



Perception vs. Reality



POSTMODERNISM, INTERPRETATION, AND TRUTH IN RELIGION AND LAW

by Frederick Mark Gedicks

Photo Illustrations by Brad Slade

In the late 1970s, there drifted into legal scholarship some philosophical ideas grouped under the term “postmodernism.” Always on the lookout for something new and trendy, legal scholarship quickly found a place for these ideas, and they now inhabit a well-established (if slightly disreputable) wing of the legal academy. To the delight of some and dismay of many, postmodernism has had significant impact on legal scholarship, particularly in jurisprudence, constitutional theory, and legal interpretation.’

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Postmodernism is not well understood within the legal academy, even by some of its proponents. Because postmodernism questions traditional concepts of law and truth, conservatives—especially religious conservatives—tend to dismiss it as nihilistic, relativistic, or just plain crazy, while those on the political left too often embrace postmodernism with naive enthusiasm, believing they have found the intellectual key to life.

Given postmodernism's contemporary influence, it is important for us as lawyers and Latter-day Saints to understand its claims and the potential impact of those claims on our political commitments and religious beliefs. Whether one believes (as I do) that there is something important we can learn from postmodernism, or whether one is unequivocally opposed to it, we must still have a clear idea of what we're talking about. Unfortunately, a full account of the many philosophical approaches that pass under the name of postmodernism is impossible in a short essay. So I will focus on two aspects of postmodernism that I think are particularly important to Latter-day Saint lawyers: (1) epistemology, or how postmodernists approach the problem of how we know what we say we know, and (2) interpretation, or how postmodernists approach the problem of what a text means. I will first outline postmodern epistemology and interpretation and their relation to modernism and follow that with some specific examples of how these aspects of postmodernism have influenced legal scholarship these last 20 years. I will close by considering what Latter-day Saints might learn from postmodernism.

Modernism

As the "post" in postmodernism suggests, it can be defined by contrast to something called "modernism." Separating intellectual or chronological periods is always somewhat arbitrary, but modernist thought would date roughly from the beginning of the Enlightenment in the mid-17th century until the mid-20th century.

Modernism assumes that the observer is separated from the object of observation. Modernism considers the human subject as if it were in a mental box, "in here," so to speak, while the world proceeds along its course outside the box "out there." (This view is usually attributed to Descartes, although there is some question whether Descartes himself actually conceived of the world this way.) "Knowledge" for the modernist consists in a mental picture or symbol "inside the box" that accurately represents the world "outside the box." For example, analytic philosophy, the most sophisticated variant of modernism, assumes that the world can be accurately represented linguistically—that is, that language is adequate to capture the essential nature of the world "outside the box." Another variant of modernism is the "correspondence theory of truth." This theory defines a true idea as one that corresponds to how the world really is, and additionally maintains that this correspondence between mind and world can be decisively demonstrated through human reason and empirical investigation.²

Until recently, the quintessential modernist discipline was natural science. By performing experiments that carefully control the variables, science confirms hypotheses about the world. Hypotheses that cannot be disproved or "falsified" are assumed to represent essential attributes of the world, the "way it really is." In the popular mind, science has long been thought to be "objective"—that is, it is thought to reveal the reality of the world neutrally, without coloring or shading that reality with the subjective attributes or biases of a human investigator.³

This view of science grew out of the Enlightenment. The notion that one might uncover reality neutrally and objectively was intensely liberating in contrast to the medieval church's insistence that a proposition had to be consistent with the church's theology to be counted as true, regardless of rational or empirical proofs. For example, in medieval times it was theologically unthinkable that the earth might rotate around the sun, regardless of the strength and number of Galileo's confirmations.⁴ Galileo was only one of many

medieval scientists who ran afoul of the church while investigating the world. In the end, the church lost its battles with science, unable to maintain the validity of its geocentric theology in the face of scientific demonstrations that this theology did not reflect reality. By the middle of the 19th century, natural science had replaced theology as the “prestige discourse” of the time—that is, the intellectual discipline that revealed truth and reality.

Installing science as the principal means of discovering reality had implications for the so-called “human sciences”—law, literature, and theology. The human sciences investigate the meaning of human texts like laws, poetry, and scripture. A correct understanding of these texts had long been thought to be a matter of judgment and taste, of an aesthetic sense that could not be replicated by objective method or procedure.⁵ By the 19th century, however, Kant’s *Critique of Judgment* was understood to have established the subjectivity of aesthetics. Thereafter, judgment and taste were considered more reflections of the interpreter’s personality and character than independent means of evaluating the text being interpreted; they could tell us much about the interpreter, but little about the text. If judgment and taste—the basis of knowledge in the human sciences—were mostly functions of the interpreter’s personal character without a scientific or other “objective” dimension, then the scholarship of the human sciences could not count as real knowledge. Philosopher Jean Grondin argues that Kant’s placing judgment into a subjective realm denied any cognitive value to the human sciences: “Whatever did not measure up to the standards of the objective and methodical natural sciences was thereafter considered merely ‘subjective’ and ‘aesthetic’—that is, excommunicated from the realm of hard knowledge.”⁶

The epistemological success of the natural sciences combined with Kant’s subjectification of judgment led those in the human sciences to attempt to develop a “science of interpretation”—an “objective” approach to interpretation in the

human sciences that would put them on the same epistemological footing as the natural sciences. If one could only uncover the “laws of interpretation,” it was thought, then these laws would yield objectively valid interpretations, enabling the human sciences to be sources of truth and knowledge equally as valid as the natural sciences.

In sum, modernist epistemology assumed that the way the world “really is” could be accurately and reliably represented. Similarly, modernist interpretation held that the true meaning of a text could be demonstrated with certainty. These are assumptions that postmodernism places in question.

Postmodernism

It is difficult to pinpoint postmodernism’s origin in the work of a single philosopher. The work of most philosophers in the continental tradition, from Kant and Hegel in the late 18th century through Husserl in the early 20th century, has contributed to postmodernism.⁷ There are even postmodern readings of Aristotle and Augustine, among other classical philosophers. A good starting point for postmodern philosophy, however, is the work of Martin Heidegger, particularly *Being and Time*, which was published in 1927 but was not widely read outside Germany until after World War II. Heidegger questioned the validity of the Cartesian box, the subject “inside” who represents the objective world “outside.” Heidegger asserted that there is never a time when subjects are uninvolved in the world, that it is never possible to investigate the world without simultaneously influencing it and being influenced by it. Instead, Heidegger described humans as having been “thrown” into a particular situation in the world—always being in relationships with things before our investigations of those things—placing in question our ability to see the world “as it really is.”⁸

Ironically, some of Heidegger’s arguments in *Being and Time* were consistent with contemporaneous developments in the natural sciences. For example, Werner Heisenberg’s uncertainty princi-

ple states, among other things, that whether a subatomic particle exhibits the character of a particle or a wave depends on whether one is measuring its mass or its momentum. If one measures the location of an electron, it exhibits the characteristics of a particle. If one measures how the electron is moving, however, it exhibits the characteristics of a wave.⁹ How can an electron be both particle and wave? Even more perplexing, why should the characteristics displayed by an electron vary according to what the scientist is attempting to measure? Heisenberg himself believed that how the world appears to us depends on what we want to know about it: “Natural science does not simply describe and explain nature; it is part of the interplay between nature and ourselves; it describes nature *as exposed* to our method of questioning.”¹⁰

Hans-Georg Gadamer, a student of Heidegger’s, extended Heidegger’s general insights to interpretation in the human sciences. In *Truth and Method*, published in German in 1960 and translated into English in 1975, Gadamer made a clean break with the 19th-century search for objective certainty in interpretation by arguing that there is no such thing as an “objective” meaning that resides in a text independent of an act of interpretation. An interpreter always brings his or her concerns and biases to the text being interpreted, and interpretive meaning is produced by the interaction of these concerns and biases with the text. Gadamer argued that it is not possible for an unengaged subject neutrally to extract from a text a pristine objective meaning:

A person who is trying to understand a text is always projecting. He projects a meaning for the text as a whole as soon as some initial meaning emerges in the text. Again, the initial meaning emerges only because he is reading the text with particular expectations in regard to a certain meaning. Working out this fore-projection, which is constantly revised in terms of what emerges as he penetrates into the meaning, is understanding what is there.”

Postmodernism and the Public/Private Distinction

Liberal political theory—which, incidentally, is subscribed to by Republicans as well as Democrats—depends on a division of human life into mutually exclusive public and private spheres.² Among other things, liberal theory provides that government can properly regulate public matters but not private ones. In contemporary life, private life is usually protected by individual rights; government regulation is permissible if it does not cross the boundary marked by individual rights into private life.

Conceptually, the boundary between the public and private spheres tracks the Cartesian division of the world into subjects and objects. In private life, individuals have what might be called “subjective freedom”: If they do not harm others, they are free to do whatever they please for any reason (or for no reason) without having to justify their conduct to the government or to other people. In public life, on the other hand, government and individuals are obliged to serve the collective “public interest” rather than the idiosyncratic tastes and preferences of a particular person. Unlike choices in private life, choices in public life must be justified objectively—that is, empirically or rationally.

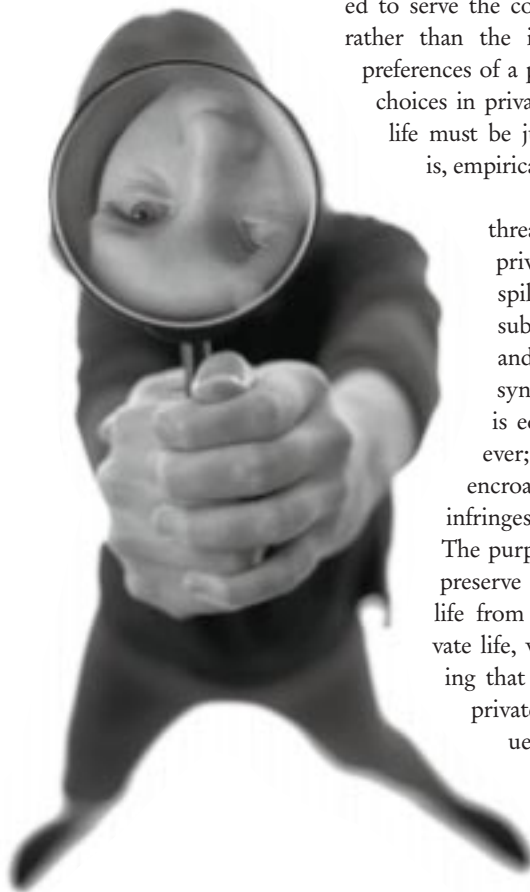
For liberal theory, the threat posed by activities in private life is that they will spill over into public life, subverting its institutions and actors to a set of idiosyncratic values. Public life is equally threatening, however; whenever public life encroaches upon private life, it infringes upon individual liberty. The purpose of government is to preserve the objectivity of public life from the subjectivity of private life, while nonetheless ensuring that there remains sufficient private space for the continued pursuit of subjective values outside the public sphere. The state accomplishes this by remaining ideologi-

cally neutral—that is, by refusing to oppose or endorse values in private life, and acting in public life only on objective facts rather than subjective beliefs. If individual values are merely a function of individual tastes or preferences that cannot be measured or explained, as liberal theory maintains, then no single set of values can be objectively shown to be better than any other set, and government must remain neutral with respect to all sets of values. It follows that the most uncontroversial kinds of government actions in a liberal democracy are those perceived to be based on objective facts, and the most problematic actions those based on subjective values.

A key task of liberal political theory is to police the boundary between public and private life by distinguishing subjects from objects—that is, values from facts and desires from reasons. Beliefs or values that reside in private life are suspect as a basis for government action unless they can be plausibly recharacterized as facts or reasons. Only if a belief is confirmed by widely held experience or scientific investigation, or by reasoning that is consistent with such experience or investigation, does it qualify as knowledge on which government legitimately can act.

This account of liberal political theory helps to explain why religious belief and practice are so controversial when manifest in politics and other areas of public life. Religious belief and practice are forced into private life by the way the public and the private are defined in contemporary American society. Particularly in conservative religions like the Latter-day Saint faith, reason and empiricism are ultimately subordinated to authority, tradition, and faith as ways of knowing. By its nature then, religion cannot satisfy the objective tests that would give it proper public status.

Keeping religion and religious belief confined to private life enables liberal political theory to marginalize religion without having to eliminate it. For example, Marx argued that we can emancipate ourselves politically from religion by “banishing it from the sphere of public law to that of private law.”³ Explaining the force of this point, Elizabeth Mensch and the late Alan Freeman, two prominent postmodernists in the American legal academy,



observed that by confining religion to private life, rather than abolishing it outright, government reduces religion to “a private whim, an expression of purely subjective individualized values.”⁴ As such, religion and religious belief need not and cannot be considered by those who act in public life.

Liberal political theory purports to treat religion and religious belief neutrally—as subjective value preferences restricted to private life like all such preferences, rather than as objective knowledge proper to public life. However, this position can be genuinely neutral only if the boundary drawn between the private world of subjective preference and the public world of objective fact accurately represents the world. As I have explained, postmodernism casts serious doubt on the proposition that things in the world can be objectively categorized as “public” or “private.” The public or private character of any activity depends not only on apparently “objective” attributes of the world but also on the classifier’s subjective perception of these attributes; most activities can be plausibly characterized as both public and private. Postmodernism thus enables criticism of the confinement of religion to private life as not being the natural or inevitable result of the objective reality of the world, but merely a particular experience of the world filtered through the premises of liberal political theory.

Postmodernism and Originalist Interpretive Methods

Critiques of “originalism”—the view that the Constitution should be interpreted as it was understood when it was drafted and ratified—are by now well known.⁵ Most of them center on the impossibility of discovering the framers’ intent—for example, the minutes of the Constitutional Convention and the legislative histories generated by the Congresses that passed amendments are often obscure, unreliable, or nonexistent; the framers themselves were often uncertain or conflicted about what they meant to accomplish with respect to certain constitutional provi-

sions; and so on. Other critiques focus on the self-contradictory nature of originalist claims—for example, the framers themselves may not have intended that the Constitution be construed according to their intentions, and certain constitutional texts like the Fifth, Ninth, and Fourteenth Amendments may reflect the framers’ intention to extend constitutional protection to rights not enumerated in the Constitution or otherwise contemplated by the framers.

Postmodern criticism of originalism is deeper than either of these arguments. Even if comprehensive legislative history exists, so that there is no question what the framers were thinking, and even if this legislative history presents a complete and coherent expression of the framers’ intent *not* to protect unenumerated rights, postmodernism holds that we cannot understand these materials as they were understood by the framers. That is, we cannot ignore the effects of the history that interposes itself between them and us. No matter how hard we try, we will never understand the Constitution as it was understood in a preindustrial, agrarian society that presupposed a common religious morality, yet nevertheless enslaved African Americans, dispossessed Native Americans of their homelands, and imposed civil disabilities on other racial, ethnic, and religious minorities as well as women. We can only understand the Constitution as the people we have become—a post-industrial, technologically advanced, egalitarian society that is religiously and morally fragmented to the extent that government is largely prevented from acting on most moral bases. In short, when we interpret the Constitution, we cannot isolate ourselves and our experiences of contemporary life inside the Cartesian box, any more than we can ignore the various interpretations of the Constitution that have been passed on to us in the last two centuries. There is no question that originalism yields answers to questions about the meaning of the Constitution, but the claim that these answers are “objective”—free of the biases and motivations of contemporary interpreters—is rendered deeply problematic by postmodernism.

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This suggests another postmodern insight about legal interpretation: that constitutional language is *always* ambiguous and thus susceptible to more than one plausible interpretation. Critics of postmodernism often deride this claim, and it is admittedly oversold by many postmodernists. A better way of putting the point is that the ambiguity of constitutional language increases in direct proportion to what is at stake in interpretation—the higher the stakes, the more likely the presence of ambiguity, and vice versa. For example, critics of postmodern interpretation often point to Article II, §1, clause 5 of the Constitution, which restricts the Presidency to “natural born Citizen[s]” having “attained to the Age of thirty-five years,” as an example of constitutional language that is not in the least ambiguous. Of course, there is currently no shortage of candidates over 35, and there is no one under age 35 who is trying to run for president; the language appears clear and unambiguous because there is no current need to interpret the language as meaning anything different from what it is currently understood to mean.

Suppose, however, that as the fulfillment of every 1960s hippy’s dream, a virus were to strike the United States killing every person over the age of 30.⁶ Now there is something at stake in interpreting this provision, because if the provision truly means what it appears to mean, there is no one eligible to be president. My suggestion here is that this previously unambiguous language would immediately become less clear, because there is now a strong motivation for a different interpretation than that of the so-called “plain meaning,” a motivation that didn’t exist before.

Consider another, less fanciful situation. For almost two centuries, the phrase “natural born Citizen” was generally understood to mean “born in the United States.” In the early 1960s, however, George Romney ran for president. Romney had been born to U.S. citizens residing in the Mormon Colonies in Mexico; such persons are usually held to have dual citizenship in both the country of their parentage and the country of

their birth until they make a choice at adulthood. A few political pundits raised the question whether Romney was constitutionally qualified to be president, since he was born outside the United States. Now is it so clear what this provision means? So long as no one born outside the United States ran for president, there was no ambiguity in this clause because nothing was at stake, but when a citizen born outside the United States sought the presidency, then the stakes were raised and ambiguity immediately appeared. (The consensus, incidentally, was that Romney was qualified; the meaning of the clause was refined to mean “citizen by birth,” as opposed to “citizen by virtue of birth within the geographical confines of the United States.”)⁷

Political conservatives are suspicious of postmodernism because it places in question the rule of law—that is, the belief that liberal democracies are governed by the force of impersonal law and not by the will of a king or other tyrant. Robert Bork, for example, argues that only an interpretive methodology like originalism can preserve the rule of law by excluding the value preferences of the judge from the task of legal interpretation.⁸ Postmodernism argues, however, that the interpretation of law is unavoidably connected to the attributes and situation of the interpreter—that is, that it is not possible to uncover an “objective legal meaning,” but only legal meaning that is the result of a complex interaction of textual object and interpreting subject. As postmodernists might predict, originalist judges regularly abandon originalism when it leads to results that contradict their personal views about political theory. Chief Justice Rehnquist, for example, has written a majority opinion upholding an understanding of presidential power in foreign affairs far broader than that envisioned by the framers, based on historical developments occurring long after the founding era.⁹ Similarly, Justice Scalia found that the free exercise clause precluded judicial exemptions because of the evils of judicial balancing, without a single reference to the framers’ views on the matter.¹⁰ Postmodernism helps us to see that constitutional and other kinds of legal interpretation are not neutral and objective processes

of discovery, but rather political processes laced with the biases and ideologies of judges on both the political left and the political right.

Postmodernism and the Gospel

One occasionally finds Latter-day Saints who talk about postmodernism as if it were the embodiment of the gospel. This is silly. Much more commonly (especially at BYU), one finds Latter-day Saints talking about conservative Republicanism or some other political ideology as if it were the embodiment of the gospel. I think this is just as silly. More than silly, both attitudes indicate a fundamental misperception of what the gospel is. The gospel does not depend for its validity on any human ideology nor is it an ideology itself. The gospel stands on its own as the revelation of God to his children; it doesn't need to be propped up by human argument, and there is some danger in doing so.

This doesn't mean that there isn't much to learn from human ideologies; to the contrary, the world has much to teach us. I think this is the meaning of the scriptural counsel that we look for wisdom "out of the best books," and that we "seek learning, even by study and also by faith."²¹ It is worthwhile to study human ideologies because of the broadened perspective and insight they might enable us to bring to our understanding of the gospel. Even Marx got a few things right—a broken clock tells the right time twice a day—and these things are worth learning. So when I discuss what postmodernism might teach us about the gospel, I do not mean to suggest that it replace or substitute for the gospel, that we somehow "postmodernize" the gospel, but only that postmodernism can illuminate some aspects of the gospel in ways that modernism doesn't, thereby deepening our understanding of our faith.

For example, postmodernism highlights the extent to which Latter-day Saints, like most conservative believers, have allowed modernist assumptions to dictate their understanding of their religious beliefs.

Take the so-called conflict between creationism and evolution, creationism being the creation of the world and its first human inhabitants by the divine and miraculous intervention of God, whereas evolution is such creation by the random interaction of wholly natural forces. The conflict usually centers on which side "has it right" about how the earth was "really" created, the evolutionists or the creationists. Both sides regularly trade accusations about bad science, usually mixed in with not-so-subtle insinuations of bad faith in interpreting the data. Why is the conflict framed in this way? Why should we care what evolutionists or creationists think?

The answer is that creationists have bought into the assumption that science accurately represents the world "as it really is" (or, at least, "as it really was created"). Evolution, therefore, is perceived by creationists to be an objective explanation of how the world and its inhabitants came to be. Given this assumption, the logical creationist response is to attack the quality of evolutionary science so as to divest it of its credibility as knowledge.

My own view is that evolution is pretty good science, and creationism hardly science at all.²² But I hasten to add that this does not mean that evolution is an accurate account of the creation—and creationism inaccurate; one has to remember how "science" is defined. Science seeks to uncover the reality of the world by rationally and empirically testing hypotheses. This means that a hypothesis that is neither rationally nor empirically testable—say, "God created Adam and Eve through supernatural forces"—is scientifically useless, because there is no way to falsify it. If one insists on an explanation of the origin of human beings and the universe that is composed only of testable hypotheses, then something like evolution is the inevitable result. "Godless evolution" is an accurate description, not because scientists are conspiratorial atheists, but because the scientific requirements of rationalism and empiricism leave little room for God to do anything. Creationism can't be science, because it depends on a hypothesis—the existence of God and his miraculous intervention in the world—which is neither rationally nor empirically falsifiable. This

doesn't mean that creationism isn't true, only that it isn't scientific—that is, rational and empirical.

Postmodernism helps us to see that creationism and evolution are alternative accounts of the same data. There is no way to prove that the data "really" support one and not the other. Because we live in a post-Enlightenment world in which science has long been the prestige discourse, however, we unthinkingly step into the trap of assuming that evolution is fact, and therefore threatening to creationist beliefs.

Much of the conflict between religion and secular knowledge derives from the habitual association of objectivity with truth. On modernist premises, the truth of something depends upon its being objectively demonstrable. This is what makes scientific method so powerful; it purports to free scientific investigation from the biases of the investigator. From this assumed dependence of truth on objectivity it follows that any proposition whose validity derives from a subjective, nonmethodological judgment cannot count as knowledge, but only belief. Hence many Latter-day Saints desire to bolster the secular credibility of our faith by "proving" the truth through the objectivist conventions of secular knowledge. Ironically, this may lead to loss of faith when such proofs are found to be impossible or, worse, to lead to conclusions that contradict Latter-day Saint beliefs.

Because postmodernism rejects the possibility of objective truth, it is often rejected in turn by Latter-day Saints and other religious conservative believers as nihilistic (that is, claiming that there is no truth) or relativistic (that is, claiming that what is true depends only on one's individual perspective). To deny objectivity, however, is not to deny truth. The world undeniably exists in a certain way no matter how or what we think of it; the most fervent commitment to postmodernism will not prevent someone who jumps off a 20-story building from falling to her death. But to acknowledge that the world has certain attributes that are independent of human thought is not to concede that secular methodologies necessarily give us an accurate or reliable view of these attributes. After all, humans have known for millen-



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nia that things fall “down” rather than “up,” but accounts of what this means and why this occurs have been legion.

Latter-day Saints claim that all human beings are the spiritual children of a Heavenly Father, that through the atonement his Son Jesus Christ saved us from death and redeemed us from sin, and that the gospel of Jesus Christ was restored to the earth through the prophetic mission of Joseph Smith and continued by successors also endowed with a prophetic calling. Secular knowledge about these claims is worth pursuing because it can illuminate our understanding of them (and it is undeniably satisfying when secular knowledge points in the same direction as our spiritual beliefs). Ultimately, however, we believe the claims of the gospel—indeed, we *know* their truth—because we have received the testimony of the Holy Ghost that they are true, a testimony whose reality and validity are nonetheless neither rationally nor empirically demonstrable. Were it otherwise, we would not need faith, because the truth of all things could be indisputably laid out before us.

“Not everything in reality,” wrote Protestant theologian Paul Tillich, “can be grasped by the language which is most adequate for the mathematical sciences.”²³ Instead, we must hope for things whose outline we only dimly perceive, which we nonetheless know are real.²⁴ To the extent that postmodernism reminds us that the truth of the gospel does not depend on the proofs of secular knowledge, and may even contradict them, it is truly something worth knowing.

NOTES

1. For a survey of the influences of postmodern philosophy on legal scholarship, see Mark V. Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515 (1991).

2. The metaphor of the mental box is Martin Heidegger's. See METAPHYSICAL FOUNDATIONS OF LOGIC 160–61 (Michael Heim trans. 1984) (1928). For a general description and extended criticism of modernism, see RICHARD RORTY, *PHILOSOPHY AND THE MIRROR OF NATURE* (1979).

The correspondence theory is considerably more sophisticated than may appear from the shorthand description in the text. For defenses of the theory,

see PAUL K. MOSER, *KNOWLEDGE AND EVIDENCE* 13–46 (1989); William P. Alston, *Yes, Virginia, There Is a Real World*, 52 PROC. AM. PHIL. ASS'N 779 (1979).

3. This view is no longer considered tenable by most contemporary philosophers of science. See, e.g., ROBERT P. CREASE, *THE PLAY OF NATURE: EXPERIMENTATION AS PERFORMANCE* (1993); THOMAS KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2d ed. 1970).

4. For an account of the deep hold that geocentric cosmology had on the medieval world, see C.S. LEWIS, *THE DISCARDED IMAGE* (1967).

5. See generally HANS-GEORG GADAMER, *TRUTH AND METHOD* 3–42, 94–100 (2d rev. ed., trans. Joel Weinsheimer & Donald G. Marshall 1993) (describing truth and knowledge in the human sciences as having been traditionally thought to depend on culture, communal sense, judgment, and taste). See also David Hoy, *Interpreting the Law: Hermeneutical and Poststructuralist Perspectives*, 58 S. CAL. L. REV. 136, 144 (1985) (“Understanding [written texts] includes some nonpropositional content that is more properly described as an ability than as a rule.”).

6. JEAN GRONDIN, *INTRODUCTION TO PHILOSOPHICAL HERMENEUTICS* 109–10 (Joel Weinsheimer trans. 1995).

7. For an accessible summary of the continental philosophical tradition, see ROBERT C. SOLOMON, *CONTINENTAL PHILOSOPHY SINCE 1750: THE RISE AND FALL OF THE SELF* (1988).

8. See MARTIN HEIDEGGER, *BEING AND TIME* ¶ 13 at 86–90, ¶¶ 31–32 at 184–95 (John Macquarrie & Edward Robinson trans. 1962) (1927).

9. PAUL DAVIES, *GOD AND THE NEW PHYSICS* 102–03 (1983).

10. WERNER HEISENBERG, *PHYSICS AND PHILOSOPHY* 81 (1962) (emphasis in original). See also *id.* at 35 (“[A]sking the right question is frequently more than halfway to the solution of the problem.”). I am indebted to Trinyan Paulsen for this quotation.

11. GADAMER, *supra* note 5, at 267.

For a summary of the complete argument of *Truth and Method*, see GRONDIN, *supra* note 6, ch. VI. For modernist criticisms of *Truth and Method*, see E.D. HIRSCH, JR., *VALIDITY IN INTERPRETATION* 245–64 (1967); Emilio Betti, *Hermeneutics as the general methodology of the Geisteswissenschaften* [Human Sciences] (Joseph Bleicher trans. 1980) (1962) in JOSEPH BLEICHER, *CONTEMPORARY HERMENEUTICS: HERMENEUTICS AS METHOD, PHILOSOPHY AND CRITIQUE* 51, 76–84 (1980).

12. This section is drawn from FREDERICK MARK GEDICKS, *THE RHETORIC OF CHURCH AND STATE: A CRITICAL ANALYSIS OF RELIGION CLAUSE JURISPRUDENCE* 29–32 (1995).

13. KARL MARX, *On the Jewish Question* in 3 KARL MARX & FREDERICK ENGELS, *COLLECTED WORKS* 146, 155 (1975) (emphasis in original).

14. Alan Freeman & Elizabeth Mensch, *The Public/Private Distinction in American Law and Life*, 36 BUFF. L. REV. 237, 241 (1987).

15. See, e.g., JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* 11–41 (1980); Paul Brest, *The Misconceived Quest for the Original Understanding*, 60 B.U.L. REV. 204 (1980). For an originalist rebuttal to these critiques, see Richard S. Kay, *Adherence to the Original Intentions in Constitutional Adjudication: Three Objections and Responses*, 82 NW. U.L. REV. 226 (1988).

16. This hypothetical is from Anthony D'Amato, *Aspects of Deconstruction: the “Easy Case” of the Underaged President*, 84 NW. U.L. REV. 250 (1989).

17. For general discussions of Romney's citizenship and its potential impact on his constitutional eligibility to be president, see *Romney Declares He Is in '68 Race; Predicts Victory*, N.Y. TIMES, NOV. 11, 1967, at 1 col. 1, 62 col. 1; *Romney—Republican Hope for '68?*, U.S. NEWS & WORLD REP., Sept. 5, 1966, at 54, 55, 57.

18. ROBERT BORK, *THE TEMPTING OF AMERICA* (1990).

19. See *Dames & Moore v. Regan*, 453 U.S. 654 (1981) (opinion for the Court by Rehnquist, J.). See also Lawrence B. Solum, *Originalism as Transformative Politics*, 63 TULANE L. REV. 1599, 1624–25 (1989) (arguing that Justice Rehnquist's dissenting opinion in *Nevada v. Hall*, 440 U.S. 410, 432–43 (1979) is methodologically identical to Justice Douglas's notoriously nonoriginalist opinion in *Griswold v. Connecticut*, 381 U.S. 479 (1965)).

20. See *Employment Div. v. Smith*, 494 U.S. 872 (1990).

21. D&C 88:118; accord D&C 90:15; D&C 109:7,14.

22. For a neo-Darwinist review of creationist arguments, see Stephen Jay Gould, *The Confusion over Evolution*, N.Y. REV. (Nov. 19, 1992), at 47. For creationist critiques of neo-Darwinism, see PHILLIP E. JOHNSON, *DARWIN ON TRIAL* (2d ed. 1993); GERALD R. SCHROEDER, *GENESIS AND THE BIG BANG: THE DISCOVERY OF HARMONY BETWEEN SCIENCE AND THE BIBLE* (1990).

23. PAUL TILICH, *THEOLOGY OF CULTURE* 54 (Robert C. Kimball ed. 2d ed. 1978).

24. Compare 1 Cor. 13:12 (“For now we see through a glass, darkly; but then face to face: now I know in part; but then shall I know even as also I am known.”); Heb. 11:1 (“Now faith is the substance of things hoped for, the evidence of things not seen.”).

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