

HUMAN FLOURISHING AND THE LAW

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Welcome to Texas everybody, and welcome to Austin.

It's a beautiful time of year here, isn't it? It's a beautiful day today—flowers blooming, sun shining but not too hot. I hope you'll all be able to enjoy it this afternoon after the conference. There's nothing quite like taking a quiet walk on a beautiful day to remind yourself that maybe this whole human flourishing thing is not as complicated as we might think.

I can't begin to talk about human flourishing and the law without first acknowledging that I believe, as I hope you do, that we humans are fearfully and wonderfully made in the image of God. I promised the organizers this wouldn't be a sermon, but sometimes I can't help it. The Book of Genesis says that God made us in his image, and the Psalms say that God delights in his creation. So what does that tell us? When we do the same thing God does, when we allow ourselves simply to delight in the natural beauty of the world around us—not as a means to an end but just because it is beautiful and therefore worthy of our delight—then I think we are tapping into an aspect of ourselves that reflects the image of our Creator, however faintly and imperfectly.

Genesis also suggests that one of the ways God delighted in his creation was to go “walking in the garden in the cool of the day.”¹ This is when we are told that Adam and Eve hear God's voice. Of course, they hear God's voice and are ashamed because they have sinned. But think about this detail—that God was walking in the garden in the cool of the day, and that is when He spoke to His people. I think about my own experience of delighting in creation, which is especially vivid when I'm walking in the quiet cool of the day—in the morning or the evening. And I think that maybe the spirit of peace and gratitude and beauty that I sometimes feel in those fleeting moments is at least an echo of the voice of God.

And if that's not human flourishing, then I've never experienced it, I don't know what it is, and you shouldn't listen to anything else I say.

* Chief Justice of the Texas Supreme Court. This speech was delivered at the Conference on Human Flourishing and the Law at the University of Texas at Austin on March 1, 2024, before Justice Blacklock was appointed Chief Justice.

¹ Genesis 3:8.

Speaking of human flourishing, I have three daughters. They are 8, 11, and 12. I highly recommend it. Flourishing literally means flowering, and children are in a sense the flowering of their parents. So quite literally, having children *is* flourishing.

I'm constantly telling my girls not to say "literally" all the time. You know, this is "literally" the worst day of my life. Or that's "literally" the dumbest thing I've ever heard. It's literally such an overused word, isn't it? My kids say it all the time. But I think I used it correctly there—children are "literally" the flourishing of their parents. You can decide.

Something that's far more important for my girls than a refined vocabulary is that they come to know what it is to delight in God's creation. We like to open our windows and doors on some of these pretty early spring days, but you can do that in Austin only certain times of year—because of the bugs. The bugs are not as bad as in Houston, where I grew up, but we have plenty of our own bugs in Austin. Usually, February would be a great time to open the windows on a nice day. But we had an unusually warm couple of days last week, and the other day we opened our windows and doors, and then we left them open after the sun went down. It's dark outside and the lights are on inside—bugs everywhere!

So at least we know the bugs in Austin are flourishing. How about the people in Austin? Inconclusive at best, at least according to the magic 8-ball of social science statistics, which can tell you all kinds of things depending on how you shake it. We know warmth and moisture are good for bugs. And so bugs flourish when they have these things, much to my wife's dismay. Bugs just need a warm day and a little something to eat. That's all they require to flourish. But how about people? A far more complicated question, about a far more complicated creature.

Speaking of bugs and men, are you familiar with the concept of the Bugman? It's internet slang, from places on the internet the human resources director doesn't want us to visit. The website unherd.com, a very interesting site, defines the Bugman as "the default, normie consumer, who imbibes uncritically the great narratives of today's power structures: the kind of person who mistakes the low-brow hedonism that Western society offers in abundance for a source of deep meaning." I think the Bugman is roughly the 21st century's version of C.S. Lewis's Men Without Chests, from *The Abolition of Man*. And trust me, reading or re-reading *The Abolition of Man* would be a far better use of your time than looking around on the kind of websites that talk about bugmen.

The Bugman is living in the Matrix, you might say—to use a cultural reference everyone of my generation will get but that some of you may be too young for. The Bugman's matrix is constructed by the powerful narrative-building authorities of our day—the law, the government bureaucracies, the journalists, the universities, Netflix—all of which seem so often to be singing from the same hymnbook, don't they? Curious how that works. But that's another speech.

How does the Bugman answer questions like, What is good? What is true? What is beautiful? Either these questions are irrelevant to him, or he is fed politically correct answers by those in power, and he accepts these answers and conforms his thinking to them uncritically—all the while believing that he’s an independent thinker who makes up his own mind about things.

Of course, we can chuckle about the Bugman and congratulate ourselves for not being one—which, by the way, is just what the Bugman would do. But here’s the thing: The only good reason to look down on the Bugman is if the ruling narrative—which he buys hook, line, and sinker—is not true. The problem with the Bugman’s worldview is not that he didn’t come up with it himself. The problem is that it’s false.

It’s a mistake to think of human beings as autonomous rational actors freely choosing each aspect of the way we look at the world. The reality is that we are social creatures who are all heavily influenced by the social forces around us, whether we want to admit it or not. Some are more independent-minded than others, of course, but each of us is inescapably the product of our upbringing, our family background, and our times. Our motivations and our decisions are heavily influenced by the feedback we get from the people around us and by the media we consume. Our views on politics and current events are a product of the sources of information we consume. And the sources of information we consume, in turn, are usually dictated by what those around us who we trust seem to think is reliable.

And so there’s a sense in which we all have something very much in common with the Bugman: We are always in the market for a matrix to plug ourselves into, a source of authority that will make sense of the world and will tell us what we should value, what we should think, and what we should do. History is not the story of autonomous individual human beings making rational choices from an unbiased frame. It’s the story of competing collective visions of the good and how those visions drive whole nations of people in and out of conflict with one another. It’s the story of matrices colliding.

The Bugman’s problem is not that he’s following other people’s lead on all the big questions. Almost everyone does that. The problem is that he’s been given the wrong answers. And if we let his false and ugly matrix take hold of our society, I’m not sure exactly what the result will be, but it will not be human flourishing. Our challenge is to offer the Bugman a different matrix—a different positive vision of the good that he can tap into and rely on.

There is always a vision of the good on offer by the dominant forces in a society, and the law will naturally reflect that vision. The ancient Roman maxim—*salus populi, suprema lex*—means “the health of the people is the supreme law.” The Latin word *salus* means more than physical health and could just be translated “flourishing.” I take this Roman maxim to mean that the purpose of the law—and the purpose of nation’s government—is to promote the flourishing of the nation’s people. Note that *populi* is plural. It’s a collective reference to the people of the

society, like “The American People.” We are not talking merely about the flourishing of individuals, but we are also not talking about the flourishing of all the people in the world, or of mankind generally. The *salus populi* is the collective flourishing of the people of the nation. I think this classical maxim works pretty well as a modern political formula. The purpose of OUR government and OUR law should be to promote the flourishing of OUR people—not just some of us, and not the flourishing of mankind in general.

Of course, the government can’t promote the People’s flourishing without a vision of what flourishing is. If we don’t much like the visions of the good being offered by powerful forces in the Year of our Lord 2024, then the political question for us is not how to make our government and our other powerful institutions adopt a value-free, morally neutral frame. We never had that, and we never will have it. Instead, we need a positive vision of the *salus populi*, from which we can derive the *suprema lex*. If we think the prevailing modern narrative about who we are and what we are for is false, as I do, then the question is what do we say is true? What is the counter-narrative we are offering, both to ourselves and to the Bugman—who of course is not a bug at all, but a fearful and wonderful creature made in God’s image.

What is good for us? What are we for? How ought we to organize our common life together under the law? These are questions so vast and deep that it seems almost impetuous to ask them as if we’re going to answer them here today. But there are no more important questions to be asked. One of the great lies of our day is that asking these questions is pointless because there aren’t truly answers. The modern mind easily mistakes the difficulty, the complexity, and even the mystery of the answers, for the absence of answers. But we must ask these questions, and keep asking them, with the conviction that there are true answers—as our forefathers have done for thousands of years. And we must not be discouraged by all the ways our answers fall short of perfection, as they always will.

Our keen awareness of the imperfection of our answers to these ultimate questions, I think, comes from the knowledge deep within us that there is an answer that is perfect, a perfect answer against which our imperfect answers can be judged. If there isn’t such a perfect answer, then how would we know our answers are imperfect? But we do know, don’t we?

The Bible answers a lot of questions, for those of us who believe it, but it does not teach that sinful men can obtain perfect, God-like understanding. We see as through a glass dimly. As Saint Augustine said, “the very perfection of man is to find out his own imperfections.” And so, looking through the dim glass that is our lot, we ask what sounds like a simple question: What is good for us?

With lower creatures, it’s easy. It’s merely material. Food, shelter. I love what GK Chesterton said in response to those who believed human beings are just advanced apes. He said that if we ignore superficial comparisons and focus on what is really worth noticing about the various

creatures inhabiting our world, then the gap between apes and men is quite obviously far greater than the gap between apes and bugs. The fact that men can make music and art and love—but bugs and apes cannot—tells us far more about the essential nature of these creatures relative to each other than any physical resemblance or genetic information. All the most important and interesting things about men are things neither apes nor bugs have—so we are in one category, and they are in another. Any time I'm asked to recommend a book, it's never a law book. If it's non-fiction, it's GK Chesterton's *The Everlasting Man*, which is where he makes the argument I just described.

As you can probably tell, I think that human flourishing is inescapably a religious question. The question is who are we, what are we for, and what should we do—both as individuals and as a people or a nation. Those are the questions for which religious faith has provided the answer to the vast majority of people who have ever lived. If your answer is we are advanced apes, there is no Creator, we have no inherent purpose, and the best we can do is to maximize pleasure and minimize suffering—well, I think that's self-evidently ludicrous. But it's still a fundamentally religious claim about the absence of a Creator and the absence of an objective standard of truth.

I am a Christian. I believe the Bible tells the true story that humanity was created in the image of God to enjoy perfect flourishing in communion with our Creator; that we rebelled against Him, that Jesus Christ came once into this world to save sinners, that he will come again to make all things new, and that history will end the way it started, in perfect human flourishing in the presence of God.

Plenty of people think that's ludicrous, perhaps some in this room. That's OK. What I think we should be after here is a vision of human flourishing that, even if it has a religious foundation, can be offered to a wide variety of people in our society with any faith or with no faith.

We can offer a vision of the good life that can be embraced by people of all faiths, or even no faith, without losing sight of the fact that an explicitly theological understanding of the telos of man has dominated humanity's thinking about our nature and purposes for most of our existence, including in this country. The Westminster shorter catechism, written in the 1640s and used in American public schools in many places into the 20th century, says succinctly that the chief end of man is to glorify God and to enjoy him forever. That answer would have been on the tip of the tongue of a large percentage of Americans at the time of our founding and even much later.

For most of our nation's history, Americans' answers to ultimate questions about human flourishing were rooted in truths far deeper and older than the political history of the United States. American history did not begin in the 1960s. It did not begin in the 1770s, or the 1620s, or even 1492. Our country is part of an ancient civilization built on the twin pillars of Christianity and classical antiquity. The birthplace of that civilization is Europe, but I fear the Europeans have

given up the ghost. We Americans are the last hope of the West. We Americans—and precious few of us, to be honest—are the last guardians of the ancient truths on which our civilization was built. We are the keepers of the flame. We are the stewards of Christendom. And like Tolkien's stewards in Gondor, we await the Return of the King, as did our Fathers before us. If those in whose hearts the flame still burns were to succumb to secularism and nihilism, we would not just fail our own country. We would fail the two-thousand-year-old tradition that made possible all of the liberty, peace, and abundance we so often take for granted.

If you are ever tempted to believe the aspect of the prevailing narrative that says a theological perspective on human flourishing has no place in American public life, remember that from a historical perspective it is the modern dogmatic secularist—not the public-spirited Christian—whose perspective stands in stark contrast to the great weight of the American tradition. If you need evidence of the place faith has held in American public life, just look at the speeches of nearly any American President prior to World War II. Here's George Washington's Letter to all the State Governors in 1783:

"I now make it my earnest prayer, that God would have you, and the State over which you preside, in his holy protection, that he would incline the hearts of the Citizens to cultivate a spirit of subordination and obedience to Government, to entertain a brotherly affection and love for one another, for their fellow Citizens of the United States at large, and particularly for their brethren who have served in the Field, and finally, that he would most graciously be pleased to dispose us all, to do Justice, to love mercy, and to demean ourselves with that Charity, humility and pacific temper of mind, which were the Characteristicks of the Divine Author of our blessed Religion, and without an humble imitation of whose example in these things, we can never hope to be a happy Nation."

We don't live in 1783, of course, but we "hope to be a happy Nation," don't we? Are we? It doesn't seem that way. How can we be? George Washington's letter says that if we want to be a happy nation we should imitate Jesus. That advice was, for many centuries, our civilization's basic answer to the human-flourishing question, however imperfectly it was often put into practice. Our modern political culture rarely gives that answer anymore, but what alternative answers does it offer?

The first answer that comes to mind—perhaps the dominant answer of modern times—is what James Carville supposedly said to Bill Clinton when his campaign was struggling. "It's the economy, stupid." It's money. That's what people care about. That's what government is for. Maximizing American economic output ought to be the overriding purpose of our political life. There is no better measure of human flourishing than the GDP!

Maybe there's some limited truth to Carville's advice when it comes to electoral politics. Personally, I doubt it. I think the vast majority of people know instinctively that our politics

ought to be very concerned about far deeper and nobler things than money. What we need is not for our political leaders to act as if money is all that matters. In fact, we need just the opposite. We desperately need more political leaders who are capable of articulating a vision of human flourishing that transcends the material and the mundane. Without vision, the people perish, as the Proverb says. Perish is the opposite of flourish.

James Carville is a smart guy, and he knows electoral politics better than I do. If we grant Carville that he's a shrewd and cunning electoral strategist, I hope we can agree that he's an atrocious philosopher—or at least that his famous political motto is incomplete, and actually very dangerous, as a theory of human flourishing. But it is in many ways the motto of the age.

Another vision of human flourishing we see on offer in our culture is what we might call the vision of individual autonomy and self-actualization. It says that human flourishing consists of the liberation of the individual from unchosen bonds. By unchosen bonds I first mean social bonds like tradition, history, religion, nation, family. But this vision also seeks liberation from the unchosen bonds of human nature, including our bodies, male and female. We're told these bonds are not givens. They're a choice. The modern West—in just the last few decades—is the first society in human history to assert its liberation from the unchosen bonds of nature in this way. Those who profess this vision seem to think we're just better and more enlightened than everyone who has come before. What if they're wrong? It's quite a gamble to stake the future of civilization on a bet that we've finally discovered the answer our ancestors were looking for all those years—and the answer is to tear down their statues and liberate ourselves from their ancient wisdom.

Notice something else about this vision of human flourishing. It is a vision of the flourishing of an individual person. It is not a vision of the flourishing of a People. It is not a vision of the flourishing of a whole society comprised of interdependent individuals and groups of individuals, whose flourishing is connected. It assumes that maximum individual freedom leads to maximum flourishing. And so it would not agree, for example, with the following statement: Even though many people might be able to use recreational drugs responsibly, many other people cannot, and so for the sake of the *Salus Populi*, it is best for those in the first category to give up their freedom for the sake of those in the second category. A legal system built on the individual-liberation vision would not make a law like that. It would always maximize freedom and minimize restrictions on individual liberty. The law itself is an unchosen bond, and so if minimizing unchosen bonds is our vision of human flourishing, then the law should have as light a touch as practically possible. The libertarians have been offering that vision for a while now—that government should have the lightest touch possible—but the libertarians never get very many votes, do they?

The political failure of the libertarian vision is inevitable because, without vision, the people perish rather than flourish. The law is always premised on a positive vision of the good. Those who promote the individual-liberation vision of human flourishing are, when you dig a little

deeper, not libertarians at all. They're actually promoting an array of substantive, non-negotiable moral judgments, from which dissent is not an option. This is not unlike all the talk you hear these days about preserving our "precious democracy"—which has nothing to do with the preservation of the people's ability to control their government through elections, and everything to do with advancing a particular substantive vision of the good, whether the people want it or not. To sum all this up, the fundamental political question is not *whether* the law will reflect a vision of human flourishing. The question is *whose* vision the law will reflect.

At the end here, I'll finally offer something like an answer to all the questions I've been asking. I don't think we have to look very far for a vision of human flourishing that is superior to the love of money or the worship of individual liberation. I certainly don't have any new ideas, but on a topic like this, we should be very skeptical of new ideas. These aren't my ideas. They're very old ideas.

An alternative vision, an ancient and enduring vision our ancestors knew well, is that human flourishing consists not of the elimination of unchosen bonds—but of the presence of the *right* unchosen bonds, bonds like faith, family, history, and tradition. These bonds can root us and guide us and shape us, sometimes even compel us, toward the good life, the virtuous life—a life of reverence, gratitude, and fortitude—a life that bears fruit in its season “like the tree planted by water” from Jeremiah, “that sends out its roots by the stream, and does not fear when heat comes, for its leaves remain green, and is not anxious in the year of drought, for it does not cease to bear fruit.” The fruit-bearing tree is firmly rooted. If it is uprooted, it will wither and die. But if it remains firmly rooted in a healthy place, it will flourish. And so it is with us.

This vision of human flourishing correctly situates the pressing concerns of the present day within the vast historical tapestry of our civilization. It teaches that we owe a sacred duty, to those who came before us, to preserve the precious heritage they handed down to us. And we owe the same duty to those who will come after us, because that heritage is their birthright. This is the kind of vision that built and sustained western civilization for over two thousand years, and there's no reason it can't make a comeback. Only in the false progressive narrative of history, the Bugman's narrative, do the prospects for its comeback look bleak. Modern nihilism is the extreme historical aberration. The classical vision is the historical norm. Its comeback would merely be history regressing to the mean; we ought to expect it, and plan for it, and try to hasten it.

Of course, asking modern people to relish their unchosen bonds is not much of a political slogan. So here's another hopefully more attractive way to sum up what I'm trying to say. Human flourishing consists of knowing and doing what is good, what is true, and what is beautiful. This vision has its origins in Plato, not in Christianity. It was adapted by Christian theologians and it has been a pillar of Western thought for many centuries, but it need not be couched in theological or religious terms. There is a deep well of writing and thinking about it, which could readily be adapted for modern use.

The first step toward re-rooting our vision of the public good and our vision of human flourishing in the good, the true, and the beautiful, is not to convince people that we are absolutely right about what is good and true and beautiful. The first step is far more basic, and perhaps far more important. People must first be convinced that there is such a thing as good, such a thing as true, and such a thing as beautiful. People must be convinced that these are realities to be discovered, rather than opinions to be chosen. And how will they become convinced of this if we who believe it do not confidently speak and act like it is true? That is the first step, and it is our responsibility to take it.

Truth, goodness, and beauty are real. They are unchosen bonds to which we should conform ourselves and our society. By seeking to know the truth, we are seeking to impose on ourselves an unchosen bond. And here's a beautiful paradox. As the words carved into the University of Texas's Tower tell us, the Truth is the bond that sets us free. "Ye shall know the truth, and the truth shall set you free." *That* is the truth. Real liberation, real human flourishing, comes from embracing truths we cannot change—not from trying, vainly, to escape them.

I'm going to shift gears a bit as I close. Let me finish by reading to you a few words about a young man who knew the glorious exertion of the human will that comes from speaking the truth. These words were spoken at the funeral of Holden Tanner, who was my law clerk in 2021. He was an extraordinary young man. He died in a car accident while he was clerking for me. He knew as well as anyone I've known that the Truth is the only thing that will set us free—whether individually or as a People. From Holden's funeral:

"Our world today, despite all our modern technology and conveniences, can sometimes feel spiritually like a barren wilderness, a wilderness of lies and half-truths about what is really good, true, and beautiful in this wonderful life God has given us. Holden Tanner was like a torch in the wilderness, a light in the darkness of this world. A bright light. And he did not hide his light under a bushel.

There are many different ways to respond to the lies the world tries to tell us. One way is to seek the safety of silence, to accommodate ourselves to the lies we hear all around us, to tell ourselves that maybe the lies aren't really so bad, perhaps even to repeat with our own lips things we know to be lies—just to get along or avoid trouble.

Another way to respond to the lies of this world was Holden's way—to boldly proclaim the Truth to all who have ears to hear it; to feel the divine spark within you lighting the fire of Truth—and not to hide it because you're afraid of what people will think about you, but to let it shine for all to see; to stand boldly for the Truth like a prophet in the wilderness. That's what I saw Holden Tanner do—with every breath of life God gave him."

May the same be said of you and me, when our time on Earth is through.

Now, if you'll excuse me, I think I'll go for a walk, in the cool of the day.