


ARTICLE

Special Issue — Law and Political Imagination: The Perspective of Paul Kahn

God and Paul Kahn (A Note on Political Theology)

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(Received 18 May 2023; accepted 18 May 2023)

Abstract

Paul Kahn has offered a fascinating account of the role of political theology in the field of law, through an exploration of some core concepts of the discipline. This article explores the nature of Kahn's undertaking through a comparison with Carl Schmitt. The conclusion is that, rather than actual theology, Kahn's "political theology" is a valuable form of legal anthropology anchored in an exploration of our legal culture.

Keywords: Political Theology; Carl Schmitt; Faith; Sacrifice; law; anthropology

A. Introduction

Since Carl Schmitt, political theology has become a pursuit for (at least some) lawyers. The expression, however, means different things to different people. It does not bear the same signification when it is used by philosophers, theologians, or lawyers. In the German tradition of the philosophy of history, political theology is either summoned (Karl Löwith) or dismissed (Hans Blumenberg) in a larger discussion of the meaning and forms of secularization. Some theologians, such as Erik Peterson, use the term as a key to understanding the relation between the Church, its gospel, and the transformation of societies and politics since the collapse of the Roman Empire. In law, because of the Schmittian imprint, "political theology" is more often than not used as a set of concepts with a disruptive quality. The polemical nature of Schmitt's work is here at play. He brings in concepts that do not normally operate in the field of public law, with a view to showing that they are in fact central, and likely to bring down the dogmatic system previously taken as dominant (liberal public law, normativism). It is remarkable that the same pursuit has been undertaken by Paul Kahn. For obvious reasons, I will sometimes bring together Paul Kahn and Carl Schmitt in my analysis. But I don't put them on an equal footing. While Schmitt is a master of intellectual bad faith, Kahn offers a much more attractive ethics of legal practice and legal thinking. Yet, Kahn has identified a kernel of truth in Schmitt's work. On that basis, he has elaborated his own version of political theology. What does he mean by that? My purpose in what follows is rather limited. This piece consists in the main of a negative interpretation of Paul Kahn's political theology. It is negative in the sense that it is not so much concerned with what his political theology *is* than a statement about what it *is not*.

As a preface to this discussion, I would submit that, in the wake of Schmitt, political theology boils down to three core theses: The *secularization thesis*, the *isomorphism thesis*, and the "*reciprocal mimetism*" thesis. First, the *secularization thesis* affirms that the concepts of the

modern theory of the state are of theological descent: “All significant concepts of the modern theory of the state are secularized theological concepts not only because of their historical development—in which they were transferred from theology to the theory of the state, whereby, for example, the omnipotent God became the omnipotent lawgiver—but also because of their systematic structure, the recognition of which is necessary for a sociological consideration of these concepts.”¹ What matters to me here is the second branch of that statement: The core concepts of state theory have a specific *systematic structure*. This brings me to the second thesis. Second, the *isomorphism thesis* states that political structures and metaphysical worldviews have comparable structures. What is held as self-evident in one field is replicated in the other. As far as institutional structures and régimes are concerned, for instance, politics replicates metaphysics. I will refer to this second thesis in my discussion of Kahn’s jurisprudence. A third thesis is, I believe, implicit in many discussions of political theology. I will call it the *reciprocal mimetism thesis*. More on this later.

Let me now turn to my main point. In a nutshell, my take is that Kahn’s political theology is *not theology at all*. It is a philosophical anthropology coupled with a set of metaphysical positions regarding the relationship between law and politics. Political theology is based on core anthropological concepts articulating human individual existence and human politics (life and death, sacrifice, and violence). This philosophical anthropology is a way for Kahn to make a place for the core issues of human existence in the spheres of politics and the law. It also brings into view a very specific understanding of law based on sovereignty, exception and decisionism.

B. Not Theology?

Schmitt and Kahn share a belief in the utility of political theology. If political theology is of any worth, it is insofar as it lends greater intelligibility—greater meaning to modern concepts. This is the dimension of “hidden meaning” that political theology is susceptible to bring to light.² Speaking of sovereignty, Kahn says, for instance, in his own *Political Theology* that it is “incomprehensible if stripped of its theological origins.”³

I’m not a philosopher and even less a theologian. Yet as a lawyer I think it necessary to understand the meaning of political theology. It has an impact on law understood as a cultural phenomenon. The effect on public law thinking of Schmitt’s main statements in his *Political Theology* since it first appeared are sufficient proof of this. As I said, I would take the view that *political theology is not theology at all*. This is of course very abrupt. Political theology is a project within which there are some religious references and some theology involved. Yet, as a whole, what lurks behind the theological allusions is traditional, pre-modern, metaphysics.

Let us begin with Schmitt. There was very little theology in his 1922 *Political Theology*. Rather, it contained a set of metaphysical positions about history, institutions, and the law, as well as an insistence on the role of ideology. In his 1969 *Political Theology*, Schmitt in fact concedes that his first essay had “nothing to do with a theological dogma, as it [raised] a problem regarding the theory of legal science and history of ideas: that of the identity of structure between the concepts of legal argumentation and knowledge and those of theology.”⁴ This is what I have called at the outset the “isomorphism thesis.” After a flurry of references in the prefaces (notably the second one) and the first pages, theology as such becomes less conspicuous. Indeed, the catholic theologian Ernst Feil deplored that Schmitt’s 1922 *Political Theology* contained only “rapid, non-systematic”

¹CARL SCHMITT, THÉOLOGIE POLITIQUE [POLITICAL THEOLOGY] (1988) (Fr.) [hereinafter SPT I (for the first essay of 1922) and SPT II (for the second essay of 1969)].

²HANS BLUMENBERG, LA LÉGITIMITÉ DES TEMPS MODERNES [THE LEGITIMACY OF THE MODERN AGE] 24 (1999) (Fr.) (citing Gadamer).

³PAUL W. KAHN, POLITICAL THEOLOGY: FOUR NEW CHAPTERS ON THE CONCEPT OF SOVEREIGNTY 140 (2012) [hereinafter POLITICAL THEOLOGY].

⁴SPT II, *supra* note 1, at 92.

assertions about theology.⁵ The 1922 *Political Theology* consists in a defense of decisionism, a theory of sovereignty, and a reappraisal of legal theory. What Schmitt achieves is in fact a metaphysics of law. Even more exactly, it is a legal ontology that brings together the existence of law and the nature of politics as a phenomenon.⁶

This is not to say, of course, that theology has been entirely jettisoned or even that it has been silenced, in keeping with Gentile's injunction ("*Silete Theologi in munere alieno*").⁷ It operates in the background. This is reminiscent of something Heidegger had said at the beginning of one of his lectures: "[W]e will honor theology by remaining silent about it."⁸ This silence about what matters most is in fact a tribute to the way in which, according to Schmitt, the divine operates in human politics: "Decision" is an irrational (but fundamentally correct) apprehension of what political existence requires. It is to politics what miracles are to religion. They operate beyond the realm of causes and effects. Thus, they are not properly so to speak knowable, except by their outcome and by their name (their being "miracles").

In fact, one could surmise that the second *Political Theology* (1969) has been written to make good the relative absence of theology in the first *Political Theology*. Yet Schmitt's posture is defensive. Schmitt has theological views of his own but more often than not, he is an adversary of the theologians.⁹ He is faced here with career theologians who either take the view that political theology has come to an end, or that Schmitt's own brand lends itself to serious objections. They point to the fact that the theological dimension in Schmitt's work may be shallow and only for show. In Schmitt's phenomenology of religion, however, theology can be present by being absent. For instance, he strikes back by blaming the theologian Topitsch for "detheologizing [sic]" and "reaching a result that eludes the burning question of political theology" while carefully refraining from spelling it out himself.¹⁰

What matters most to Schmitt is to come up with a defense of decisionism. While alluding to the theological thought of the French counter-revolutionary thinkers Joseph De Maistre and Louis De Bonald, for instance, Schmitt quickly enlists them as forefathers of decisionism: "[T]he notion of decision comes to the fore of their thought."¹¹ Schmitt's skill at tweaking the ideas of others to make them sound as his own operates here at full throttle. Traditionalist and anti-modern thought matters only insofar as it (allegedly) relies on decisionism and, ultimately, on a defense of dictatorship. The counter-revolutionaries' defense of traditional political legitimacy is thus absorbed into a decidedly modern philosophy of exception and political decision. The theological dimension is ultimately salvaged when Schmitt points out that the call for a dictatorship was, in their view, justified by the fact that the time had come for an "ultimate struggle" against "radical evil."¹²

⁵This is quoted by Schmitt himself. *Id.* at 107.

⁶By "ontology," I mean here a philosophical investigation into modes of being.

⁷A phrase pronounced by the humanist lawyer Alberico Gentili (1552-1608) and cited by CARL SCHMITT, *LE NOMOS DE LA TERRE DANS LE DROIT DES GENS DU JUS PUBLICUM EUROPAEUM* (Lilyane Deroche-Gurcel trans., Peter Haggenmacher rev., 2008) (Fr.) 160 (citing "Theologians, keep quiet outside the Church").

⁸Cited by ROGER-POL DROIT, *LA COMPAGNIE DES PHILOSOPHIES* (1998), 282-294. Schmitt is aware of this posture: He speaks of Heidegger's "consciously non theological philosophy" (SPT II, 149).

⁹Bernard Bourdin, *Carl Schmitt : un contre-messianisme théologico-politique?*, 98 *Revue des sciences philosophiques et théologiques* 241 (2014).

¹⁰SPT I, *supra* note 1, at 108.

¹¹*Id.* at 62.

¹²SPT I, *supra* note 1, at 74. Here is not the place to even begin a discussion of the concept of *katechôn* in Schmitt's thought. But I would be tempted to think that this concept is in many regards brought forward to use theology in defense of a political theory, not the opposite. In an entry to his *Glossarium* from 1948, Schmitt rebukes the Jewish theologian Joachim Schoeps for believing that the Jewish method of election was the model for the German Reich in the Middle Ages. "Indeed not, Schoeps, writes Schmitt angrily in his notes, "this is not the reason As far as the Christian empire of the middle ages emperor [is concerned], his legitimacy was that of a *katechon*." The *katechon* is the force who, in Saint Paul's *Epistle to the Thessalonians*, opposes the Antichrist, and delays the "mystery of iniquity." It is the force that "withholdeth" the antichrist so that he "might be revealed in his time." In the words of Jean-François Kervegan: "Schmitt adheres to a classical yet debatable interpretation" of this passage in which what withholds the coming of the Antichrist is "the empire as it institutes order amongst men."

C. Theologized Politics

A lot of what Schmitt and Kahn do under the cloaks of political theology consists in a catalogue of examples of what counts as “theological” concepts embedded in modern law and the state.¹³ In the middle of a heated defense of political theology against its “liquidation,” Schmitt says that it consists of “a larger world of images and reflections, of vertical analogies (going from bottom to top), of symbols and metaphors.”¹⁴ This is probably normal when the purpose is to “excavate” underlying concepts that play an active role in the explanation of law yet have been lost sight of. Political theology is an archaeological, or in the words of Kahn, “genealogical,” undertaking.¹⁵ It seeks to “excavate” what is left of the theological dimension in a modern order of things which has undergone a “transition . . . from a religious to a secular understanding of political order.”¹⁶

Schmitt entertained broader theological views of his own and he probably viewed his project as being *lato sensu* one of a religious kind. His disputation with theologians (such as Erik Peterson, notably) makes this rather clear, although, at the end of the day, Schmitt is generally more apt at summoning theological references and agitating broader eschatological views than at developing a systematic theology. Rather, his purpose was to provide eschatological foundations for his radical view of constitutional law. Political theology has become, with Schmitt and Kahn, a pursuit for public lawyers. There is no exact name for this sub-discipline. We could call it “legal theology,” but this does not sound quite right. Schmitt said in 1969 that the relationship between law and theology was worth exploring as “these are two disciplines working in large part with structurally compatible notions There is not scientific sharing of competences without notions with a somewhat equivalent structure.”¹⁷ For instance, trinitarian theology and mathematics are not commensurable. But, it would seem, law and theology are. As a matter of fact, only law and not politics—which is “not a science”—can qualify for the task. It is “the sister science of theology,” and has become a systematic science, beyond mere casuistry.¹⁸

This is what makes political theology possible, and this is also a way for constitutional law, or its forefathers (catholic ecclesiology, public law of the roman empire, *ancien régimes* public laws, etc.) to make their way into the political theological debate. Schmitt, after all, was a career law professor, not a theologian, and not even a political scientist. There must have been a reason for him to join the fray.

At the end of the day, in political theology—Schmitt’s as well as Kahn’s—it is politics, not religion, that prevails. In our disenchanting political world, it is politics, not religion, that matters. Theology has ceased to be the supreme form of knowledge it once was. Some sort of awareness of the residual presence of theology in our political culture (what Kahn calls our “imagination”) is probably the best we can accomplish. Such an awareness depends on concepts and forms of ordering, not on the possession of a theological truth. Maybe this is what makes Kahn’s project humbler than Schmitt’s. Lawyers may be political theologians, but they cannot be “masters of eternal truths,” in the critical words of John Locke. At best, they can be retrievers of ancient wisdom. Most of them, however, will not be. Kahn and the likes of him will be in a minority in the legal academia, dominated as it is by *presentism*, a fascination for the immediately contemporary: The last case in date, the last statute, the last fashionable concept.

This being said, even the “remnants” of theological influences that can thus be uncovered do not reside in their original environment anymore. We have moved, in Weberian terms, from a

Kervegan call this “a cesaro-papist” interpretation. J.F. Kervegan, *Préface* to KARL LÖWITZ, *HISTOIRE ET SALUT. LES PRÉSUPPOSÉS THÉOLOGIQUES DE LA PHILOSOPHIE DE L’HISTOIRE* (2002) (Fr.).

¹³See, e.g. Schmitt, *Preface to the Second Edition* of SPT I, *supra* note 1, at 11.

¹⁴SPT II, *supra* note 1, at 157.

¹⁵PAUL KAHN, *THE CULTURAL STUDY OF LAW: RECONSTRUCTING LEGAL SCHOLARSHIP* (1999) [hereinafter *THE CULTURAL STUDY OF LAW*].

¹⁶*Id.*

¹⁷SPT II, *supra* note 1, at 154.

¹⁸SPT II, *supra* note 1, at 159.

“traditionalistic” social order towards a “legal-rational” one. This makes a big difference. Our worldview is not religious anymore, even for those of us who consider themselves as deeply religious. When religious views are strongly held in our cultural world, they are not necessarily able to prevail. Take for instance the debate on gay marriage. In France, the religious right has fought gay marriage with an argument drawn from catholic natural law. This was a serious argument, with a very respectable intellectual pedigree. Yet the plea had ceased to be audible. The setting in which the argument was framed is what made it unconvincing. We do not live in the age of Aquinas anymore. No internal discussion of the worth of the argument was even possible. This may be a reason for the return of religious violence into politics. When religious arguments or beliefs cannot find a place in the general discussion of society, it doesn’t mean that they disappear. They make their way into the political field, not by argumentation, but through violence. The claim to bring back a transcendent, God-given order is achieved through violence and thus disorder.

D. Human Existence

A great deal of what Kahn calls political theology is in fact a “thick anthropological description” of politics.¹⁹ Sacrifice, for instance, matters insofar as it is a human behavior. The same is true of martyrdom. I’m not certain that the gods are interested in the sacred. In a world made for gods, one would not need to distinguish the godly from the ungodly, the sacred from the profane. Only a world populated by humans stands in need of such concepts. Only men, for instance, are capable of blasphemy.²⁰ These concepts describe patterns of religious experience. They also point to deeper structures of our political anthropology. Take for instance “civic religion,” a frequent presence in Kahn’s writings. I’ve always had a problem with this concept. A civic religion is not a religion at all. It is a self-oriented practice: The community worships itself as an object of faith. Civic religion is a form of political experience, a political rather than intrinsically religious reality. It is a sacralization of the profane. Civic religion is politics baptizing itself.

On the whole, Kahn inclines towards a sociology of religion rather than towards theology *per se*. Take the following passage:

[W]e begin to understand the place of sacrifice . . . when we consider its relationship to faith. Faith takes us beyond reason. A willingness to sacrifice is a demonstration by the individual to himself and others of the irrationality at the heart of the belief in the legal order.²¹

No theological argument is involved in this passage. It brings into contact the sociology of religion and the law. To say this does not in the least diminish the value of this kind of approach. In fact, Kahn eminently contributes to what Voegelin has called the understanding of man’s “meaningful concreteness,” which was (in Voegelin’s view) a condition for restoring a genuine political science.²² It may be the case that this is also a condition for restoring a genuine legal science. This is, in my view, Paul Kahn’s message.

Kahn’s political theology addresses how the fundamental conditions of our existence play a role in politics and the law. It aims at unraveling and reweaving the threads that unite human existence and politics (as the realm of human affairs). This, I would think, points to a major difference with Schmitt’s own political theology. Every question at issue in Kahn’s political theology is existential in the strongest sense. It is a question of life and death for either individuals or institutions (notably the state).²³ Kahn wants us to take these existential concepts seriously. He is more or less the only

¹⁹THE CULTURAL STUDY OF LAW, *supra* note 15, at 36.

²⁰*Id.* at 47.

²¹*Id.* at 96.

²²ERIC VOEGELIN, *The New Science of Politics*, in 6 COLLECTED WORKS OF ERIC VOEGELIN 89 (Manfred Henningsen ed., 2000).

²³SPT I, *supra* note 1, at 22.

contemporary legal scholar to do so. There is no contemporary legal “school of political theology.” I would surmise that a majority of constitutional lawyers can’t even define “political theology.” This makes Kahn’s work the more relevant. His (laudable) purpose is to remind us that there is more to politics than our institutional practices and norms. Politics is concerned with man’s very presence on earth, life and death, and the essential values that underpin it. I would call this existential politics, or the politics of being and not being:

We must not think of the state as something that simply happens in the world like a fact of nature. Neither, however, is it a mere order of norms derived from other norms. The state is not a thing or a rule; it is a power that is continually making history one way rather than another. It requires energy—*dunamis* in the classical sense. It must continually will itself into being. Absent that will, it may find itself simply brushed aside.²⁴

Yet when the law of modern liberal democracies approaches this region of the existential, it becomes somewhat clumsy and willing to look the other way. But there are times at which this becomes impossible. The existential character of politics imposes itself. War breaks out, or terrorism strikes on your backyard. Soldiers, or even ordinary citizens, are said to “sacrifice” themselves. The Nation is asked to decide on a new constitution. Or the Nation is just said to exist and to incorporate the dead and the yet unborn. In France, the nation is said to be its own master (“sovereign”) and yet we don’t exactly know what the nation is and in what exactly this mastery consists of. We are also told that it expresses a “general will” which is a hybrid of will and reason. All this points to metaphysics.

E. Metaphysics

Schmitt makes little effort to disguise that his appeal to theology is very close to a metaphysical project. He refers in passing to “political theology or even metaphysics.”²⁵ About the maxim “*rex regnat sed non gubernat*” he mentions that its roots are pagan or Hellenistic Judaical political theology in which “to tell the truth, theology is not theology but pure metaphysics.”²⁶ This is where we encounter what I have called the isomorphism thesis: “[T]he metaphysical image that an age makes of the world has the same structure as what it takes for self-evident in terms of political organization.” The isomorphism thesis suggests that the history of metaphysics and the history of the state and constitutional law move in parallel ways. There are conceptual and structural analogies between metaphysical constructs and the core structures of public law. This is one of Schmitt’s most central intuitions. What his demonstration actually involves is a history of how the “deconstruction of metaphysics,” the end of the dogmatic, pre-Kantian metaphysics, has impacted our ideas of state and sovereignty. This project would later spawn what we call constitutional law: “[T]o the notion of God in the c17th and c18th belongs the transcendence of God with regard to the world, and all the same a transcendence of the sovereign with regard to the state. In the c19th, everything is dominated, increasingly extensively, by immanent representations.” “All the representations of transcendence disappear.”²⁷ What is at play here is not so much a political theology as a narrative of the end of the theological worldview; the “disappearance” of the “theological.”²⁸

²⁴POLITICAL THEOLOGY, *supra* note 3, at 52.

²⁵SPT II, *supra* note 1, at 109.

²⁶*Id.* at 118.

²⁷SPT I, *supra* note 1, at 58.

²⁸*Id.* at 73. There are some hints of this in the way Kahn envisages the place of God in the Declaration of Independence: “God is neither actor nor audience.” Similarly in the French Declaration of 1789 in which “God of the Declaration [is] banished to the margins.” Cf. PAUL W. KAHN, *ORIGINS OF ORDER* 56 (2019).

Schmitt's *Political Theology* thus reads as an attempt to restore fundamental metaphysical truths.²⁹ He writes a history of metaphysics in reverse gear. His project is to return to the metaphysical foundations of politics that modernity has aimed at laying to rest. Instead of "foundations," I was tempted to speak of "metaphysical structures": A blend of the spiritual and the temporal, of theology and politics, of this world and the other. This is, or so the secularization thesis suggests, the stuff that western politics is made of. Our social fabric and institutional order are based on metaphysical constructs of this kind. In the modern State, therefore, the apparent and the obvious is less important than what is hidden and buried below the surface. The liberal project of dividing church and state, morality and law, etc. is bound to collapse: "[S]eparations between the two spheres and the two kingdoms . . . become insufficient . . . partitions are falling down, and the spaces that were separated beforehand, now penetrate each other and enlighten each other."³⁰ In Yeats' famous words, *the centre cannot hold*. The problem with this kind of thesis is that generally, the centre holds fine, thank you very much, while it is the supposed metaphysical or theological foundation that eventually proves too weak. This is one of the main problems any variety of traditionalism is eventually confronted with. To paraphrase Marx: Everything that was once solid has melted into air, and conversely, obsessed as they are with its apparent weakness and mediocrity, critiques of political liberalism tend to underestimate its robustness.

While Voegelin, for instance, is generally content to denounce the "positivistic taboo"³¹ against metaphysics that has been dominant since Weber, Schmitt goes further. It is as if he was trying to take the history of metaphysics in reverse gear and to reinstate the metaphysical dimension—that had been laid to rest with the rise of modernity—in politics and the law. To understand every single page of Schmitt's public law writings, the tiniest legal argument about this or that question in German public law, one must look at the underlying political-theological argument, albeit in disguise. For instance, the idea of dictatorship is closely associated with ideas about original sin and eschatology, about the ways to accomplish salvation. This is unsaid yet central. Schmitt's purpose is to "make explicit phenomenal forms" of political theology, namely modes of institutionalization of metaphysical worldviews.³²

F. Questions to Kahn

The legitimacy of Schmitt's project was therefore grounded in a restoration of metaphysics. This is probably *not* what Paul Kahn is aiming at. But if he does not share the view that traditional western metaphysics can be reinstated—which I don't think he does—what is the foundation of his own variety of political theology? Kahn, unlike Schmitt, has no one to convert and no dogma to uphold. He is not a "master of eternal truths." He is not even a high-flying polemicist like Schmitt. Schmitt is the master of bad faith in modern political thinking. Unlike Schmitt, Kahn writes in good faith. In fact, there is a polemical connotation to what Schmitt writes that is reminiscent of a great deal of apologetic church literature, made to convince, preach and above all convert the pagans. And, of course, the authors of that literature by no means mistook it for theology. We may, therefore, ask Kahn questions that Schmitt would have haughtily brushed aside. I would pose three such questions and finish with a remark.

First Question: Is everything in Kahn's political theology intended to be properly theological? A lot of the examples given sound more to me, not like theology proper, but as being drawn from ecclesiology, canon law, "discipline," or even—as I said—apologetics?

Second Question: What is the methodology for selecting the core concepts of political theology, i.e. those that appear to have been "transferred" into modern politics according to the

²⁹Schmitt is quite clear about this. Cf. SPT II, *supra* note 1, at 137.

³⁰SPT II, *supra* note 1, at 48.

³¹See VOEGELIN, *supra* note 22, at 91.

³²He gives as an example the Lateran treaty between the Pope and Mussolini in 1929. SPT II, *supra* note 1, at 141.

secularization thesis? One of the main claims of theology—or as Etienne Gilson would have put it, of “Christian philosophy”—is that, in the scriptures, concepts are knit together in an extremely tight fashion, which stands evidence of a “cosmos” of significations. For instance, in *Hebrews* 11 (generally held to be the core discussion of faith in the Canon)³³ “faith,” “sacrifice,” “justice,” “righteousness,” miracles,³⁴ community, and prophecy, are treated, if not as quasi-synonyms, at least as belonging to the same conceptual web. It is therefore difficult to treat them separately. If, for instance, we make room for faith in the conceptual apparatus of constitutional law, as Kahn encourages us to do, should we not also take onboard the horizon of salvation? And if we reject salvation, should we not find a functional equivalent for it, such as “history” or “progress”? If not, what do we have faith in? That faith can be presented as a secularized concept at play in modern law is not something self-evident. Hans Blumenberg takes the view that “the κηρυγμα” (the proclaimed Christian faith, the irreducible core of Christian apostolic preaching) “could not, by definition, be secularized.”³⁵ At least, the secularization thesis has to prove that it has been secularized, and especially, how this took place.

Third Question: Are the theological and the political realms entirely distinct and can we take for granted that the theological element is in itself devoid of a political dimension? I would call this, after the French historian of ideas Lucien Jaume, the “reciprocal mimetism” thesis. Why not approach the Church as a human institution that has applied “lay” political concepts (such as sovereignty), metaphors and analogies, to its own functioning? In other words, in the project named “political theology,” why is the relationship between theology and politics approached only in terms of the influence of religion over politics, not the opposite?³⁶ One would rather incline to think that metaphysics—the bond between the human and the superhuman, the natural and the supernatural—works in fact both ways. Via analogies, images, comparisons, the mundane penetrates into the theological as much as the theological penetrates into the sublunary. In the *Tractatus Theologico-Politicus*, Spinoza’s “political theology” included a minute analysis of such images, metaphors, etc., in the scriptures where terrestrial characteristics were attributed to the divine, as when Moses is said to affirm in the scriptures that “God is a fire,” or “God is jealous,” etc. There is at least one simple conclusion to this complex debate: Metaphysics is a two-way road. It brings into contact the visible with the invisible, with effects on the representations of both. While it may be the case that the conceptualization of temporal power has been dependent on theological ideas, it is certainly true also that spiritual powers, such as the Church and papal monarchy, have been at least in part elaborated with raw materials borrowed from secular institutions.

G. A Final Remark

I’m not sure I’m entirely convinced by some of the parallels that Kahn draws between biblical politics or early European politics and modern law. For instance, I don’t quite see the connection between “faith healing” by old regimes kings and the modern prerogative of pardon.³⁷ I’m not quite certain I see the way in which nuclear deterrence is a modern equivalent (or “remnant”) of the king’s mystical body. Mutual assured destruction is very much a concept that a modern,

³³See AQUINAS, *SUMMA THEOLOGICA*, *What is faith?*, ii-ii, Q4, Art. 1.

³⁴See *Hebrews* 11 (“By faith the walls of Jericho fell”; “[B]y faith Sarah, even though she was barren and beyond the proper age, was enabled to conceive a child, because she considered Him faithful who had promised.”).

³⁵HANS BLUMENBERG, *LA LÉGITIMITÉ DES TEMPS MODERNES* 49 (1999).

³⁶For instance, the idea of the Papacy as an absolute monarchy was resisted by French “reasonable ultramontans” at the time of the first Vatican council. Montalembert, one of France’s most famous Catholic liberals, denounced the “reciprocal mimetism” between the supporters of an absolute, infallible, Pope, and defenders of Napoleon III in France. The expression (“reciprocal mimetism”) adequately conveys my idea here: Ideas about lay institutions may have as much influenced the Church as “theological” ideas may have made their way into constitutional law. See LUCIEN JAUME, *L’INDIVIDU EFFACÉ: OU LE PARADOXE DU LIBÉRALISME FRANÇAIS* 236 (1997) (Fr.).

³⁷THE CULTURAL STUDY OF LAW, *supra* note 15, at 61.

Hobbesian, explanation of politics can account for. If our bodies are suppressed, nothing survives of us. I'm not quite certain either that at a confirmation hearing a citizen is turned magically or mystically into a Supreme Court justice by "engaging in a public turning away from his previous self."³⁸ Did Brett Kavanaugh purge himself from his vices or failings during his Senate hearing? Did he not actually make them visible to the whole world, thus showing how little Supreme Court justices were the moral superiors of their ordinary fellow citizens? Did Kavanaugh "deify" or sacralize himself? Or maybe should we say that, in his case, the rite has failed? American civic religion has taken several serious blows in the recent past. Important ceremonies, such as the 45th president's inauguration, have been turned into mockeries and moments when what was once sacred has been turned into a farce. The same could be said of the great act of rebellion against American civic religion that took place on Capitol Hill on January 6, 2021.

Competing Interest. The authors declares none.

Financial Support. No specific funding has been declared in relation to this article.

³⁸*Id.* at 83.