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## Dream Vignettes

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## Dream Vignettes

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ABOUT THE AUTHOR: Richard Chused is a professor of law at New York Law School.

AUTHOR'S NOTE: This essay is dedicated to Gerry Spann, my colleague for many years at Georgetown University Law Center. He has taught me more about living a just life in the face of frustrated dreams than anyone else I know.

## DREAM VIGNETTES

Asking a law professor to publish an essay<sup>1</sup> in observance of the fiftieth anniversary of Martin Luther King, Jr.'s August 28, 1963 "I Have a Dream" speech<sup>2</sup> is a bold and potentially foolish gesture. And in a law review, of all places. How can anyone possibly capture the ethereal heights of spirituality, emotion, and power King ushered into the world that day? Perhaps no sermon in all of American history has marshaled the power and majesty of King's oration on the steps of the Lincoln Memorial. It takes a bit of *chutzpah* for a law professor to offer words seeking to reveal the actual and potential impact of that day's religious drama on changing American law. I'll see if I can muster some.

I label the Speech a "sermon" and call the day a "religious drama." Though typically described as the most important personage of the civil rights movement—a social reform crusade freighted with the political, social, and economic history of race in America—King himself was a man of God. Most of his primary sources of inspiration were religious.<sup>3</sup> He rose to fame from the pulpit of the Dexter Avenue Baptist Church in Montgomery, Alabama—an institution that became a major force during the Montgomery Bus Boycott triggered on December 1, 1955 when Rosa Parks refused to vacate her seat for a white person.<sup>4</sup> And the Movement itself was heavily influenced by religiosity—not only because of King's theological background,<sup>5</sup> but also because so many of the organizers were people of the cloth and the foot soldiers church members.

To write about the Speech without considering the connections between religion and socially conscious law reform therefore strikes me as oxymoronic. That topic, however, is largely out of favor at the moment, at least on the Left. There are multitudes of conservative legal activists who use religion as a baseline from which to decry same-sex marriage, oppose abortion and birth control, or encourage the

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1. Despite the irrationality of the request by the *New York Law School Law Review* to write this piece, I am grateful it was made. I extend my thanks to the *Law Review* editors and my colleague Michelle Zierler for their assistance and confidence.
  2. Martin Luther King, Jr., *I Have a Dream*, AM. RHETORIC (Aug. 28, 1963) (on file with the United States Congressional Archives), available at <http://www.americanrhetoric.com/speeches/mlkihadream.htm>.
  3. King obtained a Ph.D. in Theology from Boston University. *Dr. Martin Luther King Jr.*, B.U. SCH. THEOLOGY, <http://www.bu.edu/sth/dr-martin-luther-king-jr/> (last visited Jan. 15, 2015). Over the course of his life he studied a number of important authors, not all of whom were Christian. Works by Reinhold Niebuhr, Paul Tillich, and Walter Rauschenbusch—the Progressive Era reformer—were objects of study along with Mahatma Gandhi and Henry David Thoreau. See RICHARD LISCHER, *THE PREACHER KING: MARTIN LUTHER KING, JR. AND THE WORD THAT MOVED AMERICA* 7 (1995).
  4. Ms. Parks, long an active member of the National Association for the Advancement of Colored People (NAACP), was sitting in the first row of the black section. The tradition was that if the white section at the front was full, blacks sitting in the next row were required to move back or stand so whites could sit down. Ms. Parks declined to do so and was arrested. See *Rosa Parks and the Montgomery Bus Boycott*, U.S. HIST., <http://www.ushistory.org/us/54b.asp> (last visited Jan. 15, 2015).
  5. King obtained a Bachelor of Arts degree from Morehouse in 1948, a Bachelor of Divinity from Crozer Theological Seminary in Chester, Pennsylvania in 1951, and a Ph.D. in theology from Boston University in 1955. *Martin Luther King, Jr. and the Global Freedom Struggle*, KING INST. ENCYCLOPEDIA, [http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc\\_martin\\_luther\\_king\\_jr\\_biography/](http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc_martin_luther_king_jr_biography/) (last visited Jan. 15, 2015).

distribution and ownership of weapons. And there are other legions maintaining that religiosity is a primary cause of violence in the world and an impediment to social reform. For many of them, atheism is thought to be our salvation.<sup>6</sup> Nothing written here is designed to quarrel either with religious conservatives, anti-religionists, or atheists.<sup>7</sup> My argument is a much simpler political point about the nature of law reform movements in the United States: Those interested in social welfare should neither cede the use of religious imagery to conservative throngs nor leave support for progressive change to religious skeptics and nonbelievers. Ignoring the power of theology in a culture significantly more religious than much of the developed world<sup>8</sup> is a strategic error for those on the Left seeking to promote significant legal change.<sup>9</sup>

This essay is based on the assumption that telling stories about the ways legal change was influenced by the moral force of religion will create a baseline for discussion. After thinking a bit about the religious themes in King's Speech, I work through three other vignettes of his era—the Selma to Montgomery marches in March of 1965, the farmworkers movement of the late 1960s, and the trial of the Camden 28 in 1973. In each setting, the goal is to find ways in which the central themes of liberal theology and socially conscious law reform movements reinforced each other. The essay closes with some further vignettes about the relevance of religious sensibilities in the present legal environment.

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6. The two most famous recent critics of religion are Christopher Hitchens, who died in 2011, and Richard Dawkins. *See, e.g.,* CHRISTOPHER HITCHENS, *GOD IS NOT GREAT: HOW RELIGION POISONS EVERYTHING* (2007); RICHARD DAWKINS, *THE GOD DELUSION* (First Mariner Books 2008) (2006).
  7. This certainly does not mean that I agree with conservatives or atheists. As an observant modern Jew, fundamentalism of all stripes is antithetical to much of my belief structure. The use of religion to justify violence—an all too common occurrence in the world—is repugnant. And while I am attracted to the arguments of many contemporary atheists that there is no such thing as a *Deus Ex Machina* God on high manipulating the world, my own views of spirituality easily encompass the notion that Holiness is found in the interactions between people and the world. On the latter point, the writings of well-known Jewish thinkers such as Martin Buber, Abraham Joshua Heschel, and Arthur Green—among a number of others—are well worth perusing. Three particularly beautiful short books of theirs are: MARTIN BUBER, *I AND THOU* (Ronald Gregor Smith trans., 1937) (1923); ABRAHAM JOSHUA HESCHEL, *THE SABBATH* (1951); and ARTHUR GREEN, *THESE ARE THE WORDS: A VOCABULARY OF SPIRITUAL LIFE* (2d ed. 2012).
  8. There are many studies on this issue. One of the most recent and comprehensive is GERT PICKEL, *RELIGION MONITOR: UNDERSTANDING COMMON GROUND—AN INTERNATIONAL COMPARISON OF RELIGIOUS BELIEF* (2013), *available at* [http://www.religionsmonitor.de/pdf/Religionsmonitor\\_IntVergleich\\_Englisch.pdf](http://www.religionsmonitor.de/pdf/Religionsmonitor_IntVergleich_Englisch.pdf).
  9. Nor is this a claim that natural law theory is logically coherent. That clearly is a subject of great philosophical moment and vigorous debate. But religion itself, of course, isn't logical. It comes from another realm. Some claim that progressive, religious people are beginning to grapple with the political problem I am posing. *See* Paul Brandeis Raushenbush, *The Stunning Resurgence of Progressive Christianity*, HUFFINGTON POST (last updated Aug. 4, 2014, 5:59 AM), [http://www.huffingtonpost.com/paul-raushenbush/progressive-christianity\\_b\\_5437715.html?utm\\_hp\\_ref=best-of-huffpost](http://www.huffingtonpost.com/paul-raushenbush/progressive-christianity_b_5437715.html?utm_hp_ref=best-of-huffpost).

## DREAM VIGNETTES

### VIGNETTE 1: THE SPEECH

Near the end of the Speech, King began to leave his prepared text and improvise. According to Taylor Branch, the shift began with a famous verse from the book of the Prophet Amos:<sup>10</sup>

We cannot be satisfied as long as a Negro in Mississippi cannot vote and a Negro in New York believes he has nothing for which to vote. No, no, we are not satisfied, and we will not be satisfied until “justice rolls down like waters, and righteousness like a mighty stream.”<sup>11</sup>

Then, perhaps encouraged by a strong, mellifluous shout from Mahalia Jackson sitting nearby in the audience—“Tell ‘em about the dream, Martin!”<sup>12</sup>—King shifted fully to a church-like delivery. With repetitive cadences common in the sermons of accomplished preachers he intoned:

And so even though we face the difficulties of today and tomorrow, I still have a dream. It is a dream deeply rooted in the American dream.

I have a dream that one day this nation will rise up and live out the true meaning of its creed: “We hold these truths to be self-evident, that all men are created equal.”

I have a dream that one day on the red hills of Georgia, the sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood.

I have a dream that one day even the state of Mississippi, a state sweltering with the heat of injustice, sweltering with the heat of oppression, will be transformed into an oasis of freedom and justice.

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10. TAYLOR BRANCH, *PARTING THE WATERS: AMERICA IN THE KING YEARS, 1954–63*, at 881–82 (1988).

11. Martin Luther King, Jr., *supra* note 2. The King James Version reads, “But let judgment run down as waters, and righteousness as a mighty stream.” *Amos* 5:24. Unless otherwise noted, the Bible references throughout this essay are from the King James Version. King used the translation from the American Standard Version. The verse is part of Amos’s general complaint against the Israelites for abandoning their religious obligations. This now-famous line typically is read as a call for emphasizing social justice over perfunctory ritual. Ronald T. Hyman suggests that:

The message of [*Amos*] 5:24 is not that religious practice is unnecessary and undesirable. The message is rather that the emphasis on ritual can be corrupting and inconsistent with the Lord’s direction toward moral behavior. The bringing of offerings to the Lord and the singing of ritual hymns are acceptable only when they accompany social actions consistent with the Lord’s commandments directed towards social justice and moral righteousness among people.

Ronald T. Hyman, *Amos 5:24: Prophetic, Chastising, Suprising, Poetic*, 30 *JEWISH BIBLE Q.* 227, 234 (2002), available at [http://jbq.jewishbible.org/assets/Uploads/304/304\\_AMOS304a.pdf](http://jbq.jewishbible.org/assets/Uploads/304/304_AMOS304a.pdf).

12. Henry Louis Gates, Jr., *Did MLK Improvise in the ‘Dream’ Speech?*, PBS, <http://www.pbs.org/wnet/african-americans-many-rivers-to-cross/history/did-mlk-improvise-in-the-dream-speech/> (last visited Jan. 15, 2015); DREW HANSEN, *THE DREAM: MARTIN LUTHER KING, JR., AND THE SPEECH THAT INSPIRED A NATION* 58 (2003); BRANCH, *supra* note 10.

I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.

I have a *dream* today!

I have a dream that one day, down in Alabama, with its vicious racists, with its governor having his lips dripping with the words of “interposition” and “nullification”—one day right there in Alabama little black boys and black girls will be able to join hands with little white boys and white girls as sisters and brothers.

I have a *dream* today!

I have a dream that one day every valley shall be exalted, and every hill and mountain shall be made low, the rough places will be made plain, and the crooked places will be made straight; “and the glory of the Lord shall be revealed and all flesh shall see it together.”

If you listen to an audio recording of this passionately delivered portion of King’s address, the shouts of approval, the “Amen,” and the cries of “yes” can’t be missed. They signified quite different responses than the typical rounds of applause awarded to orators for particularly trenchant points. For the podium that day was King’s pulpit, the crowd his congregation. It therefore was hardly surprising when a powerful religious image spontaneously emerged at the end of this segment of the sermon. The last sentence about crooked places and the Lord’s glory was taken from the Book of Isaiah 40:4–5.<sup>13</sup> It is near the beginning of a chapter consoling the Israelites during their Babylonian exile, perhaps written around 538 BCE when Cyrus the Mede conquered Babylonia and promised the Israelites they could return to Jerusalem.<sup>14</sup> The chapter begins with Isaiah speaking these famous verses:

Comfort, oh comfort My people,  
Says your God.  
Speak tenderly to Jerusalem,  
And declare to her  
That her term of service is over  
That her iniquity is expiated;  
For she has received at the hand of the LORD  
Double for all her sins.<sup>15</sup>

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13. The passage reads:

Every valley shall be exalted, and every mountain and hill shall be made low: and the crooked shall be made straight, and the rough places plain: And the glory of the LORD shall be revealed, and all flesh shall see it together: for the mouth of the LORD hath spoken it.

*Isaiah* 40:4–5.

14. DAVID L. LIEBER ET AL., ETZ HAYIM: TORAH AND COMMENTARY 1032–33 (2001).

15. JEWISH PUBL’N Soc’y, TANAKH: THE HOLY SCRIPTURES 698 (1985) (containing this translation of *Isaiah* 40:1–2).

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These and the following verses used by King speak not only of liberation, but also of deep consolation.<sup>16</sup> They fit perfectly with the message King delivered that day—one designed to console his people for centuries of travail while dreaming of freedom.

That dream of consoled freedom capped the sermon—one that just as easily could have been labeled the “Let Freedom Ring” speech instead of the “I Have a Dream” speech. For King ended with a rousing, ardent series of “Let Freedom Ring” chants concluding with:

From every mountainside, let freedom ring.  
And when this happens, and when we allow freedom to ring, when we let it  
ring from every village and every hamlet, from every state and every city, we  
will be able to speed up that day when *all* of God’s children, black men and  
white men, Jews and Gentiles, Protestants and Catholics, will be able to join  
hands and sing in the words of the old Negro spiritual:  
*Free at last! Free at last!*  
*Thank God Almighty, we are free at last!*

As with most spirituals, the lyrics of “Free at Last! Free at Last!” change with the times, the mood, the singers, and the preacher. But one version goes like this:<sup>17</sup>

Free at last, free at last  
I thank God I’m free at last.  
Free at last, free at last  
I thank God I’m free at last.

Way down yonder in the graveyard walk  
I thank God I’m free at last.  
Me and my Jesus goin’ to meet and talk  
I thank God I’m free at last.

On a my knees when the light pass’d by  
I thank God I’m free at last.  
Tho’t my soul would rise and fly  
I thank God I’m free at last.

Some of these mornings, bright and fair  
I thank God I’m free at last  
Goin’ meet King Jesus in the air  
I thank God I’m free at last.

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16. Indeed they play exactly these roles in Jewish liturgy. The verses used by King are recited on the Shabbat after Tisha b’Av, the traditional day mourning the destruction of the First and Second Temples in Jerusalem. It is part of the first of seven Haftorot (readings from the Prophets chanted during each Shabbat morning service) of consolation chanted during the seven Shabbat services before Rosh Hashanah and Yom Kippur. All seven are taken from Isaiah.

17. JOHN W. WORK, *AMERICAN NEGRO SONGS 197* (1940). Of course, listening to a spiritual is a completely different experience than silently reading the lyrics. For a video of The Blind Boys of Alabama performing the song, see The Gigante, *Blind Boys of Alabama’s New Video ‘Free at Last’*, YouTube (Dec. 18, 2007), <http://www.youtube.com/watch?v=eJbPKDmxkC4>; see also The Waves of Joy, “Free at Last”, YouTube (Aug. 30, 2010), [http://www.youtube.com/watch?v=\\_pW0e81nOI0](http://www.youtube.com/watch?v=_pW0e81nOI0). Not even King’s use of the lyrics comes close to duplicating their power when sung by a chorus of human voices.

This spiritual, like the Isaiah verses, is a complex mixture of consolation and freedom. It is a song about death and the consolation given to the living by the Christian belief that freedom comes in the afterlife. Indeed this spiritual often is sung on Martin Luther King, Jr. Day—typically triumphantly as a “Hallelujah.”<sup>18</sup> But whether sung as a Christian hymn, a mournful wail, or an uplifting chorale, the combination of consolation and freedom it conveys reaches deep into any person’s soul. Consolation and freedom—that must be the dream King wished for. The search for that dream defined his life.

## VIGNETTE 2: THE BRIDGE

Two years after King spoke on the steps of the Lincoln Memorial dreaming about diverse groups joining hand in hand to seek consolation and freedom, he walked across Alabama, from Selma to Montgomery, with a multitude of supportive colleagues. The event culminated a galvanizing series of violent confrontations. On February 18, 1965, police shot and killed twenty-six-year-old Jimmie Lee Jackson. He died trying to protect his mother and grandfather from beatings by the police during a voting rights protest in Marion, Alabama—about thirty miles northwest of Selma. He was one of many killed between 1954 and 1968 because of efforts to end apartheid in the South.<sup>19</sup> After Jackson’s death, John Lewis of the Student Nonviolent Coordinating Committee (SNCC) and Reverend Hosea Williams of the Southern Christian Leadership Conference (SCLC) organized a protest march from Selma to Birmingham. George Wallace, the governor of Alabama, ordered local and state police to stop it. On March 7, 1965—a date that became known as “Bloody Sunday”—the demonstration was blocked with a stark level of brutality on the approaches to the Pettus Bridge spanning the Alabama River in Selma. Clubs, horses, and tear gas were used indiscriminately. The police not only drove everyone away from the span, but also roused people out of the area and emptied the Brown Chapel African Methodist Episcopal Church where the marchers organized. The officers then patrolled the area for hours to keep the streets clear.

Much of the violence was captured by news cameras and broadcast widely across the nation. It created a storm of indignation. A larger march to be led by King was immediately scheduled for March 9. Calls went across the nation urging important religious leaders and others to journey south to participate.<sup>20</sup> The demonstration ended in a prayer session, rather than a long march, under an agreement with the Justice Department and the federal court while an injunction requiring protection from the police for a march to Montgomery was sought. That night three white Unitarian

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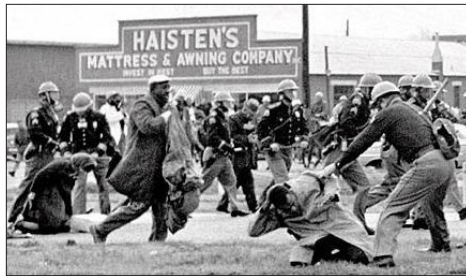
18. See, e.g., Joyful Noise, *Free at Last*, YouTube (Jan. 20, 2009), <http://www.youtube.com/watch?v=ZtyadzZIoNo>.

19. One list of forty-one victims is on the Southern Poverty Law Center web site. *Civil Rights Martyrs*, S. POVERTY LAW CTR., <http://www.splcenter.org/civil-rights-memorial/civil-rights-martyrs> (last visited Jan. 15, 2015).

20. Paul L. Montgomery, *Hundreds on Way to Join in March: Clerics and Laymen Heed Dr. King’s Call for Aid*, N.Y. TIMES, Mar. 9, 1965, at 23.



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John Lewis, Beaten on March 7, 1965<sup>21</sup>

Three thousand two hundred demonstrators left Selma and headed to Montgomery.<sup>24</sup> By the time they arrived several days later, the crowd had swelled to 25,000 or more. That same day, Viola Liuzzo was slain after driving marchers back to Selma from Montgomery.<sup>25</sup> The traumatic events were a critical factor in the adoption of the Voting Rights Act of 1965, recently gutted by the U.S. Supreme Court.<sup>26</sup>

The events briefly recounted here are well known. But what many have perhaps forgotten is the degree to which religious motivations led many to march from Selma

ministers were beaten in Selma. One—James J. Reeb—died two days later.<sup>22</sup> President Lyndon B. Johnson addressed a joint session of Congress on March 15 seeking the adoption of a comprehensive voting rights act.<sup>23</sup> At about the same time, an injunction was issued protecting the marchers and planning for a massive protest on March 21 went ahead. Johnson ordered federal troops to guard those marching.

21. The photograph displayed here is available at Ken Watts, *Supreme Court Invalidates Key Piece of Voting Rights Act*, CROSSROADS NEWS (June 27, 2013, 2:32 PM), <http://crossroadsnews.com/news/2013/jun/27/supreme-court-invalidates-key-piece-voting-rights-/>. A brief segment from a PBS *American Experience* documentary of the events is at available at *Selma 1965—Edmund Pettus Bridge*, YouTube (Nov. 15, 2007), <http://www.youtube.com/watch?v=s00-OoZAWno>. This clip, by the way, contains statements that George Wallace was furious at the level of violence used to break up the march. *Id.* He knew, it is said, that it would create a political firestorm. Further film is available at Newseum, *A Turning Point in the Civil Rights Drive*, YouTube (Nov. 5, 2013), <http://www.youtube.com/watch?v=OTgpaIowmSA>. The events were described in Roy Reed, *Alabama Police Use Gas and Clubs to Rout Negroes*, N.Y. TIMES, Mar. 8, 1965, at A1, available at <http://www.nytimes.com/learning/general/onthisday/big/0307.html#article>.
22. The events of March 9, 1965 are described in Roy Reed, *Dr. King Leads March at Selma; State Police End It Peaceably Under a U.S.-Arranged Accord*, N.Y. TIMES, Mar. 10, 1965, available at <http://partners.nytimes.com/library/national/race/031065race-ra.html>; Paul L. Montgomery, *Woman Is Shot to Death on Lowndes County Road*, N.Y. TIMES, Mar. 26, 1965, at 1, 23.
23. The Learning Network, *March 15, 1965: President Johnson Calls for Passage of Voting Rights Act*, N.Y. TIMES (Mar. 15, 2012), <http://learning.blogs.nytimes.com/2012/03/15/march-15-1965-president-johnson-calls-for-passage-of-voting-rights-act/>. The speech was reprinted in *Transcript of the Johnson Address on Voting Rights to Joint Session of Congress*, N.Y. TIMES, Mar. 16, 1965, available at <http://www.nytimes.com/books/98/04/12/specials/johnson-rightsadd.html>.
24. Roy Reed, *Freedom March Starts at Selma: Troops on Guard*, N.Y. TIMES, Mar. 22, 1965, at 1, available at <http://www.nytimes.com/learning/general/onthisday/big/0321.html#article>.
25. Roy Reed, *25,000 Go to Alabama's Capital; Wallace Rebuffs Petitioners; White Rights Worker Is Slain*, N.Y. TIMES, Mar. 26, 1965, at A1, available at <http://www.nytimes.com/learning/general/onthisday/big/0325.html#article>. Liuzzo, a white woman from Detroit, was shot by four members of the Ku Klux Klan. Montgomery, *supra* note 22.
26. See *Shelby Cnty. v. Holder*, 133 S. Ct. 2612 (2013); Adam Liptak, *Supreme Court Invalidates Key Part of Voting Rights Act*, N.Y. TIMES, June 25, 2013, at A1, available at <http://www.nytimes.com/2013/06/26/us/supreme-court-ruling.html>.

to Montgomery.<sup>27</sup> The images of violence are what we generally remember about Bloody Sunday and the events that surrounded it. Many viewed those going to Alabama from the North as courageous, perhaps forgetting that black people living in the South had dealt with racial violence for many decades. But religious faith certainly made it easier for many to join the demonstrations. While the level and randomness of violence must have troubled some—both religious and secular—as they headed to Selma, those adorned with a priestly collar, a pastor's robe, or a *kippah*<sup>28</sup> probably strode with at least an exterior sense of calm and confidence. And though there were no guarantees of nonviolence in the Alabama of 1965, religious attire may have provided some level of protection from the mobs. In any case, the presence of spiritual leaders from various faiths had a telling political impact.

Of the many priests, pastors, reverends, and rabbis who went to Selma, the brief recollections of one—Abraham Joshua Heschel—are particularly moving.<sup>29</sup> His daughter Susannah recounted his comments when he returned home. He wrote:

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27. There is some irony in the fact that the most overtly religious members of the Supreme Court comprised the majority that recently voided the central enforcement system of the Voting Rights Act of 1965 that arose from the controversy surrounding the events in Selma. *Shelby Cnty.*, 133 S. Ct. 2612. Chief Justice John Roberts wrote the majority opinion and was joined by Justices Antonin Scalia, Anthony Kennedy, Clarence Thomas, and Samuel Alito. *Id.*

28. This is the Hebrew word for the skullcap—often called a yarmulke in Yiddish—worn by some Jews when in public and many when in synagogue.

29. An uncommonly good two-volume biography of Heschel is available. EDWARD K. KAPLAN & SAMUEL H. DRESNER, *ABRAHAM JOSHUA HESCHEL: PROPHETIC WITNESS* (1998); EDWARD K. KAPLAN, *SPIRITUAL RADICAL: ABRAHAM JOSHUA HESCHEL IN AMERICA 1940–1972* (2007). Kaplan noted the fears confronting those who ventured south. Virulent anti-semitism was sometimes as visible as racism. *See id.* at 223–24. Heschel, however, must have made the trip with a determined sense of calm and conviction. Kaplan recounts an amazing and potentially risky encounter of Heschel's at the Montgomery airport on his way home:

After . . . the march, Heschel . . . [and two colleagues] went to the Montgomery airport, arriving quite late, hungry, and tense, and stopped at the snack bar to get something to eat. There Heschel's sense of humor and courage defused a nasty situation. The woman behind the counter was surly and rude, and she did nothing to hide her dislike of them. She looked at the white-bearded Heschel and said sarcastically, "Well, I'll be damned. My mother always told me there was a Santa Claus, and I didn't believe her . . . until now!" Heschel merely smiled. The men asked for food. She said there was none. They asked for bread. She said there was none. Heschel kept smiling.

Gently he asked her, with his soft voice and Yiddish accent, "Is it possible that in the kitchen there might be some water?" She admitted there was. "Is it possible that in the refrigerator you might find a couple of eggs?" She thought it possible. "Well, if you take the eggs, and boil them in the water, that would be just fine."

She glowered at him, "And why should I?"

"Why should you? Well, after all, I did you a favor."

"What favor did you ever do me?"

"I proved there was a Santa Claus."

She burst out laughing and went to make them some dinner.

*Id.* at 224.

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For many of us the march from Selma to Montgomery was about protest and prayer. Legs are not lips and walking is not kneeling. And yet our legs uttered songs. Even without words, our march was worship. I felt my legs were praying.<sup>30</sup>

The image of a walking prayer is a remarkably powerful, emotional image in Jewish thought and practice. Indeed, it is a powerful narrative for all the major Western religions—Judaism, Christianity, and Islam alike. Each has in its holiest book stories about a prophet leaving a familiar place for unknown climes as part of the founding of their faith. Moses leading the Exodus, of course, began a forty-year roundabout trek from the Sea of Reeds to Sinai to the Promised Land. It was early in that journey



Starting Off on the March From Selma to Montgomery on March 21, 1965  
From far left: SNCC Chair John Lewis; an unidentified nun; Rev. Ralph Abernathy;  
Rev. Martin Luther King, Jr.; Diplomat and Nobel Peace Prize Recipient Ralph Bunche;  
Rabbi Abraham Joshua Heschel; and Rev. Fred Shuttlesworth<sup>31</sup>

30. Susannah Heschel, *Following in My Father's Footsteps: Selma 40 Years Later*, VOX (Apr. 4, 2005), <http://www.dartmouth.edu/~vox/0405/0404/heschel.html>.

31. This is an Associate Press photograph, available at *Voter Rights March King Bunche*, AP IMAGES, <http://www.apimages.com/metadata/Index/Associated-Press-Domestic-News-Alabama-United-S-/3fe0290b02e5da11af9f0014c2589dfb/93/0> (last visited Jan. 15, 2015).

that the Torah was delivered at Mount Sinai.<sup>32</sup> Jesus traveled to the Jordan to be baptized by St. John, and then to the desert to meet his—or the world’s—demons.<sup>33</sup> And Muhammad retreated to a cave where he received his first revelation from Gabriel<sup>34</sup> and, in 622 CE, journeyed to Medina to initiate Islam’s growth. And all three faiths trace their beginnings to Abraham who, after being commanded by God to leave his father’s house, was told that a great nation would be made of him.<sup>35</sup>

The Selma march must have evoked in Heschel’s mind images of such spiritual quests—walking from the familiar to the unknown. Perhaps, as he strode across the Pettus Bridge, he thought about the Exodus and the Hebrew word for Egypt—Mitzraim, or literally, “a narrow place.” In any case, the idea of marching, walking, striding, and praying is a central feature of King’s time. So many of the events of the Civil Rights Era began with prayers and ended a walk or march away with more prayers and speeches. For King to seek the assistance and companionship of other religious leaders during the traumatic events in Selma therefore made perfect sense. For a moment at least, King’s dreams of consolation and freedom bore fruit. The moral force of widely distributed images of important civil rights advocates and reverends walking arm in arm with a rabbi carried a powerful moral message. It is one worth remembering. Alliances between a variety of religious and secular forces can be very productive. In this case, the nation responded by adopting some of the most far-reaching civil rights legislation in our history. The search for the Dream marched and prayed across the bridge.

### VIGNETTE 3: GRAPES

The civil rights movement, of course, was not the only law reform “movement” of the 1960s and 1970s. Voices from virtually every group able to affirm or claim some alliance with those asserting a history of oppression were heard—women,<sup>36</sup> students,

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32. *Exodus* 19:1–20:22, 31:18–34:35.

33. *See, e.g., Matthew* 3:13–14, 4:1.

34. *Quran* 53:4–9, 96:1–5.

35. *Genesis* 12:1–2.

36. The women’s rights movement has been widely written about. But a sense of its roots among middle-class women may, perhaps, be best gleaned by two brief excerpts from BETTY FRIEDAN, *THE FEMININE MYSTIQUE* (1963), published the same year as King’s famous “I Have a Dream” sermon:

If I am right, this problem stirring in the minds of so many American women today is not a matter of loss of femininity or too much education, or the demands of domesticity. It is far more important than anyone recognizes. It may well be the key to our future as a nation and a culture. We can no longer ignore that voice within women that says: “I want something more than my husband and my children and my home.”

The problem that has no name—which is simply the fact that American women are kept from growing to their full human capacities—is taking a far greater toll on the physical and mental health of our country than any known disease . . . . If we continue to produce millions of young mothers who stop their growth and education short of identity, without a strong core of human values to pass on to their children, we are committing, quite simply, genocide, starting with the mass burial of American women

## DREAM VIGNETTES

welfare recipients,<sup>37</sup> indigenous Americans, and farmworkers, among many others. Many of the founders of organizations representing these and other groups learned lessons from the civil rights movement. Among them was César Chávez who, with Dolores Huerta,<sup>38</sup> founded the National Farm Workers Association, the precursor to the United Farm Workers. Chávez was a major force behind organizing agricultural workers in California. Born in Arizona, he came to California in 1937 at the age of ten. His family led a hardscrabble life in Delano, California. In 1952, married and the father of Fernando, he met a Santa Clara priest named Father Donald McDonnell. McDonnell, strongly associated with left wing priests in the then-growing radical Catholic movement, introduced Chávez to the writings of St. Francis and Mahatma Gandhi—both deeply influential with Chávez.<sup>39</sup> He later worked as a community organizer in San Jose before starting to organize migrant workers in 1962. His tireless efforts, deeply influenced by his devout Catholicism, eventually led to the famous national grape and lettuce boycotts of the late 1960s. Millions of Americans declined to buy products from the farms of owners refusing to bargain with the United Farm Workers, leading to a series of worker contracts in 1970.<sup>40</sup> The consumer boycott was probably the most widespread and successful such crusade in our history.

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and ending with the progressive dehumanization of their sons and daughters. These problems cannot be solved by medicine or even by psychotherapy.

*Id.* at 78, 495–96. In both excerpts, Friedan framed a narrative—a story that could be used to galvanize women into a movement. Her book was remarkably successful in that endeavor. A generalized sense of angst felt by thousands of women was replaced by a set of cultural demands.

37. The National Welfare Rights Organization (NWRO) was a major political force between 1966 and 1975. Thousands of people—mostly women—organized protests, helped their fellow recipients at fair hearings, and lobbied for better care and benefits. Richard Cloward and Frances Fox Piven are generally given credit for the idea of creating such an organization in their pivotal article, *The Weight of the Poor: A Strategy to End Poverty*, NATION, May 2, 1966, available at <http://www.thenation.com/article/weight-poor-strategy-end-poverty>. The earliest large-scale demonstrations occurred on June 30, 1966 in a number of cities across the nation. See Homer Bigart, *Welfare Protest Made at City Hall: 1,500 Demand More Help and End to "Indignities"*, N.Y. TIMES, July 1, 1966. For a recent history of the NWRO, see FELICIA ANN KORNBLUH, *THE BATTLE FOR WELFARE RIGHTS: POLITICS AND POVERTY IN MODERN AMERICA* (2007).

38. The Dolores Huerta Foundation web site contains her biography. *Dolores Huerta*, DOLORES HUERTA FOUND., <http://doloreshuerta.org/dolores-huerta/> (last visited Jan. 15, 2015).

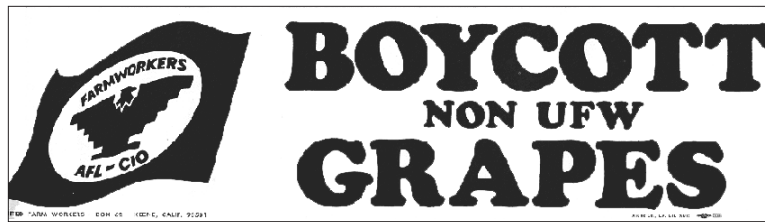
39. Richard Griswold del Castillo and Richard A. Garcia write that after Chávez and Father McDonnell met they:

[D]iscussed the history of farm-labor organizing in California and the Church's position on unions. At Fr. McDonnell's suggestion, César read the papal encyclicals on labor and books on labor history, the teachings of St. Francis Assisi, and Louis Fischer's *Life of Mahatma Gandhi*. Fischer's biography made a deep impression on Chávez, so much so that he went on to read everything that was available about India's political and spiritual leader.

RICHARD GRISWOLD DEL CASTILLO & RICHARD A. GARCIA, *CÉSAR CHÁVEZ: A TRIUMPH OF SPIRIT* 23 (1995).

40. After 1970, the farmworker movement declined, in part because Chávez failed to oversee a shift from being a singular leader to facilitating the creation of a national union organization. The story of both the rise and fall of the union is told in MATT GARCIA, *FROM THE JAWS OF VICTORY: THE TRIUMPH AND TRAGEDY OF CESAR CHAVEZ AND THE FARM WORKER MOVEMENT* (2012).



Bumper Sticker Distributed Sometime Between 1965 and 1970<sup>41</sup>

Most of the highly publicized farmworker activity occurred in California, where Chávez's efforts to organize workers became a national cause célèbre. Bumper stickers urging a grape boycott were visible across the nation. Signs popped up in grocery stores promising that no boycotted products were for sale. Not surprisingly, organizing also spread to the fields of Florida, Texas, and New Jersey. It was in New Jersey that the plight of agricultural workers led to one of the most famous and important property cases of the century. The arrest of Peter Shack, a staff attorney at the Farm Workers Division of Camden Regional Legal Services, and Frank Tejas, a field worker for the Farm Workers Division of the Southern Citizen Organization for Poverty Elimination (SCOPE), on April 7, 1970 was, in the larger run of human events, a minor happening. But the development of their trespass case into what we now know as *State v. Shack*<sup>42</sup> exemplified the impact religious thought had on those seeking significant change during the 1970s.

Just as concerns about the status of migrant farmworkers had been on the national canvas of "movements" for some years before Shack and Tejas ventured onto the farm of Morris Tedesco in New Jersey's Cumberland County, the issue had previously been on that state's legislative agenda. Partially in response to national controversy about the working conditions in agricultural areas, New Jersey adopted legislation in the spring of 1967 to strengthen the regulation of migrant labor camps.<sup>43</sup> In 1968, a governor's task force issued its report on migrant labor, recommending that the state take steps to encourage unionization of the labor force.<sup>44</sup> Tensions in the fields grew throughout this time period. By the summer of 1970, guns were being brandished and threats made against antipoverty workers, lawyers, and reporters.<sup>45</sup>

On August 6, 1970, Tejas went to Tedesco's farm in Deerfield Township to pick up Tona Rivera, whose face had been slashed some weeks earlier, and take him

41. The image is available in the library collection of Michigan State University. MSU Libraries, *Chavez Collection: Non-Book Materials*, MICH. STATE UNIV., <http://lib.msu.edu/chavez/nonbook/> (last visited Jan. 15, 2015).

42. See 277 A.2d 369, 369–71 (N.J. 1971).

43. The original legislation was repealed in 2000, but all the older regulations were kept in force, and the authority to enforce the rules was moved from the Migrant Labor Board to the Commissioner of Labor and Industry. The operative rules are located in N.J. STAT. ANN. § 34:9A (Westlaw 2014).

44. GOVERNOR'S TASK FORCE ON MIGRANT FARM LABOR, POVERTY IN THE LAND OF PLenty: THE SEASONAL FARM WORKER IN NEW JERSEY 37–39 (1968).

45. Ronald Sullivan, *2 Poverty Aides Seized at Jersey Migrants' Camp*, N.Y. TIMES, Aug. 8, 1970, at 19.

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to the hospital to remove stitches from the festering wound. Tedesco, shotgun in hand, confronted Tejas and told him to leave. Tejas called Shack at Camden Regional Legal Services. Shack also wanted to see someone on the farm. Ramon Cruz had suffered a cut on his hand while laboring in the fields; he was unable to work and had not received wages for a month. Together Shack and Tejas returned to the farm the next day, along with Ron Sullivan, a *New York Times* reporter who had been covering worker issues in the fields of New Jersey. Tedesco called state troopers and successfully sought the citizen's arrest of Shack, Tejas, and Sullivan for trespassing on his farm.<sup>46</sup>

Tejas's story was in many ways typical of the era. He came to the United States in 1949 from Puerto Rico as a field worker. It took him only a year, appalled by the worker's conditions, to leave the fields and begin organizing among the migrants laboring in southern New Jersey. When the federal legislation establishing the Office of Economic Opportunity was adopted in 1964, and SCOPE was established in New Jersey with the help of a grant from the agency, Tejas was a natural to join and work for its Farmers Division. Though much less famous than Chávez, his compatriot leader of the United Farm Workers, their roots were similar—immigrant, Catholic, and with remarkably supportive families.

The trespass case worked its way to the New Jersey Supreme Court. An extraordinary result emerged. It is wholly different from any other property opinion I know of—steeped in the religious, natural law, and humanist traditions that animated so much of American civil disobedience in the 1960s and 1970s. Though discourse about religion, natural law, and humanism—unwieldy and logically untamable as these ideas are—largely has been left outside of judicial discourse in recent decades, the *Shack* opinion is a shining and enlightening exception. The New Jersey Supreme Court opinion is a revelation. Read aloud and listen—really listen—to this remarkable passage from the beginning of Part II of Chief Justice Joseph Weintraub's opinion:

Property rights serve human values. They are recognized to that end, and are limited by it. Title to real property cannot include dominion over the destiny of persons the owner permits to come upon the premises. Their well-being must remain the paramount concern of a system of law. Indeed the needs of the occupants may be so imperative and their strength so weak, that the law will deny the occupants the power to contract away what is deemed essential to their health, welfare, or dignity.

. . . .

The migrant farmworkers are a community within but apart from the local scene. They are rootless and isolated. . . . [They cannot be] insulated from efforts to reach them. . . . The key to that . . . is communication. Since the migrant workers are outside the mainstream of the communities in which they are housed and are unaware of their rights and opportunities and of the

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46. For a longer and more complete telling of the story, see RICHARD CHUSED, *CASES, MATERIALS, AND PROBLEMS IN PROPERTY* 667–70 (3d ed. 2010).

services available to them, they can be reached only by positive efforts tailored to that end.<sup>47</sup>

It is almost like Weintraub, himself one of two Jews on the New Jersey Supreme Court when he joined that bench,<sup>48</sup> had a Passover Haggadah<sup>49</sup> before him:

You shall not oppress a stranger, for you know the feelings of the stranger, having yourselves been strangers in the land of Egypt.

When strangers reside with you in your land, you shall not wrong them. . . . [Y]ou shall love them as yourself, for you were strangers in the land of Egypt.<sup>50</sup>

These two passages are directed to the frame of mind of those sitting around a Seder table. For:

In every generation, each of us should feel as though we ourselves had gone forth from Egypt, as it is written: “And you shall explain to your child on that day, it is because of what the Eternal did for *me when I, myself*, went forth from Egypt.”<sup>51</sup>

The Passover Seder is in large part designed around a simple but profound idea—that every participant is obliged to see and feel the Exodus as if she is actually experiencing the ancient event in the present. The Seder is not the retelling of an old story for its own sake, as an historical or mythological artifact, but the retelling of a story for our sakes. What is important is attaining the immediate and palpable sense, in the present, of what it means to move from oppression to liberty, from slavery to freedom, from merely finding a way to survive to developing a sense of human empathy and understanding, from living individual, perhaps isolated daily lives to developing a strong sense of community well-being, from the depressing framework of slavery to the spiritual heights of consolation and freedom. And this occurs at a Seder in a group, out loud, with animated arguments, questions, acerbic comments, and witty commentary—a set of characteristics that duplicates well the biblical description of the cantankerous qualities of the Israelites as they left Egypt and moved across the desert. The Exodus story, after all, was a group experience. So Seder participants are not only obliged to personally see and feel the Exodus as if it was happening to each of them during the Seder, but to see and feel the sometimes

47. *Shack*, 277 A.2d at 372–73.

48. Chief Justice Weintraub was appointed to the New Jersey Supreme Court in 1956 to replace William J. Brennan after his appointment to the U.S. Supreme Court. Editorial Board & Staff, *Chief Justice Joseph Weintraub: A Dedication*, 5 RUTGERS L.J. 400 (1973). Nathan Jacobs preceded him as a Jewish member of the court in 1952. Glenn Fowler, *Nathan Jacobs, 83, An Ex-Justice of the New Jersey Supreme Court*, N.Y. TIMES, Jan. 26, 1989, available at <http://www.nytimes.com/1989/01/26/obituaries/nathan-jacobs-83-an-ex-justice-of-the-new-jersey-supreme-court.html>.

49. Haggadah means “the telling.” It is the name typically given to the book filled both with the complex ritual of a Passover Seder and the retelling of the Exodus story.

50. CENT. CONFERENCE OF AM. RABBIS, A PASSOVER HAGGADAH 65 (Herbert Bronsteined ed., 2d ed. 1982). This Haggadah, the standard version used by the reform movement, was originally published in 1974. The first verse in the text is from Exodus 23:9 and the second from Leviticus 19:33–34.

51. *Id.* (emphasis added). This Haggadah passage is taken from Exodus 13:8.



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cantankerous group dynamics of that experience. And, I must emphasize, it doesn't make any difference whether the Exodus actually occurred in history. That is unimportant. Restated memories and narratives of a community's oppression need not be true to be spiritually powerful. I am writing here about the power of religious storytelling on our present-day psyches, not about truth.

That is the sort of understanding demonstrated by Weintraub's opinion in *Shack*. He voiced for the unanimous court a deep sympathy with the consequences of cultural, linguistic, and physical isolation and depravation. The judges understood that the thousands of farmworkers migrating to New Jersey each year were strangers in a strange land.<sup>52</sup> But, even more remarkably, they understood the importance of narratives of mistreatment as a baseline for empathizing with the plight of those harvesting food in southern New Jersey. The ears of the judges deciding *Shack* were attuned to the natural law tenor of the times, to the powerful narratives told by countless groups speaking of their oppressive pasts, to the deeply humanistic and religious pleas for human decency prevalent at that historical moment, to the struggles and stories of farmworkers across the nation, and to the communicative qualities of narrative.

And that, of course, is what King did on the steps of the Lincoln Memorial. Read, or perhaps re-read, the very first lines of his sermon:

Five score years ago, a great American, in whose symbolic shadow we stand signed the Emancipation Proclamation. This momentous decree came as a great beacon light of hope to millions of Negro slaves who had been seared in the flames of withering injustice. It came as a joyous daybreak to end the long night of captivity.

But one hundred years later, the Negro is still not free. One hundred years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination. One hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity. One hundred years later, the Negro is still languished in the corners of American society and finds himself an *exile in his own land*.<sup>53</sup>

King, too, wanted those before him to sense the ongoing impact of the slavery narrative—to empathize with and feel, in that very moment, the importance of the story. He embraced it—seizing upon the fact that black Americans survived the history of slavery and segregation as a consoling narrative while hoping for freedom in the present. King used the stories of slavery and segregation, the clarion calls of spirituals, and the power of black religious experience as a basis for understanding the need to gain everyone's understanding of—and need for—freedom in the present. For King there was no empathy, no freedom, and no community without the capacity

52. Over 10,000 farmworkers arrived each year in the mid-1960s. CHUSED, *supra* note 46, at 668. Similar numbers persisted through the 1990s. See ROBERT C. SMITH, COUNTING MIGRANT FARM WORKERS 3–8 (1995), *available at* <https://www.census.gov/srd/papers/pdf/ex95-22.pdf>. That number has persisted through 2014. STATE OF N.J., AGRICULTURAL OUTREACH PLAN: PROGRAM YEAR 2014, N.J. DEP'T LAB. & WORKFORCE DEV., *available at* [http://lwd.dol.state.nj.us/labor/forms\\_pdfs/lwdhome/AOPPY2014.pdf](http://lwd.dol.state.nj.us/labor/forms_pdfs/lwdhome/AOPPY2014.pdf) (last visited Jan. 15, 2015).

53. King, *supra* note 2.

of his audience to experience slavery and segregation at that very historical moment—not in the past. What unfolded that day in 1963 on the steps of the Lincoln Memorial was not only a sermon. It was a Seder. That is why Heschel said his feet were praying in Selma. Given the hostility around him in Alabama that day, he must have deeply sensed the meaning, in the present, of the transition away from a segregated past. That is the power religious dialogue can bring to a political, cultural, and legally charged setting—the capacity to gain the empathy and understanding of all those present as witnesses to a moment. Profound legal reform doesn't come without it. The search for the Dream will go on.

## VIGNETTE 4: DRAFT CARDS

1c

1. NAME IN FULL Last First Middle <b>CHUSED, RICHARD HARRIS</b>		SELECTIVE SERVICE NUMBER <b>23 101 43 67</b>	
2. PLACE OF RESIDENCE Street and Number or RFD Route <b>15 Hacienda Drive</b>		3. DATE OF BIRTH <b>January 31, 1943</b>	
City, Town, or Village Zone County State <b>Ladue 24, St. Louis, Missouri</b>		4. PLACE OF BIRTH <b>St. Louis, Missouri</b>	
5. MAILING ADDRESS (If different from place of residence.) Street and Number or RFD Route <b>15 Hacienda Drive</b>			
City, Town, or Village Zone County State <b>Ladue 24, St. Louis, Missouri</b>			
6. NAME AND ADDRESS OF PERSON WHO WILL ALWAYS KNOW YOUR ADDRESS <b>Simon Steinberg, (Uncle), 2025 Country Club Drive, Columbia, Mo.</b>			
7. OCCUPATION <b>Student</b>		8. NATURE OF BUSINESS, SERVICE RENDERED, OR CHIEF PRODUCT <b>Study</b>	
9. FIRM OR INDIVIDUAL BY WHOM EMPLOYED <b>Horton Watkins Senior High School</b>			
10. PLACE OF EMPLOYMENT OR BUSINESS <b>Ladue, St. Louis Co., Missouri</b>			
Form Approved Budget Bureau No. 33-R099.7.		SELECTIVE SERVICE SYSTEM <b>REGISTRATION CARD</b>	

SSS Form No. 1 (Revised 6-11-58) (over)

This is a copy of the author's draft card.

During the Vietnam War, the Selective Service System was the target of widespread resistance. Tens of thousands of potential conscripts refused to cooperate with the military draft. Thousands went to jail or left the country.<sup>54</sup> Draft card burning became a standard feature of antiwar demonstrations. A number of draft boards were broken into; some of their records were removed and destroyed.<sup>55</sup> One of

54. LAWRENCE M. BASKIR & WILLIAM A. STRAUSS, CHANCE AND CIRCUMSTANCE: THE DRAFT, THE WAR, AND THE VIETNAM GENERATION, at 68, 69 fig.4 (1978); DAVID CORTRIGHT, SOLDIERS IN REVOLT: GI RESISTANCE DURING THE VIETNAM WAR 5 (1975).

55. Over 350 draft boards were broken into during the Vietnam War. DAVID KAIRYS, PHILADELPHIA FREEDOM: MEMOIR OF A CIVIL RIGHTS LAWYER 189 (2008).

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the most famous break-ins took place in Camden, New Jersey on August 22, 1971.<sup>56</sup> Twenty-eight people were indicted, all of whom freely admitted playing a role in the event.<sup>57</sup> Four were Catholic priests, one a Lutheran minister, and the rest members of the Catholic Left. The Berrigan brothers—Jesuit Daniel and Josephite Philip—were generally recognized as the most charismatic leaders of the activist Catholic opposition to the Vietnam War.<sup>58</sup> Both spent time in jail for destroying records taken from a Catonsville, Maryland draft board office.<sup>59</sup> One of the priests involved in the Camden events—Jesuit Edward McGowan—had previously worked closely with Philip Berrigan in Baltimore and participated in other draft board raids. In addition to the three other priests—Edward Murphy, Michael Doyle, and Peter Ford—several more in the group were one-time seminarians, sisters, or ordained priests.<sup>60</sup>

For several reasons, the Camden draft board break-in trial became one of the most intriguing and interesting judicial proceedings in American history.<sup>61</sup> First, it turned out that Robert W. Hardy—thought of as a close friend by some in the group—was a Federal Bureau of Investigation (FBI) informer. The defendants accused him of making the raid possible by supplying floor plans, an array of burglary tools, and other logistical support—all on behalf of the government.<sup>62</sup> Sometime before the raid, the defendants had decided not to undertake it. They couldn't figure out how to get into the building. Hardy's efforts got the ball rolling again. The depth

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56. Many of the details about the event and its legal aftermath are available on the Camden 28 web site. *The Story*, CAMDEN28, <http://www.camden28.org/master.html?http://www.camden28.org/thestory.htm> (last visited Jan. 15, 2015). The first twenty of the Camden arrests are described in Paul L. Montgomery, *25 Draft Office Raiders Held in Jersey and Buffalo*, N.Y. TIMES, Aug. 23, 1971, at 1.

57. Linda Charlton, *28 Indicted in Camden Raid; Two More Priests Are Accused*, N.Y. TIMES, Aug. 28, 1971, at 13.

58. The best depiction of the brothers and their lives is probably MURRAY POLNER & JIM O'GRADY, *DISARMED AND DANGEROUS: THE RADICAL LIVES AND TIMES OF DANIEL AND PHILIP BERRIGAN* (1997). The apparent head of the draft board break-ins was John Grady, though there was not a systematic organization set up to organize the events. When a raid was on the table, the word would be put out informally and people would volunteer. For the most part, the Camden 28 did not know each other before the event. See KAIRYS, *supra* note 55, at 188–90.

59. The trial of the Catonsville Nine, like that of the Camden 28, was a highly emotional, political, and religiously charged event. Excerpts from the trial transcript are in DANIEL BERRIGAN, *THE TRIAL OF THE CATONSVILLE NINE* (1970), a dramatic version of the proceedings. It ran briefly on Broadway in 1971 and was made into a movie the following year.

60. The complete list is available at *The Story*, CAMDEN28, <http://www.camden28.org/thestory.htm> (last visited Jan. 15, 2015).

61. Just before the trial began, eight defendants were severed from the original group. Charges against them eventually were dismissed. The cases against three others also were resolved before trial, leaving seventeen defendants in the proceedings. Donald Janson, *8 of the Camden 28 Face Separate Draft-File Trial*, N.Y. TIMES, Feb. 6, 1973, at 41; Donald Janson, *Informer Testifies F.B.I. Had Him Provoke Camden Draft File Raid*, N.Y. TIMES, Apr. 11, 1973, at 34.

62. Donald Janson, *F.B.I. Accused by 'Camden 28'*, N.Y. TIMES, Mar. 9, 1973, at 78; Donald Janson, *F.B.I. Is Accused of Aiding a Crime: 'Camden 28' Informer Says He Acted as 'Provocateur'*, N.Y. TIMES, Mar. 16, 1972, at 1, 42. The FBI had a number of informers working among the Catholic Left during the war. John Deedy, *A New Recruit for the Movement: The Spy*, N.Y. TIMES, Aug. 29, 1971, at E8.

of his involvement in planning the break-in became a major issue during the trial. Hardy eventually testified that the raid could not have happened without his assistance.<sup>63</sup> The defendants successfully requested Judge Clarkson Fisher to charge the jurors that they could acquit if they felt the government overreached. Second, counsel represented some but not all of the defendants. That strategic choice allowed the attorneys (David Kairys, Marty Stolar, and Carl Broege)<sup>64</sup> and the unrepresented parties to question witnesses and make statements to the jury. Third, the defendants sought permission to allow jurors to ask questions during the trial. Judge Fisher took the very unusual step of allowing it, provided that the inquiries were submitted to him in writing for approval.<sup>65</sup> Every time they finished examining a witness, the defendants asked members of the jury if they had any questions. That led to requests from the jury for information about the FBI's activities while an agent, Edward M. Cole, was on the stand.<sup>66</sup> Finally, the defense attorneys and the defendants were allowed to talk about jury nullification during their closing arguments.<sup>67</sup> This certainly was not standard fare in American courts.

Not surprisingly, a number of comments about religion, morality, and ethics found their way into the proceedings. Both defendants and attorneys made opening statements. Requests to acquit because of both Hardy's actions and the moral imperative of stopping the killing in Vietnam were commonly voiced.<sup>68</sup> Father Michael Doyle's opening statement was fairly typical. Here is part of it:

The terrible question that we will try to put before you, that lies before all of us and lies before all people who are concerned is simply this. The question is: Who went too far? Did the military go too far by entering Vietnam and continuing in the war there for twelve years or more? Did the Camden 28 go

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63. Hardy had previously signed an affidavit in front of Father Michael Doyle and David Kairys admitting to his role, though he swore (naively perhaps) that he just was trying to prevent jail time for the participants. Not too long after the arrests, Hardy's son died at the age of nine in a terrible home accident. He asked Doyle to officiate at the funeral of his child. It turned out that Doyle had converted Hardy to Catholicism and was the priest of his congregation. Their relationship was part of the reason Hardy came to see his informant role as a mistake. KAIRYS, *supra* note 55, at 198–202; POLNER & O'GRADY, *supra* note 58, at 248–50.

64. KAIRYS, *supra* note 55, at 194. The court approved the combined form of representation and self-representation. *Id.* at 208.

65. Perhaps some of the flexibility demonstrated by Judge Fisher was attributable to him being Catholic. For his obituary, see David M. Herszenhorn, *Clarkson Fisher, Federal Judge, Is Dead at 76*, N.Y. TIMES, July 29, 1997, available at <http://www.nytimes.com/1997/07/29/nyregion/clarkson-fisher-federal-judge-is-dead-at-76.html>. Kairys was more skeptical, suggesting that the judge was just trying to run a trial without major conflict and that he did not think the jury would actually take up the challenge. KAIRYS, *supra* note 55, at 209.

66. 'Camden 28' Jury Asks 5 Questions, Through Trial Judge, About F.B.I., N.Y. TIMES, Mar. 17, 1973, at 68.

67. Juries may acquit for any reason; they may nullify the law. Their decision to do so is not typically subject to any post-trial inquiries. But juries are rarely told they have this unbridled authority. KAIRYS, *supra* note 55, at 218.

68. Donald Janson, *A Leader of Camden Draft Raid Appeals to Jury to 'Ignore the Law' and Acquit*, N.Y. TIMES, Feb. 28, 1973, at 88.

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too far in trying to stop it? Or did the FBI go too far in giving help to the defendants to make it possible in August of '71? And what does "too far" mean when killing has started, and you want to stop it?

If we are going to be wrong or judged to be wrong, then I say it is surely more honorable to go too far to stop killing, than to go too far to continue it.

At the same time, we will attempt to show that our protests against war, and this war in particular, does not come from any high level of moral arrogance, that we do not stand in this courtroom to look down on anyone . . . maybe to look up.

We will attempt, if we can, to bring before this courtroom and this Court the very painful agony of human conscience as it struggles between loyalty to the Government and the security of that position and the basic human decency of people which is horrified by acts of real violence in My Lai, by acts of napalm against children, or the reality of bombs exploding in flesh that's tender, or old people's bones.<sup>69</sup>

Perhaps a turning point in the trial was the government's refusal to call the informer, Hardy, to the stand during their case-in-chief. The defendants called him later. The FBI, he testified, used him as an agent provocateur.<sup>70</sup> "I provided the aid and strategy they needed to get into the building," Hardy said. "This raid on the draft board would not have happened without me and the F.B.I."<sup>71</sup> He had been paid \$5,000 for his help, along with the costs of various tools and other items purchased for use in the raid.<sup>72</sup> In what was perhaps a unique instruction in the history of American law, Judge Fisher told the jury, before they began deliberations, that they could acquit the defendants if they found that government participation in setting up the raid "reached an intolerable degree of overreaching."<sup>73</sup>

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69. Michael Doyle, *Opening Statement*, CAMDEN28, [http://www.camden28.org/doc\\_picture12.htm](http://www.camden28.org/doc_picture12.htm) (last visited Jan. 15, 2015).

70. Donald Janson, *Informer Testifies F.B.I. Had Him Provoke Camden Draft File Raid*, N.Y. TIMES, Apr. 11, 1973, at 34. It is not totally clear why Hardy's participation at the trial worked out this way. He did say later that the government had promised him they would breakup the plans before the group was actually in the draft board office. But the arrests occurred later, allowing more serious charges to be brought. He was not pleased with that tactic. He ended up playing a role a bit like that of a double agent. *Id.*

71. *Id.*

72. KAIRYS, *supra* note 55, at 210, 212.

73. Donald Janson, *Judge Instructs 'Camden 28' Jury*, N.Y. TIMES, May 18, 1973. The defendants considered claiming the more traditional entrapment defense. But it was clear that they all were predisposed to commit the crime, negating the possibility of using entrapment. This predisposition rule actually was confirmed just before the Camden 28 trial. *United States v. Russell*, 411 U.S. 423 (1973). The idea was that the entrapment defense is oriented only toward cases in which the government convinces a person not intending to undertake a criminal act to go forward with the deed. But *Russell* also opened the door for use of the overreaching defense in a one-line aside in Justice William Rehnquist's opinion. "While we may some day be presented," he wrote, "with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction, the instant case is distinctly not of that breed." *Russell*, 411 U.S. at 431-32. When Fisher charged the jury he told the panel:

Before the jury began deliberations, the unrepresented defendants made their closing arguments. All spoke of the moral and ethical reasons for joining in the raid and urged the jury to acquit even if they thought the law mandated their conviction—to nullify the law. The defense attorneys did the same. Kairys’s closing, for example, referred to many now viewed as great patriots who disobeyed laws—those at the Boston Tea Party, the nation’s founders, Rosa Parks, and King. He continued:

Think about the philosophies, morals, and principles of living you heard expressed by these defendants, from their own mouths. Nonviolence, thou shalt not kill, life being more important than property, the liberty all peoples deserve, having the courage of your convictions. We’ve all heard these things from people we hold dear, and those of you who have children have probably said the same things to your children. The main difference between the people on trial here and the rest of us—and I include myself—is that they risked acting on these things we all believe.<sup>74</sup>

The unusual combination of moral fervor and government misbehavior that gripped the courtroom had an impact on the jury. All of the defendants were acquitted. Some members of the panel commented later that they were moved to free the defendants both because the government’s actions were inappropriate and because the moral questions about the Vietnam War raised by the defendants troubled them.<sup>75</sup> After the verdicts were rendered, many in the packed courtroom spontaneously sang “Amazing Grace”—a hymn published in 1779 written by John Newton. Newton was a one-time slave trader who repented and became a minister in the Church of England in the 1760s.<sup>76</sup>

Similar issues surfaced in the trial of the Catonsville Nine for destroying draft records. Both Daniel and Philip Berrigan were involved in this event.<sup>77</sup> Here, too,

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There is another defense. You have heard the terms *creative activity* and *overreaching government participation*. The evidence focused to a great extent on the activities of Robert Hardy. You must determine what role Hardy played. If you find that overreaching participation by government agents or informers was fundamentally unfair and shocking to the universal sense of justice, then you may acquit the defendants. And under this particular defense you need not consider the predisposition of any defendant.

KAIRYS, *supra* note 55, at 218.

74. KAIRYS, *supra* note 55, at 221.

75. *Id.* at 223–24; Donald Janson, *Camden Jurors Cite Role of U.S.*, N.Y. TIMES, May 22, 1973, at 45.

76. KAIRYS, *supra* note 55, at 223; *John Newton*, HYMNARY, [http://www.hymnary.org/person/Newton\\_John](http://www.hymnary.org/person/Newton_John) (last visited Jan. 15, 2015). The hymn became popular after it was set to a tune in the mid-nineteenth century by the British composer William Walker. Since that time it has been a well-known spiritual in America. The first verse is known by most:

Amazing grace! How sweet the sound  
That saved a wretch like me.  
I once was lost, but now am found,  
Was blind but now I see.

77. There is a web site memorializing the break-in. *Fire and Faith: The Catonsville Nine File*, ENOCH PRATT FREE LIBRARY, <http://c9.digitalmaryland.org/> (last visited Jan. 15, 2015). The participants were Daniel Berrigan; Philip Berrigan; Br. David Darst, a De La Salle Christian Brother; John Hogan; Tom Lewis,



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some defendants represented themselves. William Kunstler and Harrop Freeman<sup>78</sup> were the primary defense attorneys for the others. But in this proceeding, jurors were not told they could acquit for government overreaching. Nor were the defendants allowed to claim that the deaths and injuries prevented by their actions justified their non-lethal behavior.<sup>79</sup> Judge Roszel C. Thomsen, however, did allow the defendants to talk freely about their faith and motivations for destroying draft records. The defendants routinely did so. Though the final result was that all were found guilty, there was a very unusual, powerful, and revealing episode during the trial when Daniel Berrigan was on the stand being questioned by Freeman. As reported by Murray Polner and Jim O'Grady,<sup>80</sup> it went like this:

"I ask you, Daniel Berrigan, was what you did on May 17, 1968, at Catonsville, carrying out that philosophy of [protecting those in need of the] Jesuit order?"

Dan, the Catholic priest, and Harrop, the Quaker law professor, stared silently at each other.

"May I say that if that is not accepted as a substantial part of my action," replied Dan, "then the action is eviscerated of all meaning; and I should be committed for insanity."

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an artist; Marjorie Bradford Melville; Thomas Melville, a former Maryknoll priest; George Mische; and Mary Moylan. George Mische, *Inattention to Accuracy About 'Catonsville Nine' Distorts History*, NAT'L CATHOLIC REP. (May 17, 2003), <http://ncronline.org/news/peace-justice/inattention-accuracy-about-catonsville-nine-distorts-history>.

78. Freeman was a civil rights lawyer, member of the Cornell University Law School faculty, and a well-known Quaker, pacifist, and conscientious objector. After his death in 1993, Cornell posted a memorial statement about him. W. David Curtiss, Gray Thoron & Roger C. Cramton, *Harrop A. Freeman: November 7, 1907–October 28, 1993*, [http://ecommons.library.cornell.edu/bitstream/1813/18059/2/Freeman\\_Harrop\\_A\\_1993.pdf](http://ecommons.library.cornell.edu/bitstream/1813/18059/2/Freeman_Harrop_A_1993.pdf) (last visited Jan. 15, 2015).

79. The Model Penal Code "choice of evils" defense, which has been adopted in some states, is a good starting point for thinking about this issue.

(1) Conduct that the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable, provided that:

- (a) the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and
- (b) neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and
- (c) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct, the justification afforded by this Section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

Model Penal Code § 3.02 (2001).

80. POLNER & O'GRADY, *supra* note 58, at 206–07.

Then, incredibly, unexpectedly, with a great sense of melodrama, he asked Judge Thomsen if he would permit a recital of the Lord's Prayer.<sup>81</sup> The judge was so startled that he turned to [the U.S. Attorney Stephen] Sachs<sup>82</sup> and asked if that would be acceptable. "To his eternal credit"—as defense lawyer William Kunstler put it—Sachs said he had no objection. Everyone rose, defendants, lawyers, judge, prosecutors, clerks, jury, and court officers and spectators, and recited the prayer. Had it ever happened before in a criminal case?

For Harvey Cox, a Catonsville sympathizer and Harvard Divinity School professor, an amazing and wondrous scene was unfolding before his eyes—"a Pentecostal Moment." As the sacred words echoed through the austere room, "women sobbed, United States marshals bowed their heads and wiped their eyes, jurors and prosecuting attorneys mumbled 'forgive us our trespasses as we forgive those' . . . City police, bearded peace workers, nuns, and court stenographers prayed together: 'For thine is the Kingdom and the Power and the Glory[.]'"<sup>83</sup>

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81. This prayer, also known as the "Our Father," is found in Matthew 6:9–13. It is part of the Sermon on the Mount. A shorter version is in Luke 11:2–4. Recitation of the biblical verses is a regular part of the ritual used by Catholics and other Christian faiths. In Matthew 6:9 (New International), recitation of the prayer is accompanied by the instruction from Jesus, "This, then, is how you should pray . . ." *The Lord's Prayer*, therefore, is a formula for praying with humility, compassion, and repentance. Its full text is:

Our Father which art in heaven, Hallowed be thy name. Thy kingdom come. Thy will be done in earth, as *it is* in heaven. Give us this day our daily bread. And forgive us our debts, as we forgive our debtors. And lead us not into temptation, but deliver us from evil: For thine is the kingdom, and the power, and the glory, for ever. Amen.

*Matthew* 6:9–13.

82. POLNER & O'GRADY, *supra* note 58, at 187 (describing Sachs as a "well-regarded liberal, antiwar prosecutor").
83. Polner & O'Grady here cite to Harvey Cox, Jr., *Tongues of Flame: The Trial of the Catonsville Nine*, in *THE WITNESS OF THE BERRIGANS* 22–23 (Stephen Halpert & Tom Murray eds., 1972). The episode also appears in Daniel Berrigan's dramatic version of the trial although it is portrayed differently. BERRIGAN, *supra* note 59, at 111–22. In the play, the judge asked the defendants if they had anything they wished to discuss with him after the jury left the courtroom to deliberate. A lengthy dialogue about law, morality, and religion ensued. Part of it went like this:

Judge [Thomsen]: Father Berrigan, you made your points on the stand, very persuasively. I admire you as a poet. But I think you simply do not understand the function of a court.

Daniel Berrigan: I am sure that is true.

Judge [Thomsen]: You admitted that you went to Catonsville with a purpose which requires your conviction. You wrote your purpose down in advance. Your counsel stood and boasted of it. Now I happen to have a job in which I am bound by an oath of office . . .

Daniel Berrigan: Your honor, you spoke very movingly of your understanding of what it is to be a judge. I wish to ask whether or not reverence for the law does not also require a judge to interpret and adjust the law to the needs of people here and now. I believe that no tradition can remain a mere dead inheritance. It is a living inheritance which we must continue to offer to the living. So it may be possible, even though the law excludes certain important questions of conscience, to include them none the less; and thereby, to bring the tradition to life again for the sake of the people.

Judge [Thomsen]: Well, I think there are two answers to that. You speak to me as a man and as a judge. As a man, I would be a very funny sort if I were not moved by your sincerity on the stand, and by your views. I agree with you completely, as a person. We can never accomplish what we would like to accomplish, or give a better life to people, if we are going



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The creative tension of that moment—the power of gently stated moral positions confronting the rigidity of a courtroom—is palpable.<sup>84</sup> For a lawyer to try the various draft board raid cases without allowing religious feelings to surface would have been as inappropriate as discussing King’s “I Have a Dream” speech without recognizing it as a sermon. Kunstler (Jewish but quite secular) and Freeman (Quaker and pacifist) understood this as they helped orchestrate the defense of the Catonsville Nine. There is, therefore, an important message for lawyers to glean from the oratory skills of King. At times it is not merely desirable to recognize the importance of religious motivations and feelings in legal disputes, but foolhardy to ignore them. Introducing faith into a trial may provide not only consolation to the participants, but also freedom for the defendants. The former certainly surfaced in Catonsville, and both happened in Camden. In each case, the religious and moral vision of the defendants had a profound impact on the proceedings. The search for the Dream lifted courtroom spirits.

### VIGNETTE 5: MINIMUM WAGE DEBATES



to keep on spending so much money for war. But a variety of circumstances makes it most difficult to have your point of view presented. It is very unfortunate, but the issue of the war cannot be presented as sharply as you would like. The basic principle of our law is that we do things in an orderly fashion. People cannot take the law into their own hands.

BERRIGAN, *supra* note 59, at 114–15. The script goes on to note that not too long before the jury returned with its verdict, Daniel Berrigan welcomed his fate. He commented that he fully accepted the “rigors of the court.” *Id.* at 119. It is that point in the play that Berrigan asked if the court would allow him to recite “Our Father” with his co-defendants and members of the audience. Judge Thomsen dramatically replied that he had “no objection whatsoever, and rather welcomes the idea.” *Id.* at 119.

84. The moment is replayed in a dramatic work and a movie. BERRIGAN, *supra* note 59.

This graph is quite enlightening. The right edge displays the present federal minimum wage of \$7.25 in actual dollars (dark shade) and dollars valued as of 2012 (light shade).<sup>85</sup> Those two numbers, of course, were identical when the diagram was created. But historically the graph lines diverge because of the impact of inflation. The highest peak in the graph—about \$11.00 in 1968—displays the buying power of the \$1.60 federal minimum wage of 1968 in today's dollars. Put simply, if we want to match the buying power of the 1968 minimum wage today, Congress should raise the norm to \$11.00.

The timing is revealing. Wage earners in low-paying jobs were the best off during the height of the War on Poverty<sup>86</sup> and the heyday of the movements so vibrantly exemplified by King's 1963 sermon on the steps of the Lincoln Memorial. Shockingly, legislators and others on the Left supporting an increase in the minimum wage seldom use religious imagery while seeking adoption of the \$11.00 standard. President Barack Obama spoke movingly of fairness in his April 2014 remarks, complimenting several states for raising their minimum wages. But spiritual imagery was nowhere to be found in his speech.<sup>87</sup>

Surely that is not because religious movements have nothing to say about poverty. The central texts of all three major Western faiths—Jewish, Christian, and Islam alike—are littered with passages evincing an obligation to help the least well-off.<sup>88</sup>

85. See *About Minimum Wage*, U.S. DEP'T LABOR, <http://www.dol.gov/minwage/minwage-gdp-history.htm> (last visited Jan. 15, 2015).

86. President Lyndon B. Johnson announced his intention to wage a War on Poverty in 1964. Congress, then solidly in control of the Democrats, created the Office of Economic Opportunity (OEO). Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508. The OEO was designed to give grants for community organizing and other local projects to help the poor. It was a remarkable program. The government actually gave out grants to groups of people pursuing complaints against local, state, and federal agencies. One of the first, most important, and (other than Head Start) only long-lasting effort of the OEO was the funding of legal services programs. In 1964, Edgar and Jean Cahn published what became a famous law review article advocating the establishment of a nationally funded legal services program. Edgar S. Cahn & Jean Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964). The Cahns were also friends of Sargent Shriver, who was appointed by Johnson to run the OEO and had enormous influence on Shriver's decision to begin funding legal services offices. The OEO initiated a large-scale grant program in 1965. This infusion of funds allowed new legal services offices to open all over the country in the late 1960s. For more on the early history of legal services, see EARL JOHNSON, JR., *JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE AMERICAN LEGAL SERVICES PROGRAM* (1973); Alan W. Houseman, *Civil Legal Assistance for Low-Income Persons: Looking Back and Looking Forward*, 29 FORDHAM URB. L.J. 1213 (2002); Joan Mahoney, *Green Forms and Legal Aid Offices: A History of Publicly Funded Legal Services in Britain and the United States*, 17 ST. LOUIS U. PUB. L. REV. 223 (1998). Taking inflation into account, federal funds available for legal services programs in 2001 amounted to about half of the amount available in 1980 when Ronald Reagan was elected president. Houseman, *supra* at 1222.

87. President Barack Obama, *Remarks by the President on Raising the Minimum Wage*, WHITE HOUSE (Apr. 30, 2014), <http://www.whitehouse.gov/photos-and-video/video/2014/04/30/president-obama-speaks-raising-minimum-wage#transcript>. The best he could muster was the standard, sterile statement concluding his remarks: "So thank you, God bless you. God bless the United States of America." *Id.*

88. They also contain numerous verses about caring for strangers. I could have written this section about immigration reform as easily as the minimum wage.

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The notion of *Tikkun Olam*—Repairing the World—is central to Jewish theology.<sup>89</sup> Jesus’s sermon on the Mount begins with the famous line, “Blessed are the poor in spirit: for theirs is the kingdom of heaven.”<sup>90</sup> Some passages in the Quran are remarkably similar to those about poverty in the Torah.<sup>91</sup> No one should have been surprised, therefore, when King ventured into the travails of the destitute and working poor late in his all too short life.<sup>92</sup>

The fateful story of the sanitation workers strike in Memphis, Tennessee will forever link King to income inequality issues. On February 1, 1968, two black garbage collectors were crushed to death by a malfunctioning truck.<sup>93</sup> The city’s unsympathetic response led to a meeting of 700 sanitation workers ten days later. They made a decision to strike. A series of demonstrations by the employees and some Memphis citizens, as well as growing piles of garbage and trash, led the city council to recognize the union and grant a wage increase. The mayor, Henry Loeb, rejected the February 22 vote, claiming that only he could recognize a union of public employees. Tear gas was used to break up a sanitation worker march to city hall the next day. That event galvanized the larger black community of Memphis, as well as some white groups. On February 24, well over 100 local ministers gathered, organized the Community on the Move for Equality and committed themselves to daily nonviolent marches and disobedience. Many of these demonstrations were joined by significant numbers of white high school and college students. The sanitation worker strike had morphed into a much larger dispute about long extant issues of race and civil rights in Memphis. King spoke before a huge crowd at the Mason Temple<sup>94</sup> on March 18 and planned to speak at another demonstration ten days later. That gathering ended with King leaving before delivering his address. Violence erupted—perhaps triggered by participants of the growing black power movement, perhaps by a growing sense of frustration among African Americans, perhaps by a reaction to police violence—more likely by a combination of tensions.

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89. The obligation to deal fairly with people regardless of class is raised in at least four important passages in the Torah: Exodus 23:3–6, Leviticus 19:15, Deuteronomy 1:17, and Deuteronomy 16:19–20. Countless verses in the Torah refer to the impoverished in other ways. Examples include leaving the corners of fields unharvested for those who glean (Leviticus 19:9–10; Leviticus 23:22), remitting debts (Deuteronomy 15:1–2), or taking care of the poor and strangers (Deuteronomy 24:19–21).

90. *Matthew* 5:3.

91. For example, read this verse: They ask you, [O Muhammad], what they should spend. Say, “Whatever you spend of good is [to be] for parents and relatives and orphans and the needy and the traveler. And whatever you do of good—indeed, Allah is Knowing of it.” *Quran* 2:215.

92. Nor, perhaps, should we be surprised that the recently installed Pope Francis has taken on poverty and income inequality as a central theme of his reign. See, e.g., *Address of Pope Francis to the UN System Chief Executives Board for Coordination*, HOLY SEE (May 9, 2014), [http://w2.vatican.va/content/francesco/en/speeches/2014/may/documents/papa-francesco\\_20140509\\_consiglio-nazioni-unite.html](http://w2.vatican.va/content/francesco/en/speeches/2014/may/documents/papa-francesco_20140509_consiglio-nazioni-unite.html).

93. The story of the strike is well told in the King Institute Encyclopedia at *Memphis Sanitation Workers Strike (1968)*, KING INST. ENCYCLOPEDIA, [http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc\\_memphis\\_sanitation\\_workers\\_strike\\_1968/](http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc_memphis_sanitation_workers_strike_1968/) (last visited Jan. 15, 2015).

94. The Mason Temple is a huge church and the headquarters of the Church of God in Christ. See *History of Mason Temple*, CHURCH OF GOD IN CHRIST: MASON TEMPLE CAMPUS RENAISSANCE, <http://www.cogicworldheadquarters.org/history.html> (last visited Jan. 15, 2015).

Stores were looted. Police killed one teenager. Tear gas and beatings were used to disperse demonstrators from the Clayborn Temple.<sup>95</sup> King returned again to Memphis and spoke to the workers once more on April 3.

During that sermon,<sup>96</sup> reacting to death threats he received before arriving, he recalled the parable of the Good Samaritan—the story of a man stopping to aid the victim of a robbery left unaided by others on the then-dangerous road from Jerusalem to Jericho.<sup>97</sup> And King opined that the proper question was not “what will happen to me” if I stop to help the victim. Rather, the question was, “If I do not stop to help the sanitation workers, what will happen to them?” And, danger still on this mind, he then recalled his near death experience after being stabbed by, in his words, “a demented black woman” in a Harlem bookstore in 1958. There then followed the famous passage in which King anticipated his own death:

And then I got into Memphis. And some began to say the threats, or talk about the threats that were out. What would happen to me from some of our sick white brothers?

Well, I don't know what will happen now. We've got some difficult days ahead. But it really doesn't matter with me now, because I've been to the mountaintop.

And I don't mind.

Like anybody, I would like to live a long life. Longevity has its place. But I'm not concerned about that now. I just want to do God's will. And He's allowed me to go up to the mountain. And I've looked over. And I've seen the Promised Land. I may not get there with you. But I want you to know tonight, that we, as a people, will get to the Promised Land!

And so I'm happy, tonight.  
I'm not worried about anything.  
I'm not fearing any man.

Mine eyes have seen the glory of the coming of the Lord!<sup>98</sup>

King was assassinated the following evening.

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95. The Clayborn Temple—an African Methodist Episcopal church—was the central organizing point for the sanitation worker strike. The building has been abandoned for decades. It is now in terrible condition. Efforts to find a buyer have so far failed. See Linda A. Moore, *Prospective Buyer Makes Offer for Clayborn Temple*, COM. APPEAL (July 22, 2011, 12:00 AM), [www.commercialappeal.com/news/local-news/prospective-buyer-makes-church-offer](http://www.commercialappeal.com/news/local-news/prospective-buyer-makes-church-offer).

96. The text is available at Martin Luther King, Jr., *I've Been to the Mountaintop*, AM. RHETORIC, <http://www.americanrhetoric.com/speeches/mlkivebeentothemountaintop.htm> (last visited Jan. 15, 2015).

97. *Luke* 10:25–37.

98. This last line is from the “Battle Hymn of the Republic.” The lyrics were written in 1861 by Julia Ward Howe, an ardent abolitionist, to the tune of “John Brown’s Body” as a song to rally the troops of the North. The Atlantic Monthly first published the song’s words in 1862. It was not intended to be a church hymn, though it is now sung there at times. For more on the history and meaning of the song’s lyrics, see Kenneth J. Morgan, *The Truth About “Battle Hymn of the Republic”*, REDISCOVERING BIBLE (May 2008), <http://www.rediscoveringthebible.com/BattleHymn.html>. See generally JOHN STAUFFER & BENJAMIN SOSKIS, *THE BATTLE HYMN OF THE REPUBLIC: A BIOGRAPHY OF THE SONG THAT MARCHES ON* (2013).

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The references to going to the mountaintop and seeing the Promised Land, of course, refer to the well-known passages in Deuteronomy 34:1–12. They tell of Moses going to the top of Mount Nebo to look over the Jordan River toward the Promised Land and dying there without reaching his yearned-for destination. He learned that would be his fate when, near the end of the forty-year journey across the desert, Moses confronted a community complaining about the lack of good food and water,<sup>99</sup> just as he had thirty-nine years before, shortly after the Exodus.<sup>100</sup> In both cases, the Israelites romanticized their time in Egypt as better than the stark reality of desert life. In the earlier biblical story, the Israelites quarreled with Moses who rebuked them for trying the patience of the Lord. When they went on to complain about leaving Egypt only to die of thirst, Moses asked God for help. He was told to go to Horeb with some elders of the community, and to take with him the same rod or staff he had used to turn the Nile to blood with its touch. Once at Horeb, he was to strike a rock with the staff to make water pour forth.<sup>101</sup> That is how the vignette ended.

But thirty-nine years later, when complaints again arose over the lack of water, Moses and Aaron left the complaining throngs without vocal remonstrations and fell on their faces without verbally seeking God's help. Nonetheless, God intervened and told them to speak to a rock to obtain water. This time Moses did not exactly follow instructions, and Aaron did nothing to encourage obedience. Moses gathered his people together, angrily and sarcastically said to them, "Listen you rebels, shall we get water for you out of this rock?" and then—not once, but twice—struck the rock without saying a word. He did not speak to the stone as commanded by God. Water poured forth, but Moses and Aaron were immediately told they would never enter the Promised Land. Though the shift in Godly commands to Moses and Aaron from striking a rock to speaking to one seems minor, the consequences for violating the second command were severe.

Needless to say, interpretations of these passages are legion. For me the storyline surrounding Moses's failure to speak or seek assistance from God during the second water crisis is crucial.<sup>102</sup> Moses was getting old. The journey to the Promised Land was almost over. We learn in the verse just before the tale about striking the rock that Moses's sister Miriam had died.<sup>103</sup> He was, perhaps, sad at the death of his sister, tired after many years of travel, and angry at the inability of a new generation of Israelites to cope with the travails of obtaining freedom. The generational failure may have been particularly galling. It typically is said that the Israelites did not travel directly to

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99. *Numbers* 20:2–13. The event is referred to in several later passages. *Deuteronomy* 1:37, 3:26–27, 4:21–22, 32:52.

100. *Exodus* 17:1–6.

101. *Id.* at 7:14–18.

102. It also is fascinating that Moses broke an order about speaking. When the Exodus story began, Moses tried to avoid taking responsibility by saying to God that he was "slow of speech, and slow of tongue." *Exodus* 4:10. By the time Deuteronomy rolls around, that issue seems to have disappeared. Yet in this episode, he only uses his now well-developed oratorical skills in rebukes and sarcastic questions. *Id.*

103. *Numbers* 20:1. In a stunningly brief passage we are told that while in Kadesh, "Miriam died there, and was buried there." *Id.*

Canaan after the Exodus because they needed to learn how to be free—to discard the sense of victimhood, dependence, and passivity that is sometimes bred by captivity. As the story unfolded over the years, virtually the entire generation of those who left Egypt died off before the end of the forty-year journey. Only two of those who participated in the actual Exodus from Egypt were allowed to cross the Jordan—Caleb and Joshua. They alone maintained constant and undiminished faith in God through the long desert sojourn. They alone spoke in favor of entering the Promised Land after ten other scouts, sent over to reconnoiter, expressed fears about taking that critical step, and the larger community quaked in fear at the prospect.<sup>104</sup> If Moses was a teacher, his people had failed to learn—even those who had never experienced slavery in Egypt. Though the rock-striking can be taken as a statement about the need to precisely obey a supernatural and perhaps arbitrary God,<sup>105</sup> a more modern view would consider larger social issues about aging, family disarray, mental fatigue, mourning, and the difficulties of governing and creating legal norms for a nation.

Similar feelings must have been on King's mind as he spoke in Memphis. Facing growing resistance to nonviolence among his own people, the urban disturbances then coursing through American cities,<sup>106</sup> the rising disappointment at the failure of the civil rights movement to significantly alter the lives of many black citizens, and the increasing disagreement among his own followers, it is easy to understand why his final speech was so forlorn. It is a firm reminder that moving a nation is difficult, if not impossible, work. My encouraging greater recourse to religious rhetoric by legal movements on the Left is no more a magical panacea than were King's heroic efforts to find the Dream of consolation and freedom. But for social-welfare-oriented legal reformers to abandon spiritual territory is an egregious strategic error. The search for the Dream must go on.

#### VIGNETTE 6: BIBLICAL DREAMS

It seems appropriate to end an essay about King's "I Have a Dream" sermon with some discourse about biblical dreams. There are a number to choose from. Perhaps the best known involve Joseph—his narcissistic images about he and his brothers,<sup>107</sup> his interpretation of the dreams of the cupbearer and baker that eventually led to

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104. The account of the scouts is in Numbers 3:1–14.

105. "Rock" is often used as a symbol for God in the Bible. See, e.g., *Genesis* 49:24; *Deuteronomy* 32:4, 15, 18, 30–31. The *Deuteronomy* passages cited here are spoken by Moses himself in his final, poetic oration to the Israelites before he ascends Mount Nebo and dies. Striking a rock may therefore have all sorts of symbolic meanings about man's relationship to God. See, e.g., *Genesis* 49:24; *Deuteronomy* 32:4, 15, 18, 30–31.

106. The first major urban disturbance occurred in the Watts area of Los Angeles on August 11, 1965. See *Watts Riot Begins*, HISTORY, <http://www.history.com/this-day-in-history/watts-riot-begins> (last visited Jan. 15, 2015). Less severe precursors arose the year before in Rochester, New York City, and Philadelphia. Major problems arose in the Hough neighborhood of Cleveland in 1966 and in Newark, Detroit, Chicago, Plainfield, Omaha, Washington, and Baltimore during the following two summers. See e.g., *History of Newark*, THIRTEEN, <http://www.thirteen.org/newark/history3.html> (last visited Jan. 15, 2015).

107. *Genesis* 37:5–11.



## DREAM VIGNETTES

him being called from prison to speak with Pharaoh,<sup>108</sup> and his interpretation of Pharaoh's dreams about seven years of plenty and seven years of famine.<sup>109</sup> But for purposes of this essay, the most intriguing biblical dreams are two had by Jacob. The first is about a ladder or stairway. Almost immediately after Jacob and his mother, Rebekah, deceived Isaac into bestowing his paternal blessing on Jacob rather than Esau,<sup>110</sup> Rebekah heard that Esau threatened to kill his brother in anger, and convinced Isaac to send Jacob away in search of a proper wife.<sup>111</sup> Jacob was sent to seek a spouse at the home of Rebekah's brother Laban in Haran. He spent fourteen years there seeking approval of his marriages to Leah and Rachel and a total of twenty years before leaving.

On his way to Haran, Jacob had this dream about a ladder:

Jacob left Beer-sheba, and set out for Haran. He came upon a certain place and stopped there for the night, for the sun had set. Taking one of the stones of that place, he put it under his head and lay down in that place. He had a dream; a stairway was set on the ground and its top reached to the sky, and angels of God were going up and down on it. And the Lord was standing beside him and He said, "I am the Lord, the God of your father Abraham and the God of Isaac: the ground on which you are lying I will assign to you and to your offspring."<sup>112</sup>

This is a puzzling story to say the least. In contrast to King, Jacob was a passive bystander in this dream. He slept with his head on a rock—a stunning symbol. At a fairly obvious level, it presages Moses and his rock-water stories. God at times is described in the Bible as a rock.<sup>113</sup> That is one of the reasons why Moses's treatment of a stone was such a serious problem. Striking God without permission to do so is hardly the best way to make friends and influence people. In Jacob's case, dreaming on a rock notifies us that his relationship with the divine not only was difficult but also "sleepy"—passive and unconscious. Indeed, in this dream he neither climbed nor descended the ladder. Nor did he have any interactions with the angels going up and down. Though God spoke to Jacob, he said nothing to God.<sup>114</sup>

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108. *Id.* at 40:1–23.

109. *Id.* at 41:1–36.

110. The story is told in Genesis 27:1–40. Jacob, with the connivance of his mother, Rebekah, disguised himself as Esau and convinced his blind father, Isaac, to give him his paternal blessing. Rebekah and Isaac also had divided loyalties to their sons—Rebekah favoring Jacob, and Isaac preferring Esau. *Id.*

111. *Id.* at 27:41–46.

112. *Id.* at 28:10–13. This translation is from LIEBER ET AL., *supra* note 14, at 166–67. The King James Version translation uses ladder rather than stairway. *Genesis* 28:10–13.

113. *See, e.g.,* verses cited *supra* note 105 and accompanying text.

114. Some of the ideas in this paragraph are partly derived from a talk given by Rodger Kamenetz on April 2, 2014 at B'nai Jeshurun, the synagogue I regularly attend in New York City. He has authored a number of well-known books, including *THE JEW IN THE LOTUS: A POET'S RE-DISCOVERY OF JEWISH IDENTITY IN BUDDHIST INDIA* (1994), and *THE HISTORY OF LAST NIGHT'S DREAM: DISCOVERING THE HIDDEN PATH TO THE SOUL* (2007).

There is another layer in this dream—one about Jacob’s family troubles. The discomfort of sleeping on a stone surely mirrored Jacob’s psychological anxieties. After he and Rachel deceived Esau, Jacob left Haran fearing for his personal well-being. Note that we do not know what “up” and “down” the ladder signifies in the dream. To the literal-minded, they could refer to traditional notions of heaven and earth. But it is more likely that they represent the ups and downs—the truths and deceptions—of Jacob’s sleeping soul. It certainly was a positive psychological sign that he was troubled by his family history. But taking one step at a time on the ladder was a prerequisite to the repair of his character. He needed conscious, wakeful awareness of the rungs before he could step on even one. Whether reaching down into himself or stepping up to discern his troubles from above, Jacob needed to be on the ladder. That he remained passive and speechless said much about his woes.

Once in Haran, Jacob himself became the victim of deception. Laban tricked him—both to demand many years of service from Jacob before allowing marriage of a daughter, and to bar his marriage to Rachel (the woman Jacob claimed to love)<sup>115</sup>—before the betrothal of her older sister, Leah. Indeed, on what was supposed to be his wedding night with Rachel, he ended up consummating marriage with Leah. This is one of the strangest episodes in biblical lore. How was he unable to discern the identity of the woman with whom he had intercourse? Perhaps he deceived himself as much as Laban deceived him. Perhaps his life was so full of deception that he could not tell the difference between truth and fiction.

And then comes the preamble to the second dream. After many years, Jacob—now with two wives, two concubines, twelve children, and a passel of assets—left Laban’s home in Haran and made plans to see his long-estranged brother, Esau. Many years after beginning to create a family of his own—though surely one with its share of conflicts, rivalries, and jealousies—he was prepared to take a step on the ladder, to begin repairing the tears in the fabric of his parents’ clan, to turn the stone soft. Not surprisingly, he fretted about how the sibling he had previously deceived would receive him. When told that Esau was approaching with hundreds of men, Jacob sent many effects ahead as a peace offering and moved his family and remaining possessions across the Jabbok River.<sup>116</sup> Left alone to mentally prepare for meeting his brother, another dream (Or was it?) afflicted him:

Jacob was left alone. And a man wrestled with him until the break of dawn. When he saw that he had not prevailed against him, he wrenched Jacob’s hip at its socket, so that the socket of his hip was strained as he wrestled with him. Then he said, “Let me go, for dawn is breaking.” But he [Jacob] answered, “I will not let you go, unless you bless me.” Said the other, “What is your name?” He replied, “Jacob.” Said he, “Your name shall no longer be Jacob, but Israel, for you have striven with beings divine and human, and have prevailed.” Jacob

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115. *Genesis* 29:18–30.

116. The Jabbok River is a tributary of the Jordan River in Jordan located north of the Dead Sea.



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asked, “Pray tell me your name.” But he said, “You must not ask my name!” And he took leave of him there.<sup>117</sup>

In this story Jacob was active—physically, psychologically, and verbally. The wrestling match left him with an injured hip and a permanent limp—a physical as well as an emotional scar. He overtly struggled with his history, recognizing the injuries to his soul inflicted both by his parents and by his own actions. Ironically, he sought a blessing—perhaps to repair the one he stole from Esau. After his nighttime wrestling match, Jacob rejoined his family and went to meet his brother. Despite his misgivings, the meeting went well. But just after their hugs loosened and their tears dried, Jacob declined his brother’s invitation to travel home together for a visit. Indeed, he deceived Esau about his intentions in order to avoid traveling with him.<sup>118</sup> Perhaps that is why he is sometimes called Jacob and sometimes Israel in the rest of his biblical history. Indeed the naming pattern in the text seems largely random.<sup>119</sup> Though renamed Israel by his wrestling “partner,” he never fully reconciled himself to his past any more than he fully reconciled with his brother. He began to perceive the depth of his problems, but many of his personal issues were unresolved at his death. Sometimes he was Israel. Sometimes he reverted to Jacob.

That is a metaphor for King’s sometimes tragic search for the Dream. At his death he, like Jacob, was partially consoled and partially free. At his death, he had climbed some rungs on the ladder of justice but never approached the pinnacle.<sup>120</sup> He marched with huge throngs of supporters, but those passively watching at home did not always pay heed. He wrestled with angels but was deeply wounded—not in his hip, but in his heart.

The Dream went unfulfilled.

## CONCLUSION?

There is no conclusion—only a beginning. King’s dream of consolation and freedom has not been attained. But for King and so many others then and now, life is empty without seeking it. Those reaching for a rung on Jacob’s ladder often run legal gauntlets after they pray with their feet. Lawyers must be willing to climb and walk with them.

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117. *Genesis* 32:25–30. This translation is from LIEBER ET AL., *supra* note 14. The etiology of the word “Israel” is partly mysterious. The end “el” refers to Elohim—God. The beginning is from a Hebrew root connoting both rising up in splendor and struggling. Many say that the name means to struggle with God. And many Jews think of themselves as a people struggling with God.

118. The episodes are recounted in *Genesis* 33:1–17. The further deception is in *Genesis* 33:12–17. Jacob told Esau to go ahead. He wished, he said, to move slowly in order to care for his flocks and children. But rather than meeting with Esau in Seir, Jacob went in the opposite direction to Succoth. *Id.*

119. One summary of the various namings may be found in Herbert Block, *Distinguishing Jacob and Israel*, 34 *JEWISH BIBLE Q.* 155 (2006), available at [http://jbq.jewishbible.org/assets/Uploads/343/343\\_jacobis1.pdf](http://jbq.jewishbible.org/assets/Uploads/343/343_jacobis1.pdf).

120. In the Jacob’s Ladder dream, of course, there is no way anyone could reach the pinnacle. King certainly climbed more rungs than most of us ever dream of.