The Word and the Law

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THE WORD AND THE LAW

James Boyd White*

In this Article I shall first give a brief account of Milner Ball’s book, The Word and the Law,¹ saying something about the interesting and important way in which it connects theology, literature, and law. I shall then give a little more content to what I say about this achievement by engaging in a kind of reading of two texts, one theological and one literary, connecting both to the law. I mean this reading simultaneously to be my own and to reflect something of what I have learned from Milner. Another way to put this is to say that I shall be trying to demonstrate what Milner does by engaging in my own version of it—a version that I have to a large degree learned from him.

I.

The Word and the Law is an extraordinary combination of law, personal statement, literary criticism, and theology. In a sense its central question is whether it is possible to have a life in the law that is good, and the answer is yes—yes, though not at all easy. I have often suggested it as reading to students who are worried about the profession they have chosen, and they frequently return to me with deep thanks for the introduction.

Milner’s commitment throughout is not to abstraction or theory or generalization, but to particular realities. Partly for this reason he begins the book with a series of vignettes²—in a better world they might have been profiles in The New Yorker magazine—of people working in and through the law in ways that seem to Milner fundamentally good. But the word “good” hardly does it; it would be better to say that he sees these people as expressing, acting out of,

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² Id. at 7–72.

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and making real what he calls "the Word,"\(^3\) a complex term that is central to his theological thinking and about which I will say a little below.

The people about whom Milner writes in the first section of *The Word and the Law* include a man working ceaselessly to end capital punishment;\(^4\) the founder of a legal services office in Eastern Kentucky;\(^5\) a woman who works as a judge in a New York City housing court;\(^6\) a man, based in Oregon, who serves as tribal judge in several Native American tribes;\(^7\) the head of the Indian Law Resource Center in Washington, D.C.;\(^8\) the Director of the clinical program at Yale, who teaches law students how to represent the dispossessed; and his partner in life, who works on the problems of homelessness in New Haven.\(^9\) What makes these people remarkable is not simply that they work on the side of the marginalized and the oppressed, though they do, nor that they have achieved the results in the world they wished to achieve, which they often have not, but the way in which they do these things: with confidence, good humor, attention to the particulars of the person and problem before them, and real professional skill.

Milner treats these people as they tend to treat those with whom they deal, with deep respect for the particularity of their lives and personalities and situations in life, which he does much to capture for his reader. But certain general themes do emerge, especially, as I suggest above, the deep confidence these people have in themselves and in the value of what they do. They all have it, even though they all also recognize that they will not in fact change very much the way the world runs. The evil against which they work is a permanent part of the scene. But they are full of a sense of value and meaning, which reflects itself particularly in their shared disposition for warm and generous laughter. We do not really have an adequate language with which to express what these people seem

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\(^3\) *Id.* at 4.
\(^4\) *Id.* at 7–16.
\(^5\) *Id.* at 16–24.
\(^6\) *Id.* at 24–38.
\(^7\) *Id.* at 38–49.
\(^8\) *Id.* at 49–60.
\(^9\) *Id.* at 60–72.
Let us say, using Milner's central term, that in them we can see the Word at work in the world.

These are lives in the law that hold out a promise to the rest of us, including the students whom I send to this book and those of us who teach as well.

How is this promise to be defined, explained, talked about further? Maybe nothing more is required, but Milner wants to connect his experience of these people with other aspects of life, especially literature—Dilsey in William Faulkner's *The Sound and the Fury* and Baby Suggs in Toni Morison's *Beloved*—and the theology which is for him simply a necessary part of how he thinks.\(^\text{10}\)

To start with Dilsey and Baby Suggs, these two African American women, each abused and exploited, achieve contact with the truth in a way that enables them,\(^\text{11}\) again in a highly particularized way, to . . . to . . . to . . . —well, to do what, exactly?

How are we to talk about what these people of the law manage to do, what these two women in literature manage to do? To use the word "good," as I have done, hardly does it—the term is too vacuous and moralistic. Yet to speak, say, of self-fulfillment, as our culture invites us to do, misses the point entirely, for such a term makes it sound as though the purpose of life is simply to please or satisfy the impulses of the self—as if these achievements of spirit and imagination are to be ranked with developing a good taste for wines or furniture or clothes. How are we then to talk? This is the point at which Milner is driven to use the language of theology, troublesome though it may be to his readers and surely is to him. What can we say, for example, about Dilsey's truthful, clear-eyed, accepting, un-self-important willingness to meet the needs of those around her? For Milner, what can best be said is that she performs or enacts or expresses or serves the Word. Someone else with a Christian commitment might speak of "serving the will of God" or of "imitating Christ," but these phrases would be not much clearer and for many people would be much more problematic than Milner's laconic term.

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\(^{10}\) *Id.* at 4.

\(^{11}\) *Id.* at 73, 82, 90–91.
Why do I say they would be more problematic? Partly, and obviously, because these formulations would tend to exclude anyone who was not a Christian, but I think that is not the worst of it. The biggest problem is that these formulations would fit all too easily into familiar patterns of dead and sentimental speech and thought that would make it almost impossible for them to be used in a real and vital way. Unless they were used by a master writer in a composition that complicated and deepened their meaning, the words quoted above would slide easily into the discourse of what Milner, following Barth, calls "religion." By this term he means the sentimentalization of faith or belief, and its institutionalization, which is all too common and often in the service of terrible evil, such as human slavery, racism, genocide, or war.

Milner's use of "the Word," as I see it, is his way of insisting upon the life, the mystery, the opacity, of what he is trying to invoke, its irreducibility to human terms. He is separating himself so far as he can from the dead and sometimes murderous use of standard formulations in the Christian tradition and its language. His word for what he is trying to do is "theology"; his word for what he is refusing to accept is "religion." He is as deeply opposed to much of what "Christianity" has done and been as he is committed to the revelations and imperatives at the heart of that tradition. He is not anti-Christian, far from it; rather he is against the use of dead formulas, clichés, empty and self-righteous platitudes that are in his view too much part of the world Christians have made, and in favor of vital and authentic speech, faith, and action. It is this to which he points with his use of "Word," which for him is a term not only of Christian but of Jewish theology.

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12 By "sentimental" I mean locutions that deny hard realities, including the realities of our own ignorance and sinfulness, and maintain the pretense that life can be expressed and managed by the manipulation of stock phrases.

13 Id. at 75–82.

14 Id.

15 In Christian thought, "the Word" refers simultaneously to the sacred texts of the tradition, to efforts to expound those texts, and to the source of all life and holiness that lies behind and in those texts—and of whom John's Gospel says, "In the beginning was the Word." John 1:1 (Authorized Version). In Jewish thought "the Word" is likely to invoke the Hebrew word DVR, both noun and verb, and the Holy One who speaks that way.
In insisting on the distinction between “religion” and “theology” Milner is rejecting a general image of human life that dominates our culture, namely that human felicity and flourishing are to be found in the satisfaction of human desires, and the correlative idea that the best life is that in which the maximum satisfaction can be found. What he calls “religion” seeks to satisfy human desires in such a way; what he calls “theology” seeks to understand and act in accordance with “the Word.” What Milner is determined to affirm is the possibility that, despite our difficulties of understanding and expression and thought, despite the limits imposed upon us by our nature and our selfishness and our stupidity, it is sometimes possible for a human being to act in accordance with the Word—or perhaps to allow the Word to act through him or her.

II.

This is a bold and beautiful book. Milner’s theology is full of passion and maturity and difficulty. It is the opposite of a set of comfortable and sentimental formulations, for Milner insists upon directing the attention and the mind where they cannot wholly go, upon what they cannot wholly understand. His formulations are not meant to close off thought or investigation, but to provide an opening for these activities. It is almost as though instead of saying “the Word” he said “X,” putting all of the responsibility upon the reader to give it content. He does not quite do this, and he does invoke texts from the Jewish and Christian traditions, which give some content to what he means. But this content is difficult, troublesome. Milner works in particular with one crucial passage in the Gospel of Mark where Jesus explains a parable to the disciples (the Parable of the Sower) but makes clear at the same time that he is deliberately not explaining it to the people at large, and for a reason that is problematic to say the least: “so that they

16 BALL, supra note 1, at 102–28 (including Biblical passages from, inter alia, Mark, Isaiah, Kings, and Deuteronomy).
17 Id. at 106–07; Mark 4:1–20 (English Standard) (“The Parable of the Sower.”).
may indeed see but not perceive, and may indeed hear, but not understand, lest they should turn and be forgiven.”

How can this be? Jesus is keeping secret his explanations in order to ensure that the people will not convert and be forgiven? This has long been, for many Christians, a simply impossible text. It turns out that the language that Jesus uses is a quotation from a passage in Isaiah (translated into Greek first in the Septuagint, then in Mark’s text, then translated again for us into English), which presents similar questions about the justice of the Deity. I will not summarize Milner’s treatment of these crucial texts beyond saying that he does not seek to evade their difficulty, but to face it.

I think the best way into Milner’s theology is not to think of it conceptually, in terms of the doctrines or positions or claims or arguments that he asserts, but to think of it as a way of life, or as a ground of life. Milner is not telling us what he thinks, certainly not asking us to think that too, so much as showing us how he lives, or hopes to live. This is a theology that finds its expression in life, not propositions. And the kind of life that he performs or enacts for us in this book is one that insists upon difficulty: the difficulty of understanding texts, including sacred texts; the difficulty of understanding the Word; the difficulty of expressing anything valuable in the languages we have, all of which can decay into sentimental clichés and formulas—into “religion” or, in the law, “legalism.” He knows, and makes us see, that what he is pointing to with the phrase, “the Word,” cannot be fully and clearly expressed in any human language, or grasped by any human mind; he makes us see that the passages from Mark and Isaiah are not susceptible to clear and convincing elucidation of any kind that will make their problems go away; he makes us see that it is not just the identity of

18 Mark 4:12 (English Standard).
19 Including the writer of Matthew, who in a characteristic way softens what Jesus says by changing the “so that” to “because.” Matthew 13:13 (English Standard). In Matthew, that is, Jesus is not trying to make the people blind and deaf, but simply recognizing that they are not capable of understanding what he is saying. BALL, supra note 1, at 107.
20 BALL, supra note 1, at 108–09.
21 Of course no one can live without propositions of one kind or another. In theology one must ask how to read the propositions of one’s faith, how to connect them with one’s own experience, and how to utter propositions of one’s own, whether direct reiterations from the tradition or transformations of those expressions.
the client or cause for which the lawyer acts that determines whether she is acting on the side of death or of life, but the way in which she does so—the tone and style and attitude, the openness of mind, the capacity for trust, the insistence upon justice and meaning.

I think the heart of what he sees, and makes us see, is the responsibility that lies upon each of us, upon you and me, for what we do and say under these difficult circumstances. We are not to repeat in a mindless way the phrases used by others, even the phrases used by Milner Ball, as if they carried force and life by themselves. If we did that in the realm of the sacred, we would be engaging in "religion" not theology; if we did that in the thinking about statutes or judicial opinions, we would be engaging in legalism not law; if we did that in the reading of literature, we would be using, not reading, the texts. Rather, we are to become what he is, a writer, an imaginer, a speaker; one who can bring together texts and questions from law, theology, literature, and the rest of life. We have to face in our way what he shows himself facing in his.

III.

How are we to discharge that responsibility? Milner's answer lies not in any instructions, but in his own performance. I will not try to parse or explain what he does, with literature, law, or theology. But in what follows I do want to say something more in particular about his theology, which is I think the center of this book and the ground of what it achieves. I cannot avoid it, nor do I want to do that.

It is very difficult to talk about this subject, or in this vein, as Milner himself makes clear. My way of doing this, as I said at the outset, will be to try to show something of what I think Milner means in a performance of my own, in which I will necessarily at the same time be building on what he has done. With this as my aim, let me try to give what I mean to be a Milner-like reading of a couple of texts, one a sacred text from the tradition to which both he and I belong, the other quite different, a modern rewriting of an ancient
literary text. In the process I shall try to say something about law as well.

A.

The first text I have in mind, to which I shall give fairly extended treatment, is a moment in chapter six of the Gospel of John in which Jesus seems to be deliberately leading his disciples into confusion and uncertainty, as a result of which many of them simply leave his company, apparently for ever. In its own way this is as puzzling as the passage from Mark referred to above, in which Jesus is said to be keeping his message and his meaning secret from the people.

What precipitates the moment in chapter six is Jesus's sudden and radical intensification of an image that he has repeatedly been using to describe himself and what he offers the world—an image of himself as a kind of food or drink, or nourishment. Earlier in John's Gospel, for example, he says to a Samaritan woman he meets at a well that those who drink from the water that he gives will never thirst again. Of course he is not talking about physical water—water from a special flask he has by his side or anything like that—but is using the image of water to talk about his gift of life to the spirit. Later he feeds 5,000 people who have come to hear him, using two loaves and five fish which miraculously multiply to feed everyone. This time Jesus is providing physical food, fish and bread, but this is surely meant to represent spiritual food as well. Then, in a series of speeches to his disciples and others, Jesus says, several times, that he is the "bread of life," bringing life eternal.

This image is familiar and natural to those raised in Christianity, but in its context it is deeply challenging. The comparison Jesus has in mind, as he makes plain, is with the Exodus story in which the

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22 See John 6:22–59 (English Standard) ("I am the bread of life... unless you eat the flesh of the son of man and drink his blood, you have no life in you.").
24 See supra notes 17–18 and accompanying text.
people of Israel were fed by manna from heaven during their sojourn in the desert. Jesus is saying that he is bread from heaven, like manna; but he is a new and better kind of manna, bringing not just earthly food but eternal life. Those who eat his “bread”—whatever he means by that—will live forever, unlike their ancestors who ate the manna that kept them alive in the wilderness, but were ultimately to die ordinary deaths. Jesus is thus making a claim that must be deeply shocking to his Jewish audience—and all of his audience was Jewish—namely to surpass the great act of divine grace by which the God of Israel fed the chosen people when they were starving in the wilderness. Jesus is saying that he offers more than the God of Israel did at one of the greatest moments in history; at the same time, he makes plain that his offer is not just to the chosen people, but to all people—to whoever eats of the bread of life. This must be very hard for his audience to understand and accept.

This is difficult enough, but Jesus’s image of feeding now intensifies in a way that is bound to make his audience even less comfortable. He shifts from bread and water to flesh and blood, saying that unless you eat of the flesh of the son of man and drink his blood there is no life in you; but if you do these things, you have eternal life.

What can he mean by this weird and apparently cannibalistic language? To modern Christians the image of eating the body and drinking the blood is of course familiar, because it is the basis of the Eucharist, where the bread and wine are said in some way either to be or to represent the body and blood of Christ. But Jesus’s disciples have heard nothing of the Eucharist, and John has told us nothing on the subject. In fact his Gospel will never tell the story of the Eucharist. Obviously the first readers of John, and today’s readers too, have heard of the Eucharist and can read Jesus as foreshadowing it; but that does not change the fact that this language is simply not intelligible to the disciples, his immediate audience in the story.

29 John 6:53.
In fact the disciples not surprisingly rebel at what Jesus is saying. "This is a hard saying; who can listen to it?" they ask. This is a highly understandable response. Aside from the simple weirdness of the image to one who knows nothing of the Eucharist, Jewish law explicitly prohibits the drinking of blood as unclean, and this must make the figure of speech deeply offensive to his audience—including of course his disciples.

So the disciples' confusion makes good sense. Yet when Jesus responds to them he does not do so as the friendly, loving, and helpful presence he is sometimes imagined to be (especially in what Milner would call "religion"). He does not really explain or clarify what he means, or try to make it easier. In fact, in a way that reminds me more than a little of the passage from Mark, he makes it harder: If what I have just said offends you, he says, how do you think you would respond if you saw the Son of Man ascending in the sky to the heaven from which he came? This reference to the Ascension—which has of course not occurred nor so far as we know been predicted, and which is by any measure a strange thing to imagine—must be puzzling in the extreme. Then, shifting his subject rapidly, he says: My words offer you spirit and life, but I know that some of you do not believe. This means, given what he has earlier said, that some of his disciples will not have eternal life. Tough news indeed, and again puzzling in the extreme—and certainly different from the sentimentalized Jesus of much religious instruction. Then he says, No one comes to me unless it is granted by the Father—suggesting perhaps that God is a kind of gatekeeper to salvation, with the result that we cannot on our own choose to believe, or to accept his teaching. If that is true, does it mean that some of us are just doomed to death without our fault, others given the gift of eternal life? How can that possibly be just? This too raises disturbing possibilities.

30 John 6:60 (English Standard).
32 There was one precedent, the ascension of Elijah to heaven, which might give Jesus's remark some familiarity to his audience. 2 Kings 2:11. To the extent Jesus was invoking that precedent, however, he was claiming to be a new Elijah, itself not an easy thing to accept.
33 John 6:63–64.
34 John 6:65.
Jesus has identified a whole set of extremely difficult issues—the meaning of eating the flesh and drinking the blood; the nature of eternal life; the mystery of the Ascension; the persistence of disbelief even among his friends; the possibility of predestination and hence divine injustice—issues that have troubled the theologically minded for the past two thousand years and are still with us today. No one has solved any of them. But Jesus dumps all of them on his disciples, who are in no way prepared or equipped even to identify the issues, let alone think about them.

These difficulties are in a real sense beyond the capacities both of his disciples and of those of us today for whom this is a sacred text, certainly beyond our rational analysis. I know that I cannot fully explain, even to myself, the justice of God; the nature of the Ascension; exactly what happens at the Eucharist; or what Jesus means when he speaks here of eating the flesh and drinking the blood of the Son of Man. We live in contact with realities and experiences we cannot manage with our minds.

This is perhaps the main thing that Jesus in this passage is trying to teach the disciples, saying to them something like this: Of course you balk at what I have just said about eating the flesh and drinking the blood. But there will be much more to balk at before you are through. Life with me, my way of living, cannot be reduced to logical coherence, to human language, to human understanding. You will always live in the edge of understanding, in the presence of that which you cannot reduce to human terms.

What Jesus is not so much telling his disciples in this passage as making them experience directly, is that what he offers can never be rendered wholly intelligible in a rational or propositional way. To live the life to which he is inviting them is to live with the unknowable, the inexpressible, that which is beyond language and the mind. This is the opposite of the vice that Milner calls "religion," which typically, in the Christian context at least, involves the reiteration of linguistic formulas, doctrinal propositions, credal statements, as though the expressions told the truth nonproblematically.

This experience pushes off on to the individual disciple the responsibility for speech and action in the context it defines. You must yourself decide what you are to say and do; you must decide
whether or not you can live with the inexpressible without, the inexpressible within, and the difficulties such a life presents. In all of this you are not of course alone: you have the sacred texts, the church both as institution and as community, and the presence of what I might call the Spirit, and Milner the Word. But as the passage from John makes plain, your own responsibility is not to be evaded by recourse to any of these things.

What Milner calls "theology" is a way of continuing to inhabit the space Jesus here defines and creates. The task is not to answer the questions he poses, but to learn how to live with them. Those who do so are called to a certain kind of existence, highly problematic in nature, with no guarantee of success.

B.

I wish now, like Milner, to turn to the law, seen not simply as a set of rules or as a system of institutions but as a life, an activity of mind and imagination, and ask what I take to be Milner's question: What connection can there be between the kind of theology he does, as represented in his book, and in my own efforts just above, and the law, especially the practice of law?

Obviously law, like theology, is inherently neither better nor worse than any other life, but better or worse only as we make it so. Law can be dreadful, marked by thought and expression that is rigid, dead, authoritarian, sentimental, the equivalent of what Milner calls "religion." Or it can be . . . what exactly? Can it be in Milner's terms a place for the Word to live?

First, let us think of the way language works in legal texts. Some people, and some part of ourselves, want to claim that these texts have fixed and clear meanings; that any difficulties in interpretation are trivial in kind; that the phrase from the statute book or judicial opinion somehow says it all. But most lawyers learn that this simply will not work, a discovery that is forced upon them by the brutal fact that their authorities will not perfectly cohere. The inherent uncertainty in language creates an unavoidable openness to contrasting readings that cannot be avoided and that can be ignored only at one's peril. This openness creates possibilities for
newness of thought and imagination—for the life of what Milner calls the Word.

There are powerful forces in the law that resist the disposition of the law to become a closed and authoritarian system. The first is the simple fact that in the usual case there are lawyers on both sides, each of whom is under a constant pressure to open up possibilities of meaning that a casual or lazy reading would miss or slide over. The statute may seem to favor the defendant, but the plaintiff has every incentive to test that reading in every way he can—by exploring the possible linguistic meanings of the crucial words and phrases and by reading the particular provision in its larger contexts: in light of the larger statutory scheme, or against the common law background it was meant to modify, or by analogy with other statutory and judicial authorities (from one's own jurisdiction or others), or by the invocation of the structural values that underlie the law and find only implicit expression on its surface. Of course he or she will also examine other statutes that may conflict with this one, or supersede it, and other constitutional provisions, state and federal, and other principles of common law or rules of practice. While it is of course true that some rules will be too plain and certain for argument, in any real case the hunt is perpetually on for those rules, or other texts, that afford an opening for argument.

A second source of the energy that keeps legal interpretation open is the fact that it is our convention—and maybe a convention necessary in any system that claims to be law—that in every case the requirements of law and those of justice must be seen to coincide. As a practical matter it would be very difficult for a lawyer to confess that a statute is unjust but claim that it must nonetheless be applied, just as it would be difficult to confess that the only proper construction of a statute is adverse to his client but claim that it must be disregarded nonetheless because it is unjust. Each lawyer must argue that both law and justice are on his side, in essential harmony. In every case there is thus a potential

35 Of course the lawyers on the two sides of a case will have competing understandings of what justice requires, just as they will have competing interpretations of the law. There is no clear definition of justice to which both (or either) can unproblematically appeal. But
redefinition both of law and justice and the relation between them, which opens the discourse in ways that cannot be predicted or controlled. And once the argument begins it cannot be reduced to a merely technical affair, for it raises issues and doubts and difficulties that cannot be cabined and confined.

In addition, the lawyer must face the fact, familiar to the theologian, that he deals with experience that his language cannot wholly express, and must do so in connection with other languages which it can neither completely dominate nor completely ignore. For what brings the parties into conflict is often an experience—an injury, a betrayal, a loss, a hope—that cannot in fact be wholly expressed in any language. In the course of trial, it is always a possibility that the law will find itself poised against another language, another body of knowledge—engineering or medicine or accountancy or sociology or psychology—that cannot simply be translated into legal terms but has its own meaning, its own authority, with which the lawyers and judges will have to find a way of coming to terms. The law must deal with what it cannot express, in relation both to the original human experience and to other forms of thought and discourse.

The surprising openness of the law to thought and invention and newness creates for the lawyers simultaneously a set of difficulties, a set of opportunities, and a set of responsibilities. For the law must be reinvented, over and over again, in case after case. This makes it possible for the lawyer to have a sense, seen in many of those whom Milner describes at the beginning of his book, that in working hard in the law, on case after case, detail after detail, one is, without quite knowing how, marking out points on a trajectory that will have a significance that one at the time can only dimly grasp; and perhaps another sense too, that in these moments at which one faces the inexpressible reality of other people’s experience, the problematic meanings of the law, and the impossible task of defining what justice means, there are flashes of significance, of power, of grace, that redefine life itself. The responsibility of the lawyer, and his joy, is to live with the difficulties at the heart of law, at the heart

just as the meaning of the law is a necessary topic of the lawyer’s argument so is the meaning of justice, in general or in this case.
of justice, difficulties that can never be resolved, will never go away, but which he must address nonetheless. In all of this it is rather like theology, as both Milner and the author of John define it.

Of course law can be terrible. It can be used for evil ends, for torture and slavery and the oppression of the poor. It can be part of what Simone Weil calls the empire of force. It can become a tissue of sentimental slogans, of clichés, of formulations that trivialize and dehumanize our fellow human beings and us too. But so, as Milner argues, can theology, including Christian theology. The responsibility to see that law and theology are not used in this fashion lies upon us, and this responsibility is so similar in the two fields as nearly to unite them.

There is this to add, which I express here as a matter of faith. My own belief is that when law is used in the way I describe in the preceding paragraph, it loses its character as law. When our law was used to maintain the hideous system of racial slavery upon which so much of the nation's life and economy was so shamefully founded, it lost its essential nature, for it became subject to the control of a single value, that of slavery, which always prevailed when it conflicted with any other. Instead of being a system of thought and expression in which conflicts are recognized, and faced, and dealt with, it became an almost perfectly authoritarian and empty system in nature, unable to open itself to argument based upon the larger purposes and character of the law, upon analogies among the various parts of law and to the larger culture, upon claims of justice—upon whatever can happen when established ways of stating the truth are challenged. Similarly today the use of the forms of law to justify the torture of those whom some government officials suspect of crime, or perhaps merely of criminal disposition or association, in my view threatens the very existence of law as we have known it. Indeed I think this practice

36 Here is what she says: "No one can love and be just who does not understand the empire of force and know how not to respect it." Simone Weil, "L'Iliade, ou le poème de la force," first published in Les Cahiers du Sud (December 1940–January 1941). SIMONE WEIL, OEUVRES 528 (Florence de Lussy ed. 1999). In French the sentence reads: "Il n'est possible d'aimer et d'être juste que si l'on connaît l'empire de la force et si l'on sait ne pas le respecter." Id. at 551. The translation given above is my own.

37 For an elaboration of this position through readings and questions, see my THE LEGAL IMAGINATION, 430–503 (1973).
is so obviously evil and so obviously gratuitous that it must be the true purpose of those who propose "legalized" torture to destroy law itself, and with it the law's power to control government.

For me—and I know here I may be far from what Milner would say—the center of both law and theology is the fact that in each we constantly face the moment of speech, the moment of thought, at which we may find ourselves replicating dead and toxic forms of expression or may, instead, find new and vital ways to speak. The latter is always possible, and always our responsibility, in both fields; and in both it is in a sense always enough to be a servant of life, to seek living speech and what it can offer, even if in the particular moment one loses, or is ignored or forgotten or killed. Both law and theology are in this sense based upon fidelity to the possibility of the moment, the openness of the world to new life, new expressions of the truth.

C.

I want to close with a brief account of another work, certainly literary and legal, and perhaps theological too, that I think of extraordinary interest and importance. I have in mind the version of Sophocles' Antigone composed by François Ost, professor of law and Vice-Rector of the University of St. Louis in Brussels. I include it here as a way of affirming one of Milner's major points as a Christian theologian: that just as there may be activities that are styled "religious" and "Christian" but in which the Word is not present or respected, so too there may be activities that are wholly secular in appearance, or the product of a radically different religious tradition, in which the Word is present and alive. How to determine whether either of these is the case, or not, is for Milner a central responsibility of the faithful life.

Entitled Antigone Voilée (in English, Antigone Veiled), Professor Ost's play locates the Antigone story in a modern European country which is francophone with a substantial Muslim population—France or Belgium or Anycountry. The setting of the events is a highly selective public secondary school, in which Ayisha, the Antigone-

figure, and both of her brothers, Nordin and Hassan, and her sister, Yasmina, are students. The two brothers are killed by an explosion of an object apparently in their possession, Nordin immediately, Hassan after a period in the hospital. As the Director of the School sees the facts, this is the fault of Nordin, in his mind a terrorist, who must have been carrying a bomb; Hassan, the good citizen, must have been struggling with him to prevent the use of the bomb when it went off.

The brothers are of course direct parallels to the two brothers of Sophocles' Antigone who die in battle for the control of Thebes. One of these, Eteocles, is thought by Creon, their uncle and now by default the ruler of Thebes, to be the good one, dying for the city; the other, Polynieces, is on his view the bad one, attacking the city and seeking to overthrow the government. Eteocles, Creon declares, is to be honored with a public burial; Polynieces is to be thrown out of the city, to be devoured by dogs and birds. Creon announces that it will be a crime punishable by death to provide his body with the protection of religious "burial," which can be achieved simply by sprinkling dust on the body. This is the decree that Antigone disobeys, an act that leads ultimately to her death.\footnote{Creon's version of the story omits the fact, deep in the tradition, that Eteocles and Polynieces, were supposed to share the rule of Thebes in alternate years, and that Polynieces was attacking Eteocles, not the city, because Eteocles refused to yield power when his time was up.}

In Antigone Voilée, the major parallel to the burial is attendance at funeral services for Nordin, which the Director prohibits to any student, including Ayisha, who begins to wear the hijab, or veil, in protest. When she is threatened with punishment, she enters upon a fast, from which she ultimately dies. Much of this play, as of Sophocles' play as well, is taken up with arguments among the various actors as to the rightness of the decree in question and of the refusal to obey it. In Ost's play the characters include members of what we would call the board of trustees, including their chair, teachers, a couple of news reporters, as well as the primary antagonists, Ayisha and the Director.

I will not rehearse the arguments except to say that there is surface plausibility in many of them, on both sides. The idea that
the school should prevent its students from wearing insignia that would divide them on religious lines has of course power, as does the fear that the funeral may become a kind of political theater, challenging the regime of the school. And it would challenge not only the regime of the school but its central educational function. For the mission of a French school, much clearer than its American counterpart, is to produce citizens who share French culture in a deep and vital way. On the other hand, students are allowed to wear crosses and yamulkes, and small items that indicate belief in Islam, so why not the veil? And the factual assumptions upon which the Director is proceeding, namely that Nordin is a terrorist and Hassan a good citizen, are wholly unproven. 

As in the original Antigone, and as in a good law case too, the arguments not only answer each other, they open up new lines of thought and action. Ayisha starts off being offended by one thing, the prohibition on attending the funeral of her brother, but becomes much more deeply offended by the gradually emerging structures of thought and feeling that underlie that prohibition. This leads to her own theater, of self-starvation. 

One beauty of this play is that it brings the mainstream reader or audience to see this conflict, of course a widespread one in Europe, and soon perhaps here, from the point of view of the Muslim, who is seen by the official world as a threat and whose willingness to act on her beliefs, even in purely symbolic ways, is seen as an offense and a danger. 

One line of questioning to which Ayisha is subjected, and which lives for the audience as well, is exactly why it is so important for her to wear the veil. Here we naturally want to think legalistically, in terms of rules and sanctions. Does the Qu’ran require it? Upon the threat of what sanctions for disobedience? Or is this just her “personal” idea of what she should do? Or is it really a “cultural” or “political” rather than a “religious” symbol? And what of the argument that the prohibition of the veil is meant to protect the individual girl or young woman from the dehumanizing control of others, especially men, against her own will or preference? If the school permits her to wear the veil, the thought is, she may be required to do so by her community, sometimes under the threat of rape or other forms of violence if she does not. And in any case will
the affiliation she is enacting in wearing the veil, even if in some sense voluntary, prevent her from achieving a condition of autonomy that will permit her to make the authentic choices upon which our idea of democracy and civilization depend? All this means that the value of the young woman's autonomy is arguably on both sides of the question, not just one. As these arguments and others too are advanced by the various speakers, we come to see how complex and difficult the issue is, especially when regarded not as a matter of law or theory, but of life and action.

We cannot fully evaluate these arguments for we do not know what we think we know, namely what Islam is—or what different versions of it exist; or what the meaning of the veil is, or the range of meanings, to Ayisha, to other Muslims, to the world. In this sense these arguments are a call to us to do the work necessary to reaching a right judgment.

But what is a “right judgment”? Think here of Ayisha’s own judgment: it is not simply that she insists on wearing the veil that matters, or the persuasiveness of the arguments she makes on her own behalf; it is how she does these things, and who she is in doing so. Some of the arguments advanced against her by time-servers and bullies and administrative cowards have real force (or would have force if they were advanced by others, in another way); the arguments are cogent in themselves, but in the nature of things inconclusive; in the end it is who the proponents are that matters, how they make the arguments they do, and in these respects many of them are contemptible. In a way that may remind one of Milner’s understanding of the Word, and of the good lawyers described in his book, the most important questions of human life cannot be reduced to proposition or program or outcome, but lie in the world of character and meaning. Others could do what Ayisha did and be plainly wrong, and the same is true of our own most significant moral judgments: what determines quality at the deepest level is who one is, the meanings one lives by, the way one acts in the world.

So how does the play end? The Director realizes something of what he has done, and is ashamed and guilt-ridden. Yasmina, speaking with authority here, compares this situation with that of her father—Oedipus—when he confronted the Sphinx. He thought
he knew more than the Sphinx, Yasmina says. The Director, somewhat puzzled, says he has never seen the Sphinx.

"She was there however, but you didn’t see her," says Yasmina. "You asked questions and made answers. But you didn’t think there really were questions. You saw only the answers. You were encumbered with certainties. Answers are easy. All they take is patience and work. But questions are risky. You walk the tightrope above the void, without a safety net. Every step is a disequilibrium. One must believe in the next step, inventing the path as one goes."

The Director asks her if he should resign. Yasmina goes on:

"You still don’t understand. Someone else in your place would not have done better than you. It is not a question of being Director or not. It has solely to do with knowing how to listen, how to hear the questions that are posed."

The Director asks whether Nordin is one of the faces of the Sphinx, and Yasmina says: "Yes, and Hassan also."

"And Ayisha?" he asks. "Not she," she replies. "The veil perhaps. You must understand this veil was not a screen, but an enigma. It was not a rejection, rather an appeal, an open question."

"And you?"

Yasmina says, "I have had enough of the questions of others."

The Director turns at the end to thoughts of his son Eric, fearing that he has done something irreparable. Yasmina says, "Certain people are condemned to live. I know something about that."

"What could I ever say to him?"

"There always comes," says Yasmina, "a moment at which you are asked what has been your question. You will have much time now for thinking about your question."

I have no idea whether Professor Ost would think of himself as having theological interests or concerns, but he is a lawyer, and his vision of law, and life, seems to me to bear a deep similarity to that of Milner. It is how one lives with the unknown and unknowable, the decisions one makes and the risks one takes, that matters. Life is a series of questions, including the questions this play puts to us, including the questions Milner raises, including the questions Jesus puts to his disciples in the passage from John. No easy or familiar answer is possible, in law, theology, or life itself. This is true for
Ayisha and Yasmina, true for the lawyer who feels and accepts the extraordinary responsibilities of his position and his calling, and true for those who read the Jewish or Christian Scriptures, and I assume the Islamic texts as well, in a way that acknowledges their opacity and difficulty and recognizes the hope they make real.