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Views From the Outside: A Theological and Literary Conversation on the Character of the Law - Introductions

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**SPECIAL CONTRIBUTION:
CARL VINSON LECTURE
SERIES:**

**VIEWS FROM THE OUTSIDE: A
THEOLOGICAL AND LITERARY
CONVERSATION ON THE CHARACTER
OF THE LAW**

Introductions

by **Jack L. Sammons, Jr.***

As this audience knows, Stanley Fish is a premier literary theorist and an acclaimed Milton scholar with a special interest in the relationship

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between aesthetics and theology. Among legal scholars he is perhaps best known for his rhetorician's stand against the hidden foundations of contemporary legal thought, especially those involving the interpretation of legal text. For Professor Fish, all textual meaning is a function of one's situation within an interpretive community. As he says in *Is There A Text in This Class? The Authority of Interpretive Communities*:¹

There isn't a text in this or any other class if one means by text what E.D. Hirsh and others mean by it, "an entity which always remains the same from one moment to the next;" but there is a text in this and every class if one means by text the structure of meanings that is obvious and inescapable from the perspective of whatever interpretive assumptions happen to be in force.²

This message, written in 1980, caught the immediate attention of the legal community, and the legal community caught Professor Fish's attention as well. The interchange that resulted helped produce *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies*.³ There Professor Fish demonstrates his interpretive practice in criticisms of most of the major styles of legal discourse—from formalism to Critical Legal Studies. Along the way Professor Fish shows us Dworkin, Fiss, Posner, Unger, Milton, Freud, and critical self-reflection as we had not seen them before.

Let me use another person to introduce my friend Stanley Hauerwas to you:

The first thing to be said is that, in this book as before, Hauerwas is right about so much that nearly the whole American church and academy culpably have wrong, and he is so beneficial in his ability to say what others can or will not say, that he fully deserves his position as bellwether and *bête noire* of American theological ethics.⁴

This is by Robert Jenson, Professor of Religion at St. Olaf College, reviewing Stanley Hauerwas' most recent work, *After Christendom*.⁵

Professor Hauerwas' ability to say "what others can or will not" is a product of his understanding the church as a distinct "story-based" interpretive community with an integrity peculiar to itself. According to Professor Hauerwas, this community is called to be an alternative to the political world. The church, as a community faithful to the story of God,

1. STANLEY FISH, *IS THERE A TEXT IN THIS CLASS?* (1980).

2. *Id.* at vii.

3. STANLEY FISH, *DOING WHAT COMES NATURALLY: CHANGE, RHETORIC, AND THE PRACTICE OF THEORY IN LITERARY AND LEGAL STUDIES* (1989).

4. Robert W. Jenson, *Hauerwas Examined*, *FIRST THINGS*, Aug.-Sept. 1992, at 49, 50.

5. STANLEY HAUERWAS, *AFTER CHRISTENDOM: HOW THE CHURCH IS TO BEHAVE IF FREEDOM, JUSTICE, AND A CHRISTIAN NATION ARE BAD IDEAS* (1991).

gives Professor Hauerwas the language he needs to describe this political world, to "speak truth to power," as he would say.

The social ethical task of the church demands nothing less than keeping our grammar pure by calling social injustice by its proper name—i.e., sin. A society that has degraded the language of sin and judgment is a society that ultimately has no purpose beyond the manipulation of some for the security of others.⁶

Among legal scholars, Professor Hauerwas is perhaps best known for his theological critiques of liberalism and the state, his narrative ethics emphasizing character and virtue, and the unique vision his theologically disciplined eyes offer of our most difficult ethical problems.

In Martha Nussbaum's trenchant phrase, there is "no true commitment to justice that exempts its own privileges from scrutiny."⁷ One of the many things that our speakers tonight have in common is that they are both relentless in reminding us of the subtleness of the privileged views of our society and how we have exempted these privileged views from scrutiny. They do this, I think, by trying very hard to be truthful in their descriptions of the world although I make this claim with some hesitancy because for both any project of being truthful is fraught with risks.

Yet they are both willing to embrace something that is in the world and subject to its risks. I think this is the virtue that I most admire in both of our speakers although I also think both might argue with my description of it. Perhaps what I am really praising in them is that each rejects false securities that many of us spend most of our lives seeking.

What Stanley Hauerwas embraces as a Christian is, of course, something that is in the world, but not of it. He embraces the church, as the Body of Christ, and it is this embracing that provides him with the resources he needs to engage in a project of truthfulness about the world. Part of what makes Stanley Hauerwas' project so interesting is that he must make these claims of truth, but he cannot make them foundationally. He cannot make them outside the church. Stanley Fish, I think, would insist that his is not a project at all, but a description—one that reminds us of our responsibilities and of the risks we must take if we are to act responsibly. The virtue I have attributed to him would be for him, perhaps, its own reward. Part of what makes Stanley Fish's work so interesting are the difficulties created by his desire not to have a project.

Tonight we have asked these two most interesting of men to talk with each other and with us about the character of the law. We have done this,

6. STANLEY HAUERWAS, *VISION AND VIRTUE: ESSAYS IN CHRISTIAN ETHICAL REFLECTION* 7 (1981).

7. MARTHA NUSSBAUM, *THE FRAGILITY OF GOODNESS: LUCK AND ETHICS IN GREEK TRAGEDY AND PHILOSOPHY* 420 (1986).

in part, because, as I have noted, each has found a second home in the law. As scholars interested in interpretive communities, and as antifoundationalists doing battle with the continuing projects of the Enlightenment that claim authority outside of that offered by interpretive communities, they have both turned to the law to criticize us for having pretensions beyond our communal claims and to support us by helping us understand what it might mean to be an interpretive community. They do this, however, in very different ways that are reflective of their different primary disciplines. Accordingly, it should be very telling, I think, if their different perspectives on the law have led them to similar understandings of its character.

With their permission, I will leave it to the brochure you previously received to describe for you their many accomplishments because I, for one, am far too anxious to hear what our speakers have to say to listen to any more of an introduction. We are in for an exciting afternoon. As Stanley Hauerwas wrote to me, and as you will see, neither speaker is a shrinking violet. Well, this is, for me and I hope for you, the most interesting conversation going on this afternoon with the possible exception, as my colleagues know too well, of whatever Alasdair MacIntyre might be mumbling to himself.

And so Professors Fish and Hauerwas, we welcome you to Mercer; we thank you for coming, and we look forward to the exchange. Professor Fish, I believe, will start us off. I give you Professor Stanley Fish.