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## RESPONSES BY PARTICIPANTS IN THE COLLOQUIUM TO THE PRECEDING PRESENTATIONS

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Following the Colloquium, all who attended it were invited to put their thoughts and comments in writing and to submit them for publication in this online format. Respondents were asked to keep their comments to a maximum of 1,500 words. Their responses are shown below.

### *Comments from David Rouch, Partner at Freshfields, Bruckhaus, Deringer*

I thought the three presentations framed the issues well in the time available. The conversation that followed may not have grappled as much as it might with the substance of what had been said so much as its practical application, but I enjoyed some excellent contributions. James Orr's comment (with which I agreed but could not have put in quite such erudite terms!) came a little late to focus us back on the substance and, specifically, the Christian element (which essentially seemed to me to be concentrated in Nigel's second two 'contrasts').

I suppose I came away wondering to what extent Christian realism is really more descriptive than normative. In other words, is it not just describing what wise decision-making looks like when a person well formed by the Christian story and community engages meaningfully with practical reality (i.e. where they actually have to take decisions). Or, moving towards something more normative, does it perhaps simply attempt to provide a 'post hoc' explanation for it?

In that context, I was struck by Simon Polinder's discussion of humility and irony. The first in particular is a virtue, so something that is formed. That led me to wonder where the capacity to make wise decisions, formed by engagement with the Christian story, tradition and community fits in. Nigel seemed to be more focused on a theoretical framework for practical action.

*Comments by Professor Rosa Lastra, Queen Mary University of London, UK*

The abandonment of a common belief in a natural law rooted in the universal order created by God is at the root of the growing disconnection in today's society between law and religion. (Tom Holland argues in 'Dominion' that the Christian faith is at the root of our civilization). This abandonment, this decoupling or de-anchoring, finds its intellectual origins in the work of Hugo Grotius, the Dutch jurist, scholar and diplomat, considered by many as 'the father of international law'. Though Grotius himself was deeply Christian, he wrote in *De Iure Belli ac Pacis* (1625) '...that there is a common law among nations, which is valid alike for war and in peace... (Prolegomena, 28) even if we should concede...that there is no God, or that the affairs of men are of no concern to Him (Prolegomena, 11)'.<sup>1</sup> It is in this passage that the de-anchoring commenced and that we started moving towards a system of positive law.

Hans Kelsen is the key exponent of legal positivism. In 1934 he published his 'Pure Theory of Law' (the influence of Kant is visible in the title). Kelsen places the Constitution at the top of the legal pyramid of norms, with lower norms deriving their validity from higher norms. The Constitution (the Grundnorm or Basic Law) supplants the role of the ultimate Divine law (which is immutable). But the problem with Kelsen's theory is that there no such thing as 'objective positive law'. All positive law is potentially subject to political manipulation.

With the erosion over time in our society of Christian ethical foundations (providing a common platform of shared values or norm), when positive law supplants natural law, and subjectivity supplants objectivity, there are no longer universally held permanent truths. Everything is relative.

Both Kant (1724-1804)<sup>2</sup> and Hegel (1770-1831) had constructed an ideal world, a departure from Christian realism. The absolute idealism espoused by Hegel

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<sup>1</sup> For a short explanation see <https://www.britannica.com/biography/Hugo-Grotius>

<sup>2</sup> Kant's 'Critique of Pure Reason' (1781) helped bring about the development of 'German idealism'.

justified an excessive belief in the power of the State. Totalitarian regimes are the ultimate example of the perils of an unanchored positive law, in particular Nazism. Under the Nazi regime, what was 'law' was enforceable positive law, a law that became contrary to human dignity. Legal positivism, with the belief that 'law is law', explained the lack of action by German judges during the Nazi regime against arbitrary and inhuman law. Positive law derives its validity from being enacted by an authority. The all too visible excesses of positive law led to the dehumanization of Nazi society.

Following the horrors of World War II, there has been a revival of natural law,<sup>3</sup> the belief that every individual possesses rights, that there are objective standards of what is good and evil that every person can understand because they are inherent to the human condition regardless of age, race, religion, place and time. This inviolable dignity is a permanent part of what it means to be human. But what is the anchor? Is it divine wisdom or is it human reason devoid of transcendental considerations?

Hersch Lauterpacht, who became a key figure in the enunciation of the international human rights regime with his seminal writings, 'The Law of Nations, the Law of Nature and the Rights of Man'(1942)<sup>4</sup> and 'An international Bill of the Rights of Man' (1945), explains the mutuality of influence between natural law and the inherent rights and between international law and the law of nature. In his 1942 article, he talks about how the 'menacing shape of the unbridled sovereignty of the State' and 'pagan absolutism as perfected by the German State threatened to engulf man, in countries opposed to that ideology the tradition of the law of nature became once more a vital element in the affirmation of the sanctity of the individual and in the craving to find a basis of the law more enduring than the enforceable will of the sovereign' (1942, p. 21).

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<sup>3</sup> <https://www.cambridge.org/core/books/abs/cambridge-companion-to-legal-positivism/german-tradition-of-legal-positivism/78E1D61A71201FF8A1CCE74F289F3C35>

<sup>4</sup> <https://www.jstor.org/stable/743001>

The Nuremberg trials by the International Military Tribunal indicted Nazi officials and organizations for crimes against humanity (in addition to crimes against peace and war crimes) on the basis of political, racial or religious grounds. The Tribunal confirmed that the dignity of human beings is objective and universal. Yet, the revival of natural law has been to some extent a limited effort. The Grundgesetz (the Basic Law), the German Constitution of 1949, forbids the elimination by democratic means of democracy.<sup>5</sup> This is, of course, a very welcome provision in the light of history. But Constitutions (in Germany and elsewhere) are the supreme norm in a system of positive law. And the question still arises: can we rely upon a regime that is not anchored in natural law?<sup>6</sup>

Professor Nigel Biggar refers in his presentation to ‘natural moral law’ and to the Hobbesian conception of an amoral natural reality in stark contrast with the Christian tradition that anchors natural law in the universal order created by God. St Thomas Aquinas (1225-1274) developed ‘the perennial jurisprudence of the natural law’,<sup>7</sup> building upon the Aristotelian tradition and the work of St Augustine. St Thomas Aquinas defined natural law as participation in eternal law,<sup>8</sup> and considered the law of nature as superior to the law of the state. This Christian tradition influenced the work of the School of Salamanca – a group of 16th century Spanish jurists, theologians, philosophers – that constitutes the cradle of international law (predating Grotius). The new *Ius Gentium*<sup>9</sup> (international law) was articulated in particular by Francisco de Vitoria, who started teaching in Salamanca in 1526 and held the ‘Cátedra de prima’, the most important chair of

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<sup>5</sup> Article 21 (1) of the Grundgesetz (Basic Law) states: ‘Parties that by reason of their aims or the behaviour of their adherents, seek to undermine or abolish the free democratic order to endanger the existence of the Federal Republic of Germany shall be unconstitutional’.

<sup>6</sup> The Treaty of the European Union (TEU) defines the constitutional principles of the Union in Article 5: conferral proportionality and subsidiarity. Subsidiarity – advocated by Jacques Delors – is anchored in the social doctrine of the Catholic Church, which places emphasis on necessary limits to the State’s intervention, as the individual, the family and society are prior to the State and the State exists in order to protect their rights and not stifle them.

<sup>7</sup> Stephen Hall, “The Persistent Spectre” (EJIL, 2001) <http://www.ejil.org/pdfs/12/2/1518.pdf> p. 270.

<sup>8</sup> Summa Theologica 1a, 2ae, qu. 94, art.2. Natural law is ‘the participation in the eternal law of the mind of rational creature’.

<sup>9</sup> The original *Ius Gentium* originated in Roman law and regulated relationships between Roman citizens and non-citizens.

theology at the University. Confronted with the ‘discovery’ of America by Christopher Columbus, Francisco de Vitoria and the School of Salamanca created a body of doctrine on natural and international law<sup>10</sup> (predating Grotius), setting the legal and moral foundations that could legitimise the Spanish intervention in the newfound territories and that gave rights to its inhabitants: the ‘Indians’. These foundations influenced the so-called ‘Leyes de Indias’.<sup>11</sup> Natural law was key to the development of international law. The School of Salamanca is also at the origins of human rights law.<sup>12</sup>

The influence of the Christian tradition is also evident in the 1948 Universal Declaration of Human Rights given the instrumental role played by Jacques Maritain, Charles Malik and other Christian thinkers.

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<sup>10</sup> They also created a body of doctrine in economic law. The role of the School of Salamanca in the development of early monetary theory has been documented in the work of Marjorie Grice-Hutchinson. While at the LSE, Marjorie came under the influence of Friedrich von Hayek, who urged her to study the work of these 16<sup>th</sup> century scholars. Her monograph, *School of Salamanca. Reading in Spanish Monetary Theory 1544-1605*, was published by Clarendon Press, Oxford, 1952.

<sup>11</sup> Francisco de Vitoria, *De potestate civili* (Teófilo Urdánoz, Madrid, 1960). Other distinguished members of the School of Salamanca were Domingo de Soto, Fernando Vázquez de Menchaca, Diego de Covarrubias, Luis de Molina, Juan Ginés de Sepúlveda and Francisco Suárez.

<sup>12</sup> Michael Freeman, ‘Beyond Capitalism and Socialism’, in *Human Rights and Capitalism: A Multidisciplinary Perspective on Globalisation*, edited by Janet Dine and Andrew Fagan (Edward Elgar Publishing, 2006) persuasively argues that the 17<sup>th</sup> century concept of natural rights developed by Grotius, Hobbes and Locke derived from late medieval controversies and from the Spanish thinkers of the sixteenth century particular from the so-called ‘School of Salamanca’. According to their understanding, ‘natural rights were what were commanded by natural law’. Domingo de Soto and Francisco de Vitoria in particular developed the association between right and freedom. Freeman uses this revisionist account to show that the concept of natural rights is anchored in the Christian tradition of respect for the dignity of human beings and can be traced back to St Augustine. He writes (p. 3): ‘The concept of human rights derives primarily from international law, which in turn took it from the philosophy of natural law’.

*Comments by The Rt. Reverend Professor Peter Selby, King's College  
London, UK*

I enjoyed the colloquium and was very grateful to be included among the participants. Nigel Biggar's presentation was (unsurprisingly) learned and as a structured argument very easy to follow. The two respondents did more than respond, adding insights of their own: I found Dr Polinder's journey into irony particularly thought-provoking.

As reflections have been requested what follow are just a few thoughts following the event. They don't pretend to evaluate what was described as the 'Christian Realist' position or to critique the presentations, and probably owe too much to convictions, political and theological (our genial host might call them prejudices) that I hold anyway, quite part from what I learned at the colloquium.

I am, for instance, well accustomed to the accusation that left-wing policies take insufficient account of original sin, and our speakers wanted us to take original sin seriously as a reason for 'realism' about political and economic possibilities.

Biggar had a very suggestive way of describing Christian realism by contrasting it with four other positions, with the clear implication that it is those contrasted positions that consistently fail to take sin into account adequately.

As I think about the event as a whole and indeed the decision to hold it, I'm left wondering whether it's unfair as a summary of the conclusion at which we are meant to arrive to say that we are meant to conclude that it is Christian to be 'realistic' about the possibilities of the triumph of virtue in political and economic affairs. We should not predicate policies on the assumption that human beings will always choose the good if they are offered the opportunity to do so.

On the face of it that's not a very striking point to make. We all need an awareness of 'original sin', and indeed of actual sin, not least our own, as well as of the complexity of our problems and the danger of oversimplified solutions.

But it isn't possible just to receive this as a sensible precautionary thought. It has also to be placed in the context in which this argument is offered for our attention. Put succinctly, are we being invited to accept what I certainly have been told rather often, that the problem with socialism is that it fails to take account of these important concerns about human sin, whereas reliance on the free market is the best way of ensuring that we don't fall victim to the naïveté that idealistic socialists represent, or (worse) the totalitarian instincts which will lead socialists to seek to enact their conviction by law or by force.

Opposed to this danger is the conservative belief in the market and Novak's *The Spirit of Democratic Capitalism*. The picture is of an interplay of forces which serves to prevent a one-sided idealistic/totalitarian society, and it is that freedom of interchange and exchange that protects us from the triumph of evil and enables the best kind of prosperity.

If that niggling suspicion of context and agenda of which I have found it difficult to rid myself since the colloquium has anything of truth in it, then I need to say two things: first, I am not here alleging some nasty agenda on the part of our host, or the speakers, to railroad us into their ideological world; I would be cautioning, only, that none of us is immune from the ideas that our context in western capitalism makes second nature to us – it is after all behaviour that encourages attitudes, not the other way round – and constitutes a box which we find it very hard to think outside. And secondly, there are enough reasons to doubt the capacity of free market capitalism to remedy the terrifying prospects we face (and not a little reason to see some of the prospects as having arisen from that context in the first place) for us to face the uncomfortable question: Is a failure to take sin seriously enough a disease only of idealists (not to say the 'left'), or might it be the case that free marketeers are just as vulnerable? If it is the case that, in the words of the title to Al McFadyen's book on the topic, we are all *Bound to Sin*, could it be that recommending Christian realism might not be quite realistic enough?

*Comments by Dr Peter Warburton, Heriot Watt Business School, UK*

I found the Colloquium very stimulating and wish to express my sincere thanks to Lord Griffiths for his generous invitation and to the three speakers for their respective contributions. As an applied economist with no formal training in theology, I became aware, very early in the proceedings, of vast gaps in my reading and understanding surrounding the relevance of Christian Realism. However, I will offer some brief remarks in response to the presentations and the discussion that followed.

Christian Realism locates our contemporary situation, with all its challenges and contradictions, in five contexts.

First, the transcendental context: because we fail, both individually and collectively, to grasp the divine potential for beneficial transformation of any human situation, we are limited in our ambitions. Simultaneously, because we lack divine perspective, we fail to grasp the potential for ill-conceived political interventions to have perverse, unintended and long-lasting consequences. I suggest that a common thread running through a variety of contemporary policy blunders is a lack of systems thinking: an inability, and sometimes an unwillingness, to consider the wider and longer-term effects of policy decisions.

I am particularly familiar with the interacting forces of financial system leverage and financial innovation on financial stability. Leverage operates on the financial system in a non-linear fashion: increased leverage can facilitate economic development and prosperity up to a point, but beyond this additional leverage is commonly associated with crisis and depression. Financial innovations, such as structured products designed to mitigate risk for fund managers, can facilitate entrepreneurial activity in the short-run but can also act to de-stabilise the financial system in a crisis.

Another example is the granting of regulatory approval of a common weedkiller. Initially, the impact was to increase crop yields, boost annual food production and



improve national nutrition. After 30 or 40 years of continuous and ubiquitous application to the soil, the active chemical in the weedkiller is found to have damaging effects on wildlife and human health. Other examples can be found in the context of the impacts of smartphone access on teenagers and the over-prescription of drugs such as anti-depressants and opioids.

Second, the redemptive context, which encapsulates the reality of human brokenness and failure, and the pathway via repentance into forgiveness and restoration: some restorations – whether of personal or national reputations – are swift; some take a human lifetime; some failures of governance have such severe and widespread consequences that centuries are required.

I contend that there has been a significant drift towards legalism in public life. The court of public opinion, fuelled by press and social media, passes judgement on individuals daily. Sometimes, to elevate them to virtual sainthood, but more often to berate them and to seek to remove them from office. Candidates for a position of political or corporate seniority must suffer an unforgiving and forensic examination of their private lives. This lack of grace and flagrant hypocrisy deprives us of many applicants of good character, yet with chequered pasts. Perversely, this legalistic trend has propelled into high office some with a cynical disdain for moral virtue and a stubborn unwillingness to admit their mistakes or take responsibility for their actions.

I was struck by Dr Polinder's statement that 'Christian realism can contribute to a sense of humility which makes a pluralistic society possible and makes room for politics.' When the virtues of humility (a restraining of one's own power to allow space for others) and meekness (strength and righteousness under patient control) come to be considered instead as character flaws, then politics descends into polarisation, bickering and stalemate.

Third, the historical context: our forebears have left a legacy of practical wisdom in the conduct of human affairs that we disregard at our peril. The Christian

church, in all its longstanding traditions, is a repository of great wisdom in relation to matters of personal behaviour, communal prosperity and governance. Professor Maspero emphasised the theological contribution of the Church Fathers, naming Augustine and Ambrose, urging us to ‘simultaneously keep in mind original sin and the call to relationship with God’, to be realistic regarding both evil and good; not to become too pessimistic (Butterfield) about the tragic aspect of the human condition and its expression as national self-righteousness and aggrandisement in foreign policy; nor too optimistic (Preston) about the persistence of human moral and rational capabilities, under God.

While the wisdom and insight gained by one generation can be lost by subsequent generations, what has been written down can also be recovered by still later generations. The antiquity of the Church – my local parish church recently celebrated its 800th anniversary – brings with it a wealth of experience of living in prosperity and famine, in peacetime and in war, through political stability and turmoil, through natural disasters such as floods, earthquakes and pandemics. The testimony of the Church is that God has sustained human societies through the toughest of circumstances. History documents the mercifully rare instances of social and economic calamity and ruin; historians have analysed the precursors to these events, to serve as a warning to future generations.

Today’s political leaders face challenges and obstacles that, almost always, have presented themselves in analogous forms in the past. They should acquaint themselves with historical precedents and of the successful strategies that have been used to confront similar challenges. They should use the warnings of history as a guard rail, to avoid the repetition of error.

Fourth, the temporal context: the importance of the present moment. The gospel of St John contains 80 references to ‘now’. There is a time that is past, that we call history; a time to come, that we call the future, but decisions must be made in the ‘here and now’. Jesus Christ was the master of the moment: he knew the significance of every place he visited, he knew the minds of those around him and

he knew what was required of him in every situation. He waited for the fullness of time, and he acted decisively. He understood the costs of acting prematurely, and in haste, and the costs of procrastination.

The business of government can so easily be consumed by process and protocol, such that decisions are delayed interminably. Justice is delayed. Compensation is delayed. Health appointments and operations are delayed. The maintenance of buildings is delayed. Planning decisions are delayed. Delays impose arbitrary costs, which usually fall most heavily on those least able to bear them. In the words of C. Northcote Parkinson, 'Delay is the deadliest form of denial.' Political leaders are called to act urgently and effectively in pursuit of justice and peace.

Fifth, and perhaps more controversially, the prophetic context: the awareness that God is working out his purposes on the earth, 'your kingdom come, your will be done, on earth as it is in heaven.' All who believe in Jesus Christ partake in that heavenly vision, perceiving however dimly and partially something of the glory to be revealed when Christ returns.

To borrow Professor Biggar's Preston quote, 'Christian Realism is not a gloomy outlook, but a hopeful one. It is not disposed to be satisfied with things as they are; the Christian gospel has a radical challenge accompanying its good news.' The call in Matthew 6:33 to 'seek first his kingdom and his righteousness' embodies the concept of a divine ordering of things, the way that things ought to be. The Christian in public life is charged with the task of re-ordering human affairs to bring them into closer alignment with the values of the kingdom of God and is empowered by the Holy Spirit to do so, while understanding that all such efforts will meet opposition. Political leaders are called to be visionaries, ushering in those peaceful and just social and economic structures that mimic the Righteous Kingdom.

Aspects of a vision for righteous governance: Christian realism in action

1. Respect for the Commons – the shared social and economic capital accumulated over long periods of time
2. Respect for other members of the legislature, regardless of political affiliation and personal attributes
3. Readiness to forgive one another
4. Readiness to apologise to one another
5. Willingness to work together towards a common goal – to create peaceful and just social and economic structures
6. Willingness to reach a compromise when objectives and opinions conflict, recognising that compromises are temporal but essential
7. Acknowledgement of, and adherence to, the independence of the judiciary from the political process
8. Commitment to free and fair elections, acceptance of the verified results of elections and full co-operation in the peaceful transition of power
9. Honesty with the public when confronting periods of difficulty and needful sacrifice