

# LAW, LANGUAGE, AND LIABILITY:

## The *Persona Ficta* of the Corporate Person in Theology and Finance



*“Quite often, in fact, we find bankers accused of buying counterfeit coins as well as stolen valuables such as gems and silver belts. As we have seen . . . sometimes they themselves were discovered to be partners in the production and distribution of counterfeit coins, or they were found to have ordered the wholesale clipping and filing of mint coins, even though culling was a criminal activity.”*

—Reinhold C. Mueller<sup>1</sup>

THERE IS A JOKE GOING AROUND in the wake of the vast fraud committed by the banking and securities communities over the past few years: “I’ll believe that corporations are persons,” says our anonymous interlocutor, “when the state of Texas executes one of them.” In some versions of the joke, the names of the corporations—J.P. Morgan-Chase, Goldman Sachs, and a host of others—top the list of those on “corporate death row.” Of course, in the audience there is always a lawyer or two who objects that the whole *purpose* of corporations is to limit personal liability for the misdeeds of a corporation or its officers.

But it was not always so, and indeed, the original basis of the doctrine of the corporate person is theological, and the whole *point* of the theological version of the doctrine was precisely to make sure that an individual could

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<sup>1</sup> Reinhold C. Mueller, *The Venetian Money Market: Banks, Panics, and the Public Debt, 1200–1600* (Baltimore: Johns Hopkins University Press, 1997), p. 70.

be morally culpable for someone *else's* misdeeds. So how did we get from the theological doctrine to the current state of affairs? How did we start with a doctrine whose whole purpose was to hold humanity corporately responsible and morally culpable for an individual's misdeed, and arrive at the present, when the corporate person can, and has, gotten away with fraud on a massive scale, while many corporate officers presiding over the fiasco have actually given themselves bonuses for their "performance"?

## A. THE THEOLOGICAL PART OF THE STORY

The theological part of this story begins with a mistranslation made by St. Jerome in the Latin *Vulgate*, and with how St. Augustine of Hippo Regius, on the basis of that mistranslation, formulated the Western Church's doctrine of "Original Sin."

But first, some caveats.

The first caveat is this: to attempt to survey the vast amount of literature that has been written about the doctrine of corporate personhood as an adjunct of the Western Church's doctrine of original sin in a few mere pages in a chapter is an impossibility. Whole tomes have been written about the subject, and all that can be accomplished here is to show the basic theological concepts, their roots, interconnections, and a few of the sweeping implications of that doctrine for the formation of Western culture, jurisprudence, and finance.

The second caveat flows from those previously mentioned roots, interconnections, and implications, for the doctrine as the *Western Church* came to hold it—in one form or another, and in varying degrees of "severity"—was precisely a *western* doctrine, unique to the medieval Latin Church, and therefore in its conceptual roots unique to the Protestant churches that broke from it. *It was not, and is not, the doctrine of the Eastern Orthodox churches*, which do not even refer to the doctrine as "original sin" but as "the ancestral sin." As we shall discover in this short excursus, the western doctrine is intimately related to the notion of the "infinite debt" that mankind supposedly owes God, and to the Western Church's interpretation of the sacrifice of Christ as a kind of "infinite sacrifice" balancing the divine account books.

### 1. *The Central Verse and Crux Interpretum* a. *The Greek and the King James*

The easiest way to approach this complex subject in our theologically illiterate culture is by examining just one verse in the New Testament, a verse that is, so to speak, the foundation for the doctrine of original sin. That verse

is Romans 5:12. In our exposition of this verse, it is important for the reader to remember that we are *compacting* centuries of analysis and theological interpretation, and thus, the reader will have to learn a bit of theology, and a little Greek and Latin, along the way. We cite the verse here in the translation of the Authorized (King James) Version, for reasons that will become apparent shortly:

Wherefore, as by one man sin entered into the world, and death by sin; and so *death* passed upon all men, for that all have sinned.

Before we proceed with complex analysis, it should be noted that the verse does *not* say that “sin nature” or even “guilt” passed upon all men, but that *death* did.

Now let us begin to look at this verse, and particularly the last clause of the verse—“for that all have sinned”—very closely. In the original Greek, this reads εφ ω παντες ημαρτον, and the two words that concern us here are εφ ω (or “eph ho,” to transliterate it), which the King James translators have very carefully (as we shall see) translated “for that.” The interesting thing about this expression—εφ ω—is that it is capable of three different interpretations all at the same time (after all, this is Greek!). These two little Greek words are, in the first instance, an idiomatic expression, meaning simply “because.” Thus, the first meaning of the verse in the Greek is this:

Wherefore, as by one man sin entered into the world, and death by sin; and so *death* passed upon all men, because all have sinned.

However, it is when we consider the meaning of the two Greek words εφ ω—*eph ho*—*separately* that the meaning becomes more specific. The second of these words, ω, or *ho*, is a *masculine singular reflexive pronoun*, referring, obviously, to a masculine singular antecedent in the previous parts of the sentence. The first word, εφ, or *eph*, is a preposition, which in this grammatical construction means “for that reason” or “because of which.” Notably, by adopting the translation “for that,” the King James translators were being scrupulously faithful in trying to preserve not only the *first* meaning—“because”—but also the other two possible meanings—“because of which” or “for that reason”.

So the question at this point becomes “what is the antecedent of the masculine singular pronoun ω, or *ho*?”

In the previous parts of the verse, there are only two possibilities in the Greek, the “one *man*” (ο ανθρωπος) and death (ο θανατος).

If one takes the first antecedent, the “one *man*,” then the meaning of the verse becomes this:

Wherefore, as by one man sin entered into the world, and death by sin; and so *death* passed upon all men, because of the one man all have sinned.

But there is a problem with this reading, and many Greek church fathers saw it immediately. The problem is that in such constructions, the normal rules of grammatical exegesis infer that reflexive pronouns refer, not to the *farthest* antecedent, but to the *nearest*, which in this case, is not the “one man,” but *death*. Thus, the more specific reading of the verse is this:

Wherefore, as by one man sin entered into the world, and death by sin; and so *death* passed upon all men, because of death all have sinned.

What this means is that on the *first* reading of the verse—“so death passed upon all men, because all have sinned”—is that death is a punishment for *individual personal sin*, whereas on the *third* reading of the verse—“so death passed upon all men, (and) because of death, all have sinned”—it is *death*, i.e., physical and spiritual corruption, that is passed from Adam and Eve to their descendants, but *not the moral culpability* for their sin. In other words, it is the *consequence* of their action—death—that is passed on, *but not the moral responsibility* for someone *else's* misdeed. Indeed, it is largely the first and the third reading that the Greek church fathers favored, and hence, there is *no* notion within Eastern Orthodoxy that one inherits a moral culpability for Adam and Eve, or a “sin nature” as is often stated in the western version of the doctrine.

This close reading of the verse had enormous consequences for how the Eastern Church interprets other texts relating to this issue, and also had enormous consequences for legal and cultural developments in the East, not the least of which was that within Orthodox cultures it is not the Crucifixion of Christ that is the central liturgical event, but the Resurrection of Christ that is the central liturgical and cultural event. The reason is simple: the basic problem of mankind, on this view, is not so much a *moral* one (and hence, not a problem of infinite debt), but, so to speak, a *physical* one that only God Incarnate, through the conquest of death, can repair.<sup>2</sup>

Note something very important here, for it will be crucial to understanding how the *Western* doctrine is in fact a doctrine of inherited guilt or moral

2 I am well aware that the meaning of “death” for the Greek fathers implied both a physical and *spiritual* corruption, but am stressing the “physical” aspect of it for western audiences unaccustomed to thinking of such issues in other than moralistic and thus purely spiritual terms, in order to show that there is no notion of an inherited moral, or “legal,” culpability or guilt for someone else’s sin.

culpability *based on the doctrine of corporate personhood*. In the Greek, death is indeed a *natural* consequence, that is to say, it inheres in the common human nature passed on from parent to child, and thus, in the Orthodox Christian view, from Adam and Eve to the rest of humanity. But in the Orthodox view *sin* remains a *personal* choice, and hence, the moral culpability is only ascribed to the individual *person* committing the act. Thus, a very clear distinction is drawn between *person* and *nature*, a distinction that, as we shall now see, dissolves in the Western version of the doctrine.<sup>3</sup>

*b. The Latin Vulgate and All Other English Translations*

It is when we turn to the Latin Vulgate translation of St. Jerome that we see the origins of the western doctrine that will become codified by St. Augustine of Hippo Regius, for here, there is clearly an implied doctrine of a “corporate person.” In the Vulgate, Romans 5:12 reads this way:

Wherefore, as by one man sin entered into the world, and death by sin; and so *death* passed upon all men, in whom all have sinned.

The Latin of the last phrase is quite clear, emphatic, and insistent: *en quo omnes peccaverunt*, opting to translate only the *second* possible meaning of the Greek εφ ω παντες ημαρτον, a reading that, as we saw, was not favored by the Greek fathers nor really even consonant with normal rules of grammar.

Now we must “parse” this reading somewhat, again compacting massive amounts of theological writings of the period, and massive amounts of analysis. Our guide here will be the two crucial categories of *person* and *nature*, and the third metaphysical category so essential to theological dogmatics, the category of *natural operation*. We may get a glimmer of what each of these categories are designed to do, by noting the questions they are designed to answer:

- 1) *Person* answers the question *who is doing something?*
- 2) *Natural operation* answers the question *what is it that they are doing?*  
and
- 3) *Nature* answers the question *what are they that they are doing these things?*

We can gain an appreciation of the second and third questions from the old adage “if it looks like a duck, walks like a duck, and quacks like a duck, all natural operations of ducks, it’s a duck, i.e., possesses the common nature of

<sup>3</sup> It should also be noted that the King James *alone* of all English translations achieves a translation rendering most of the subtleties of the underlying Greek text, whereas other translations opt to translate only one meaning, and the simplest one at that.

duckdom.” We get close to an understanding of the difference between person and nature here by noting that ordinary language maintains it. We say “I *am* a person (person)” but “I *have* a soul” (nature), and thus, the rational faculties of human nature and soul *are distinct from the person itself*. As we shall see, it is customary for those in the West’s culture to make the mistake of identifying *person* with *soul* and thus to reduce person to the soul’s rational and volitional faculties, for reasons we shall get to shortly, reasons closely allied to the doctrine of an inherited moral culpability, the corporate person, and the peculiarly and uniquely western doctrine of “original sin” as distinct from the Eastern doctrine of *ancestral sin*.

It is these three categories of metaphysical distinctions—person, natural operations, and nature—and the three questions associated with them that form the basis of trinitarian theology, the doctrine of the Incarnation, and theological anthropology. It is worth pausing to take a short look at the first two, before passing on to a consideration of what happens to these three categories when viewed in the context of the implied doctrine of inherited guilt and the theological anthropology of the Western reading of Romans 5:12. It is important to note that our sole purpose here is *not* to defend the truthfulness or falsity of these doctrines, but merely to elucidate the general method of *thinking behind them*.

With respect to the database or dataset of the first two fields—trinitarian theology and the Incarnation—the texts of the canonical New Testament became, of course, the basis on which the questions were posed. For example, if in the New Testament the fathers saw Christ uttering phrases with the words “I am”—the name of God in the Old Testament—and performing miracles or forgiving sins, and if the Holy Spirit could be blasphemed against, then the clear implication was that the “Whos” that were “doing these things” had the same common “divine” nature. Hence, three *persons* doing *common operations* of a common underlying *nature*.

With respect to Christ, the same order of asking questions in terms of the categories led to a different result. There, *one* person was performing *two entirely different sets* of natural operations: “divine” ones like healing the sick, forgiving sins, and so on, and human ones like walking, talking, and so on. This led to the famous Chalcedonian definition in 451 that he was *one Person* in *two* natures. In both the trinitarian and christological instances, it is important to note that the distinction of the three categories has been maintained.

Now let us return to the Western version of Romans 5:12 and parse what is going on in terms of the *categories* of person, natural operation, and nature, to see what has happened. First, let us recall the reading of the Vulgate itself:

Wherefore, as by one man sin entered into the world, and death by sin; and so *death* passed upon all men, in whom all have sinned.

Note now the implied steps of the metaphysical “logic” here:

- 1) The *person* of Adam—the “one man” of the verse—sins;
- 2) Sin is a *personal use* of the *natural operation or exercise of the human will*, which is a property common to human *nature*;
- 3) But the moral culpability of that choice passes to all his descendants (in whom all have sinned); thus,
- 4) The *natural operation of the will* and *its personal use* now defines the content of *all persons common to the inherited nature*. In other words, *person has been confused with nature on the basis of one, or several, persons using their common faculty of will in the same or similar ways. This common functional use thus implicitly defines the very person itself, and consequently makes possible the conception of a “group” or “corporate” person conceived precisely in terms of this common functional use of the will.* It is this step, in other words, which informs the corporate logic so many people find frustrating, namely, the formation of corporate “group think” cultures. Such a phenomenon is built into, and an inherent component of, the underlying corporate logic of the doctrine of original guilt.

In other words, the distinction between person, operation, and nature has been completely blurred,<sup>4</sup> and what has arisen as a consequence is a kind of “group person”—the Protestant theologians would sometimes call it a federal person or “the federal Adam”—which is defined *by the assumed common functions* of the will and its involvement in a universal guilt. Persons engaged in common functions—in this case, “sin”—defined the group, or corporate, person in this case, all of humanity descended from, or “in” Adam: “in whom all have sinned.” It is this step that forms the theological basis of the doctrine of corporate personhood in law.

Finally, in its own way, this doctrine is deeply rooted to the Western Church’s understanding of the Atonement of Christ as being the payment of an infinite debt.<sup>5</sup> In one sense, the understanding of “original sin” as an

<sup>4</sup> It is worth pointing out that this blurring of distinctions *also* occurs in western trinitarian theology, as the Eastern Church pointed out consistently once the peculiar formularies of Augustine of Hippo became known to it. This blurring of the categorical distinctions also played a major role in the recurrent western controversies over predestination and free will. I have outlined these two points previously in my published theological works.

<sup>5</sup> See Farrell and de Hart, *Grid of the Gods*, pp. 201–217.