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# Foreword

## Shall These Bones Live? Resurrecting Truth in American Law and Public Discourse

*Wilson Huhn\**

Duquesne University School of Law hosted the symposium “Shall These Bones Live? Resurrecting Truth in American Law and Public Discourse” on November 16 and 17, 2017. The symposium was initially conceived by Professor Bruce Ledewitz and began to take shape with suggestions from Professor Jane Moriarty. Professor Heidi Feldman of Georgetown served with Professor Ledewitz as co-convenor of the symposium. The material and technical aspects of the program were conducted by the law school’s staff under the able direction of Jill Chadwick, Executive Assistant to the Dean, and Chris Driscoll, Director of Information Technology.

The law school hosted this conference on “Resurrecting Truth” at a moment of crisis in our society—a crisis of faith—a crisis of confidence in our ability to seek and know the truth. Politically, our country is divided, with different factions adhering to their own beliefs about foreign interference in our last national election and the role that the President played in those events. Economically, there is more inequality of wealth and income than at any other time in our history, with entrenched interests diametrically opposed on what to do about it. Racially, we face challenges on immigration and police violence that leave people bitterly at odds. And sexually, leading men from every branch of our society stand accused of sexual harassment and assault, leaving us each with the obligation to decide whom to believe.

“What is truth?”

Rather than wash their hands of the question, the co-conveners of this conference, Professors Ledewitz and Feldman, have assembled an impressive array of passionate seekers of truth to advise us on how we might seek the truth more effectively and see it more clearly. Each of the seven speakers addresses a different aspect of the problem. Their energy leapt from the lectern; each presentation was followed by vibrant discussions with the audience. This

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symposium issue of the *Duquesne Law Review* represents our best effort to capture their passion and commitment on the written page.

The keystone to the presentation of our keynote speaker, Professor Louise Antony, is “perspective.” Professor Antony brings her vast expertise on the relation between language and the mind, feminist epistemology, and the philosophy of religion to bear on how we understand the world around us in terms of our values. She emphasizes the importance of introspection—that before we investigate the facts and draw inferences from them, we must reflect upon, identify, and seek to set aside our own biases. We must strive to be objective—to be “fair and balanced” in ascertaining the truth. This is, of course, no easy task. People who care deeply about our country and the challenges we face do so because we perceive injustice and wish to redress it. From a humanistic framework, she reminds us to hate the sin, not the sinner. She brings all of her deep knowledge of human thought and experience together to encourage us to maintain perspective.

Professor Ledewitz focuses on “trust.” How can we restore trust to our society—trust in our institutions and trust in each other? To develop and sustain a consensus about what is true, the people of a community must have a common frame of reference, and they must share a commitment to the “common good.” Professor Ledewitz rejects both moral relativism and materialism and calls for a spiritual revival. He proposes that we find common ground in a philosophy of “hallowed secularism” whereby we embrace values consistent with the precept that the universe is on our side.

Professor Justin Dyer explains why materialism is so destructive of values—that if we are ruled by desires and appetites, then our values consist only of self-interest and gratification. Professor Dyer, a political scientist who has closely studied this nation’s history, would instead have us seek to be guided by reason, as were the founders of our country. He reminds us that we can find commonality of purpose by remembering the first principles upon which the United States of America was founded: the natural law principles of the Declaration of Independence. These are the principles in which our nation was conceived and to which it is dedicated. Professor Dyer finds hope in the founders’ view of human nature, specifically the anthropology of James Wilson, a signer of both the Declaration and the Constitution.

As a linguist and a lawyer, Professor Larry Solan brings a unique perspective to the question of “truth.” As a linguist, Professor Solan focuses on the relation between the individual and the truth, and as a lawyer, he describes the impact of mendacity on our system of

justice. Lawyers are not permitted to lie, nor may they suborn perjury, but the law does not require lawyers to be candid, and in some circumstances, lawyers are ethically obligated to deceive; the purpose of the adversary system is to uncover deception. Solan distinguishes between “lies,” “deceit,” and “bullshit” and examines the destructive effect of each on the law and our society.

Professor Alina Ng is currently exploring how neuroscientific data can shed light on our thought processes, and how this can lead to the development of innovative social policies and changes in the law. Professor Ng notes that medical and social science research reveals that people are “hardwired” to embrace truth—that we naturally seek the truth and that we are naturally drawn to the truth. Science and the scientific method are the material foundation of today’s society. She addresses whether we can extend the success of science beyond materialism to moral truth. Can devotion to empiricism and objective truth lead us to deeper and more true beliefs about human potential? Can we overcome Hume’s naturalistic fallacy? Can we derive “ought” from “is”?

Professor Feldman, trained in law and philosophy, has studied the relation between law and science, as well as that of virtue ethics and legal ethics. The scientific method requires scientists to make careful, objective observations of the world; the ethics of science require them to report their findings truthfully and without bias. So, too, does society, through law, demand truth. Professor Feldman points out that laws governing the marketplace require not only honesty but candor. Fraud and misrepresentation make contracts void or voidable; deceptive acts and practices are punishable; and false advertising is a crime. She describes how our social and political discourse should be modeled after the ethics of science and law.

Professor W. Bradley Wendel, whose scholarship has focused on the application of moral and political philosophy to legal ethics, offers an institutional perspective. Is it not remarkable that adversarial attorneys who are each bound to zealously champion the interests of their respective clients are indispensable components of a system of justice devoted to discovering the truth? Professor Wendel explains how competing versions of “legal truth” and the obligation of “role-differentiated morality” that is enjoined by the ethics of the legal profession contribute to both truth and justice.

Professors Elizabeth Agnew Cochran and Jennifer Ann Bates of Duquesne proficiently moderated the panel presentations, and I moderated the plenary session. What follows are my personal reflections on the theme of the conference.

We have created a great civilization. We have managed to do this only because and only to the extent that we are obedient to the truth.

Buildings do not withstand hurricanes or earthquakes unless they are constructed according to codes and specifications based upon mathematical and engineering principles designed after careful experimentation and observation, and unless they are built by contractors who follow those codes and who use the materials they are required to use. All parties to the erection and maintenance of those structures must be obedient to the truth. Only then can we trust that these edifices are sound—that they are built upon rock and not upon sand.

So it is with our system of criminal justice. Only when investigators are devoted to uncovering what really occurred; when prosecutors diligently seek to prosecute wrongdoers; when defense attorneys are obedient to their duty not to partake in the misprision of evidence or suborn perjury; when witnesses tell the truth, the whole truth, and nothing but the truth; when juries evaluate the trustworthiness of evidence in a fair and objective manner; when trial and appellate judges administer justice without respect to persons, and do equal right to the poor and to the rich, and faithfully and impartially discharge and perform all the duties incumbent upon them—only then can we have faith that our courts will punish the guilty and absolve the innocent.

So it is with our system of civil justice. The civil justice system replaces the police with the process of discovery. In a civil case, all relevant evidence—in fact, all information that might lead to the discovery of relevant evidence—must be disclosed to the other party. Each party has the power of subpoena, the power to force the other party and the other party's witnesses to testify under cross-examination. The process of discovery is a mighty engine for the discovery of truth. When civil disputes arise in our society, only through discovery can we have faith that the truth of the matter will come to light.

So it is with our legislative process. Consider, for example, legislation that seeks to govern the financing of healthcare, which constitutes one-sixth of the American economy. The regular legislative order would normally require such an important bill to pass through careful scrutiny by multiple committees of Congress; there would be wide-ranging testimony and voluminous studies from both interested parties and disinterested experts; we would hear from leading economists, healthcare organizations, employers, trade associations, and consumer advocates. We should expect the cost of

the measure and its likely consequences be examined by experts at the Congressional Budget Office, the Joint Committee on Taxation, and the Centers for Medicare and Medicaid. Only with the considered input of all these parties and institutions can we hope to produce laws that will work as intended. Only through the regular legislative process can we have faith that the law will truly reflect the will of the people.

And so it is with the democratic process—our experiment, now two centuries old, in self-government. When a hostile foreign government is free to spy on candidates or political parties; when it can infect our country with the kind of propaganda that is typical of totalitarian regimes; when it can seek favor with candidates in return for political assistance—then we no longer have a democracy, and we no longer rule ourselves. Even without foreign interference, to the extent that undemocratic devices such as malapportionment or gerrymandering or voter suppression are used to dilute the political power of citizens, then, to that extent, elections do not truly reflect the will of the people.

There is no doubt that we are making progress in our search for truth. Our social, legal and moral edifices are increasingly reliant on the empiricism of science and social science. The Brandeis Brief—a legal argument that attempts to base the law on expert scientific findings—has become a critical component of legal argumentation. In the future, we will no doubt continue to rely upon both economics and sociology in the enactment and interpretation of the law.

What of lies? They will dissipate in the light of truth. The gravest lie of our society—our original sin—is the myth of White Supremacy. Over the centuries, people have fought desperately to dispel that lie. The victory of the United States in the Civil War brought an end to slavery, and the Civil Rights Movement ended *de jure* discrimination and segregation. We are still fighting institutional racism and have not yet entirely cast off the myths that shackled our ancestors.

Truth is emerging. Women are coming forward now, increasingly, to tell the truth and to challenge male entitlement to ownership of women's bodies. The victims of child sexual abuse are coming forward now to challenge the silence and complicity of those who would prefer to ignore this atrocity. Other groups of citizens and non-citizens are coming forward into the light to assume their rightful place as equal persons under the law.

As Justice William Brennan wrote fifty years ago:

The mists which have obscured the light of freedom and equality for countless tens of millions are dissipating. For the unity of the human family is becoming more and more distinct on the horizon of human events. The gradual civilization of all people replacing the civilization of only the elite, the rise of mass education and mass media of communication, the formation of new thought structures due to scientific advances and social evolution—all these phenomena hasten that day.<sup>1</sup>

Our country can and will resurrect our search for truth. This symposium re-dedicates us to hastening that day.

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1. William J. Brennan, Jr., *How Goes the Supreme Court?*, 36 MERCER L. REV. 781, 786 (1985).