz.* the role of the Holy Spirit, for it is clear that the dialectic that Temple spoke about was not the purely Hegelian one but was, rather, one that operated within the spiritual sphere and, to that end, partook also of spiritual qualities. Above all, however, Temple found the ultimate reconciliation of the universal and particular (as I do, in the next Section) as being embodied in the very Person of Jesus Christ Himself. As Lowry pertinently points out (*supra*, n.6 at p.104), '[i]n his thinking of God, Temple is constantly and consistently Christo-centric. The Incarnation is for him no abstraction. It is the heart of faith, the key to truth' (and see Temple, *Christus Veritas*, *supra* at p.ix (reference to a 'Christo-centric metaphysics'). See also, in similar vein, Suggate, *supra*, n.6 at pp.57-58. And *cf.*, on the general issue of the tension between universals and particulars, Denning, *ibid.*, at p.31.

³⁶ See *e.g.*, Temple, *Mens Creatix*, *supra*, n.35 at pp.342-343 and, by the same author, *Christus Veritas*, *supra*, n.35 at p.155 and Ch.XV; *Nature, Man and God*, *supra*, n.35 at p.446; *Christian Faith and Life*, *supra*, n.35 at Ch.VI; as well as 'The Church Looks Forward: V' in Ch.XX of *The Church Looks Forward*, *supra*, n.35 at p.143 and 'The Christian View of the Right Relationship between Finance, Production and Consumption' in Ch.XXI of last mentioned work, at pp.163-164. Interestingly, Temple has observed (see *supra*, n.27 at p.67) that 'it seems scarcely too much to say that neither individualism nor collectivism is compatible with a truly Christian understanding of man or of life'; as will be suggested below, the way forward is really via reliance on the Holy Spirit. And on Temple's own reliance on divine guidance (which I interpret as the experience of the objective guidance via the Holy Spirit), see *e.g.*, Kent, *supra*, n.6 at pp.183-185 and Suggate, *supra*, n.6 at pp.48-49. Temple's emphasis was, ultimately, on *action*: see Lowry, *supra*, n.6 at pp.7-8 and 64; as well as (in particular) Temple, *supra*, n.27. Apparently, Temple was supposed to have written a book on the Holy Spirit after his retirement (see Baker, *supra*, n.6 at p.29). Unfortunately, his premature demise has deprived us of a more systematic work on the Person and work of the Holy Spirit. For interesting works on the Holy Spirit, see M.J. Erickson, *God in Three Persons — A Contemporary Interpretation of the Trinity* (Baker Books, 1995); R. Swinburne, *The Christian God* (Clarendon Press, 1994) at Ch.8; and Lewis, *infra*, n.37 especially at pp.142-143 and 152-153.

Reference may also be made to Temple, *The Hope of A New World*, *supra*, n.35 at pp.46-57. Finally, a good overview is to be found in Suggate, *supra*, n.6 at Ch.10, entitled 'Natural Law'; reference may also be made to *ibid.*, at Ch.15, entitled 'Love and Justice'.

also testable both through logic as well as historical argument. Constraints of space preclude a discussion in any real detail, but one can point to the arguments of C.S. Lewis with respect to the claims of Jesus³⁷ as well as to the arguments demonstrating why Jesus was in fact resurrected from the dead.³⁸ There is also the issue centring on the authenticity of the Bible, in particular, the New Testament and, here again, there are many works in support of such authenticity and which therefore bear close scrutiny.³⁹ Indeed, for extreme sceptics, even the existence of God is an issue which has to be dealt with at a threshold level. And this raises, in turn, the more general question as to whether or not God exists in the first instance. Quite apart from the cosmological argument that Aquinas endorsed, there are other arguments, such as those from design.⁴⁰ Other scientific arguments are also relevant, both with regard to the creation — evolution debate⁴¹ and (in a related vein) the issue of probabilities.⁴² It should also be mentioned that these various issues and arguments are themselves also linked across disciplines.⁴³

All the various arguments briefly referred to in the preceding paragraph are important because, if accepted, they link the universal with the particular, and Christianity becomes more than just an abstract concept that can be embraced solely through blind faith and superstition. It becomes testable; more than that, I believe that this was deliberate since human beings tend to rely more on their senses and

37. See C.S. Lewis, *Mere Christianity* (Macmillan Publishing Company, Rev. Ed., 1952; 1st Paperback Ed., 1960) at pp.55-56.

38. See e.g., J. McDowell, *Evidence That Demands A Verdict*, Vols I & II (Here's Life Publishers, 1972 & 1979); J.W. Montgomery, *History and Christianity* (Reprint: Intervarsity Press, 1971); Sir N. Anderson, *Jesus Christ: the witness of history* (Intervarsity Press, 1985); S. Greenleaf, *The Testimony of the Evangelists: the Gospels Examined by the Rules of Evidence Administered in Courts of Justice* (Reprint: Kregel Classics, 1995); Frank Morison, *Who Moved the Stone?* (Faber & Faber, 1958); R. Clifford, *Leading Lawyers' Case for the Resurrection* (Canadian Institute for Law, Theology & Public Policy, 1st Canadian Ed., 1996) and N.L. Geisler, *The Battle for the Resurrection* (Thomas Nelson Publishers, 1989). It is of no mean significance that the majority of the authors cited in the present note were or are lawyers.

39. See e.g. F.F. Bruce, *The New Testament Documents: Are They Reliable?* (Intervarsity Press, 5th Revised Ed., 1960).

40. That Aquinas also endorsed. See generally e.g., J.P. Moreland, *Scaling the Secular City — A Defense of Christianity* (Baker Book House, 1987) and J.P. Moreland & K. Nielsen, *Does God Exist? — The Debate between Theists & Atheists* (Prometheus Books, 1993). For a particularly accessible (yet nuanced) account (which comes down on the side of the existence of God), see R. Swinburne, *Is There A God?* (Oxford University Press, 1996).

41. See e.g., Phillip E. Johnson, *Darwin on Trial* (2nd Ed., Intervarsity Press, 1993).

42. See generally the works cited at *supra*, n.40.

43. See e.g., Phillip E. Johnson, *Reason in the Balance — The Case Against Naturalism in Science, Law and Education* (Intervarsity Press, 1995) and C.S. Lewis, *Miracles* (Fount/Harper Collins, 1947; reissue, 1974).

looked at from that point of view, the entry of God, in the person of Jesus, into human history was necessary, as was the Bible. The Holy Spirit is also part of the Godhead of the Trinity and provides the individualised guidance to each person *transcending* space and time: *truth* is thus imparted in an individualised fashion and we are no longer left with the frustration that stems from the absence of linkage between the universal and the particular which gives rise (in turn) to an inability to test an abstract belief and a contrasting resignation to (and even feeling of despair in) individual relativity.⁴⁴ Indeed, in *Jesus Himself*, as we have already seen, the universal and the particular are also united.

It should also be mentioned that the focus on the particular details of Christianity is necessary to give some idea as to how the broader problems of philosophy and legality can be solved and (correspondingly) why they cannot if arguments tend only towards the more abstract; in such a situation, the gap between the universal and the particular remains, or even widens. Indeed, I would, with respect, venture to suggest that the more modern natural law theories fail precisely because they have swung too far into the abstract sphere. I am not sure whether Professor Lon Fuller's concept of the internal morality of law⁴⁵ qualifies as a natural law theory, but, assuming that it does, its principal weakness lies in Fuller's inability to justify the source of his suggested eight principles of legality. Professor John Finnis's theory, on the other hand, clearly falls within the purview of modern natural law.⁴⁶ However, in attempting (in my view at least) to make his theory more general,⁴⁷ the learned author has made it extremely difficult to justify the theory; his argument of self-evidence, for example, appears to demand a blind leap of faith insofar as its purported justification is concerned.

44. See, in particular, (and with the exception of the work of Professor Roberto Mangabeira Unger) the work of the Critical Legal Scholars: *e.g.*, that of Duncan Kennedy (see *infra*, n.48 and, much more recently, *A Critique of Adjudication* (Harvard University Press, 1997).

45. See generally L.L. Fuller, *The Morality of Law* (Yale University Press, Revised Ed., 1969). *Cf.* R. Henle, 'Principles of Legality: Qualities of Law — Lon Fuller, St. Thomas Aquinas, St. Isidore of Seville' (1994) 39 *American Journal of Jurisprudence* 47.

46. See J. Finnis, *Natural Law and Natural Rights* (Clarendon Press, 1980). But *cf.*, by the same author, a later work entitled *Moral Absolutes — Tradition, Revision and Truth* (The Catholic University of America Press, 1991) as well as 'On the Practical Meaning of Secularism' (1998) 73 *Notre Dame Law Rev.* 491.

47. *Cf.*, *e.g.*, his concept of an 'Uncaused Cause' in the first work cited in the preceding note.

It should be mentioned that the approach advocated here also resolves what Professor Duncan Kennedy has termed the ‘fundamental contradiction’⁴⁸ — ‘that relations with others are both necessary to and incompatible with our freedom’.⁴⁹ The ‘fundamental contradiction’ is not only embodied within the intense (and seemingly insoluble) conflict between individual rights and utilitarian goals but is also not at all at variance with the view of human nature assumed by Christianity, *viz*, the doctrine of original sin.⁵⁰ It is suggested that the *agape* of Christ can transform the human heart through the individualised guidance of the Holy Spirit, although the exercise of freewill in an act of deliberate submission is also required. At that point, as the *agape* of Christ infuses the individual, individuality is realised through sacrificial giving to others, particularly the less fortunate members of the community — thus giving effect to both individual as well as communitarian interests simultaneously: a point exemplified by the situation described in Chapter 2 of the Book of Acts.⁵¹

All this, however, is relevant to a separate essay that focuses on the relevance of William Temple’s thought to Christianity and its justification as well as application in the modern day: indeed, in an age characterised by pluralism and an accompanying belief (under the rubric of liberalism at least) in the pursuit of subjective conceptions of the good, the objectivity laid down by Christianity is by no means an attractive one. A couple of related points might be made at this juncture. First, it is not possible to avoid objectivity in discourse as such, and this

48. See D. Kennedy, ‘The Structure of Blackstone’s Commentaries’ (1979) 28 *Buffalo Law Rev.* 205 at pp. 211-213. But Kennedy subsequently recanted the concept: see P. Gabel & D. Kennedy, ‘Roll Over Beethoven’ (1984) 36 *Stanford Law Rev.* 1 especially at pp. 15-16 and 24. *Quaere* whether Kennedy was expressing a tongue-in-cheek view here. And on Kennedy’s views with regard to Lord Denning, see D. Kennedy, ‘The Political Significance of the Structure of the Law School Curriculum’ (1983) 14 *Seton Hall Law Rev.* 1 at p.14. Kennedy’s views of both Blackstone and Denning are, with respect, misconceived simply because they omit the very crucial fact that both the latter were adopting a *Christian* perspective. Kennedy’s arguments would, of course, still hold if no objective basis for Christianity was forthcoming. It is submitted, however, that there *is* indeed such an objective basis and some of the relevant arguments were in fact canvassed extremely briefly above: see, in particular, the main text accompanying nn.37-43, *supra*.
49. See Kennedy, ‘The Structure of Blackstone’s Commentaries’, *supra*, n.48 at p.213.
50. Indeed Johnson is of the view that Kennedy’s concept of the ‘fundamental contradiction’ ‘sounds very much like original sin’: see P.E. Johnson, ‘Do You Sincerely Want To Be Radical?’ (1984) 36 *Stanford Law Rev.* 247 at p.285.
51. See Acts 2:42-47. See also William Temple, ‘The Church Looks Forward: IV’ in Ch.XIX of Temple, *The Church Looks Forward*, *supra*, n.35 at pp.138-139.

has been acknowledged even by liberals such as Dworkin.⁵² Secondly, the attempt to rely on procedure instead of substance⁵³ is, with respect, woefully inadequate since the law is all of a piece.⁵⁴ Is there a way out of this conundrum, or are we forced to resign ourselves to a relativistic nihilism?⁵⁵

It is suggested that there is indeed a way out, and it entails reliance on a coherent theory of natural law. Indeed the classical natural law approach, perhaps best embodied within the work of Aquinas,⁵⁶ comes (it is suggested) closest to what Lord Denning would probably endorse. Interestingly, William Temple, whilst endorsing the Aquinian approach, was of the view that it can only be effectively applied if modified.⁵⁷ Significantly, too, there has been a fair bit of writing in recent years that adopts an approach that is consistent (albeit not identical) with the approach mooted here.⁵⁸ However, as already mentioned, all this (and more) is a project for another

52. See R.M. Dworkin, 'Law, Philosophy and Interpretation' (1994) *Archiv Fur Rechts-und Sozialphilosophie* 463 especially at pp.474-475 and, by the same author, 'Objectivity and Truth: You'd Better Believe It' (1996) 25 *Philosophy & Public Affairs* 87.
53. The paradigm model, arguably at least, is to be found in the work of Professor John Rawls: see *A Theory of Justice* (Harvard University Press, 1971) and *Political Liberalism* (Columbia University Press, 1993).
54. And see, in the context of the law of contract, the incisive essay by Professor Atiyah 'Contract and Fair Exchange' (1985) 35 *University of Toronto L.J.* 1 (reprinted as Essay 11 in P.S. Atiyah, *Essays on Contract* (Clarendon Press, 1986).
55. And see *supra*, n.44.
56. See e.g., R.J. Henle, S.J., *St Thomas Aquinas — The Treatise on Law* (University of Notre Dame Press, 1993) and E. Gilson, *The Philosophy of St. Thomas Aquinas* (Translated by E. Bullough, 1929, and edited by G.A. Elrington — Dorset Press Reprint). Cf. A.J. Lisska, *Aquinas's Theory of Natural Law — An Analytic Reconstruction* (Clarendon Press, 1996) and John Finnis, *Aquinas — Moral, Political, and Legal Theory* (Oxford University Press, 1998).
57. See *Religious Experience*, *supra*, n.6, pp.229-236 (originally published in *Blackfriars*, a monthly review edited by the English Dominicans, March 1944); reference may also be made to Temple, 'Theology To-day', *supra*, n.35 at p.332. But cf. Lowry, *supra*, n.6 at pp.1-10 and 92.
58. See e.g., P.E. Johnson, *supra*, nn.41, 43 and 50, as well as, by the same author, 'Some Thoughts About Natural Law', (1987) 75 *California Law Rev.* 217; F.S. Alexander, 'Beyond Positivism: A Theological Perspective' in J. Witte Jr. & F.S. Alexander (Eds.), *The Weightier Matters of the Law: Essays on Law and Religion — A Tribute to Harold J. Berman* (Scholars Press, 1988) especially at pp.277-284; E.J. Murphy, 'The Sign of the Cross and Jurisprudence' (1994) 69 *Notre Dame Law Rev.* 1285; J.E. Maire, 'The Possibility of A Christian Jurisprudence' (1995) 40 *American Journal of Jurisprudence* 101; R.F. Cochran, 'Christian Perspectives on Law and Legal Scholarship' (1997) 47 *Journal of Legal Education* 1; G.V. Bradley, 'Catholic Faith and Legal Scholarship' (1997) 47 *Journal of Legal Education* 13; D.S. Caudill, 'A Calvinist Perspective on Faith in Legal Scholarship' (1997) 47 *Journal of Legal Education* 19; D.M. Smolin, 'A House Divided? Anabaptist and Lutheran Perspectives on the Sword' (1997) 47 *Journal of Legal Education* 28; and J.T. Noonan, Jr., 'Posner's Problematics' (1998) 111 *Harvard Law Rev.* 1768. The remarkable number of recent writings is not only encouraging but also significant.

essay. It is interesting, however, to note that to the extent that there is a close connection (as I have sought to demonstrate) between the thought and work of Lord Denning and William Temple, any such further essay (in particular, one which focuses on Temple's own work) will inevitably impact on (and, in turn, be impacted on by) Lord Denning's own thought and work.

William Temple dealt, in fact, with a great many pertinent issues of broad social import. Unfortunately, as already mentioned, constraints of space preclude further discussion. However, by way of an anticipation of a possible future essay on Temple's own work, it might be briefly mentioned that Temple did refer, from time to time, to the institution of the *law*, as we have already (again, briefly) seen above. Interestingly, and somewhat commonsensically, he did not view adjudication as capable of achieving even close to perfect results, at least in the eyes of the parties (in particular, one might guess, the losing party) themselves: 'Here as elsewhere we have to do the best we can, using as our criterion of "the best" the absolute standard of the Christian ethic. But to determine this "best" is a work of reason.'⁵⁹ He then proceeds to observe, consistent with views we have already seen above,⁶⁰ that '[i]n practice this reliance upon reason works out as a positive desire to hear the best that can be said for the other side'.⁶¹ He also argues that Christian charity or love must transcend justice and human love, and that 'Christian charity manifests itself in the temporal order as a supernatural discernment of, and adhesion to, *justice* in relation to the equilibrium of power'.⁶² Somewhat curiously, perhaps, he then proceeds to observe that '[t]he Christian understanding of history has much closer affinities with the Marxist view, in which all assertions about the nature of man are inseparably bound up with the dynamics of his historical existence, and with other dynamic views of history, which understand the world in terms of conflict, decision and fate, and regard history as belonging to the essence of existence, than with the

59. See W. Temple, 'Christian Democracy' in Temple, *Religious Experience*, *supra*, n.6, pp.136-152 at p.151.

60. See *supra*, n.28.

61. See *ibid.*

62. See W. Temple, 'What Christians Stand For in the Secular World' in Temple, *Religious Experience*, *supra*, n.6, pp.243-255 at p.253 (emphasis in the original text).

interpretations of Christianity in terms of idealistic thought which were lately prevalent'.⁶³

Temple also dealt with (significantly, it is submitted, if nothing else because of the subject-matter dealt with) rights to property, the doctrine of the Just Price and the Prohibition of Usury,⁶⁴ as well as the need to preserve order as well as the security of person and property.⁶⁵ Temple has also observed thus:

'A judge who, sitting in a court of law, pronounces an arbitrary judgment, is abusing his officer. The function of the judge is to effect the complete connexion between the general law and the individual case brought before him, and there must be nothing arbitrary about it.'⁶⁶

It is suggested that such 'complete connexion' can only be achieved via a natural law approach (as mooted in an earlier part of this essay). This interpretation is apparently supported by Temple himself, as follows:

'In practice, the Natural Order or Natural Law is discovered partly by observing the generally accepted standards of judgement and partly by consideration of the proper functions of whatever is the subject of enquiry. This is a task for human reason; but so far as reason enables us to reach the truth about anything in its own essence and in its relationships, it enables us to see it as it is in the mind of God. Thus it is a Natural, not a Supernatural, Order with which we are concerned; but as God is the Creator, this Natural Order is His order and its law is His law.'⁶⁷

63. See *ibid.*, at p.254; cf. Denning, *supra*, n.32 at p.10, where he did not wholly reject Marxian theory, and where he observed thus (emphasis added):

Many people would deny that this has any Christian backing. They would say that derived from the atheist Karl Marx, who held that in an industrial community, the only alternative to private capitalism was state ownership of land and capital, and he advocated a revolt of the lower classes to bring this about. This has not happened in England; we have had a social revolution, but it has all happened peacefully, and I believe that at bottom it is because we are still a Christian country, and that a certain part of Marxist teaching (though by no means all) is quite in accord with Christian ethics.'

64. See Temple, *supra*, n.27 at pp.37-49.

65. See *ibid.*, at pp.54 and 82. See also Temple, *Mens Creatix*, *supra*, n.35 at pp.217-218 and 225.

66. See W. Temple, 'Christianity as an Interpretation of History' in Temple, *Religious Experience*, *supra*, n.6 at p.260 (this was in fact the first William Ainslie Memorial Lecture delivered at St. Martin's-in-the-Field on 'D' Day, 6 June 1944).

67. See *supra*, n.27 at pp.77-78. Reference may also be made to Temple, *The Hope of A New World*, *supra*, n.35 at pp.46-57. Finally, a good overview is to be found in Suggate, *supra*, n.6 at Ch.10, entitled 'Natural law'; reference may also be made to *ibid.*, at Ch.15, entitled 'Love and Justice'.