

RELIGION & PHILOSOPHY

ther more as an alumnus than an apostate," reports Pelikan. The Second Vatican Council (1962–1965) accepted a number of Luther's theological points, and Pope John Paul II prays daily for a Catholic-Lutheran reunification.

Luther's continuing appeal, even to nonbelievers, says Pelikan, stems from his "spirited defense of the sanctity of the individual" in matters of conscience and from the sharp line he drew between religion and politics. Luther had little sympathy for challenges to the civil status quo and thought it a mistake to inject religion into affairs of state. He would have viewed with "exquisite scorn," Pelikan says, the "20th-century theocrats" of the Left or Right who invoke the will of God to further their own political causes.

Debating What Judges Decide

"Law without Law" by Shirley Robin Letwin, in *Policy Review* (Fall 1983), The Heritage Foundation, 214 Massachusetts Ave. N.E., Washington, D.C. 20002.

"Courts are mere instruments of the law," declared Chief Justice John Marshall in 1824, "and can will nothing." After a long allegiance to judicial activism, Anglo-American legal theorists appear to be returning to something like Marshall's traditional "rule of law" jurisprudence. But appearances, warns Letwin, a British legal theorist, are deceptive.

Under the "rule of law" model, laws handed down by the legislature were absolute; judges simply applied them to individual cases, exercising discretion only when points of law conflicted. In the United States, support for that system began to fade early in the 20th century, spurred by two activist Supreme Court Justices, Oliver Wendell Holmes, Jr., and Benjamin Cardozo. By the 1930s, writes Letwin, America's Legal Realists' argument that "the idea of law as a system of fixed rules should be dismissed as a utopian fantasy or a willful deception" had prevailed. What actually happens, the Realists said, is that different judges faced with one case often reach different decisions. The law is ultimately just what judges say it is.

Some contemporary legal philosophers, uncomfortable with potential abuses of unfettered judicial discretion, yet loath to revert to the rigid jurisprudence of old, have attempted to develop a new set of objective standards of law.

Oxford's Ronald Dworkin, the most prominent of the new theorists, argues that judges should apply political principles, unwritten but implicit in the law, in deciding cases. [See *WQ*, Winter 1982, p. 28.] He believes, for example, that Northern judges before the Civil War who upheld the letter of the law in returning escaped slaves to their Southern masters should have relied instead on "principles of justice and fairness" to free them. Dworkin contends that applying such principles would yield only one "objective" answer in each case; judges' discretion would thus be eliminated.

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The problem, Letwin argues, is that there is no clear consensus on what principles are important or on how competing values (e.g., equality and individual freedom) should be balanced. Each judge would simply apply his or her own principles. But reconciling different beliefs, she contends, ought to be the job of elected legislators. Leaving the job to judges guarantees that the written law will be disregarded.

Letwin suggests that Dworkin and his colleagues take a cue from Socrates. The Greek philosopher was so convinced that a society in which the law was not supreme would be turned "upside down" that he submitted to a death sentence he knew to be unjust.

SCIENCE & TECHNOLOGY

A Chemistry Of Crime

"Locks—A Key to Violence?" and "Biochemical Aggression—The Legal Dimensions" by Janet Raloff, in *Science News*, (Aug. 20 & Sept. 10, 1983), 1719 N St. N.W., Washington, D.C. 20036.

For some people, violent behavior could be a matter of chemistry.

William Walsh, a chemical analyst at the Argonne National Laboratory near Chicago, has been studying the crime-chemistry link in his spare time for 17 years, reports Raloff, a *Science News* editor.

Last spring, Walsh released the results of a five-year-long study comparing concentrations of metallic "trace elements"—calcium, magnesium, and zinc—in the bodies of 96 "extremely violent" and 96 "nonviolent" men. Of the violent men, 35 were only sporadically so. All 35 shared a distinctive chemical profile: low levels of copper, high levels of potassium. Fifty-seven chronically violent "sociopaths" followed the opposite pattern: high in copper, low in potassium. The remaining four men were deficient in *all* trace elements.

Scientists do not know what causes trace element imbalances. Diet seems an unlikely suspect. Earlier, Walsh studied 24 pairs of brothers between the ages of eight and 18. In each pair, one boy was "very delinquent," the other, "all American." Each pair grew up together and presumably ate the same foods, yet displayed marked differences in trace element levels. Walsh suspects that the abnormalities stem either from a metabolic disorder or from a basic chemical imbalance. Nor do scientists know exactly what role trace elements play in the body's functioning, though some researchers suspect links between these nutrients and intelligence and diseases such as Tourette's syndrome.

The key to all this intriguing research, writes Raloff, is hair. Trace element levels in individuals vary from day to day in blood or urine; hair serves as a more reliable table of contents, collecting trace elements 200 times more concentrated than those in the blood. Criminal forensic specialists have long used comparisons of hair samples to iden-