

Book Review

Stephen Presser, *Law Professors: Three Centuries of Shaping American Law*, St. Paul, Minn.: West Academic Publishing, 2017, pp. 502, \$48.00.

Reviewed by Bernard W. Bell

In introducing his book, legal historian Stephen B. Presser places his work in the tradition of Plutarch's *Lives of the Noble Greeks and Romans* (9). Perhaps Presser is being a bit immodest both as to his own work and the profession about which he writes. For readers less acquainted with the classics, Robert L. Heilbroner's *The Worldly Philosophers: The Lives, Times and Ideas of the Great Economic Thinkers*, which describes the theories and lives of seven leading economic theorists, provides a more accessible and quite possibly more apt analogy.¹

Presser chronicles the ideas and lives of twenty foundational scholars in the American legal tradition. He begins with an English law professor, William Blackstone, who had a profound influence on eighteenth-century American legal thought, through his *Commentaries on the Law of England*.² He then discusses one of the first American law professors and an important framer of the United States Constitution, James Wilson. As Presser explains, Wilson adapts Blackstonian principles to an American context, emphasizing law's foundation on the consent of the governed rather than religious principles (40).³ Presser's biographical sketches proceed chronologically to the present, including such contemporary scholars as Richard Posner, Patricia Williams, Catherine McKinnon, Antonin Scalia, and Cass R. Sunstein. Presser largely ignores professors who have had a profound effect through their advocacy and development of litigation strategies. Thus, he omits figures such as legendary Howard Law School Dean Charles Hamilton Houston, Rutgers/Columbia Law School's Ruth Bader Ginsburg, and Pennsylvania/Stanford/

Bernard W. Bell is Professor of Law and Herbert Hanoach Scholar at Rutgers Law School.

1. ROBERT HEILBRONER, *THE WORLDLY PHILOSOPHERS: THE LIFE TIMES AND IDEAS OF THE GREAT ECONOMIC THINKERS* (7th ed. 1999). The first edition was published in 1953.
2. Davison M. Douglas, *Foreword: The Legacy of St. George Tucker*, 47 WM. & MARY L. REV. 1112-13 (2006).
3. Presser does not discuss St. George Tucker, who became the second professor of law at William & Mary in 1790. Tucker's influential edition of *Blackstone's Commentaries* included essays describing American law adaptations of Blackstonian principles. *Id.*

NYU's Anthony G. Amsterdam, central figures in the fights against Jim Crow laws, gender inequality, and the death penalty.⁴

Some of Presser's choices are a bit quirky. He includes two fictional law professors, Lewis Eliot, a British barrister and law professor created by English philosopher C.P. Snow, and the more recognizable Charles Kingsfield of *The Paper Chase*.⁵ He also includes Barack Obama, as the first elite law school faculty member to become President of the United States.⁶ Obama, as Presser notes, taught part time at the University of Chicago, produced no scholarship, and primarily practiced law and served as a state legislator while on the faculty. Unlike other professors Presser chronicles, Obama left the academy to become an elected legislator and chief executive, not a jurist. Presser's inclusion of Obama is particularly odd given the book's heavy focus on both theoretical jurisprudence, virtually excluding clinical education, and judges' roles in interpreting the law, largely disregarding legal interpretation by elected officials, administrators, or even practicing lawyers.

In *Law Professors*, Presser pursues two separate projects. First, he seeks to provide a relatively objective survey of the ideas expressed by the law professors who have most influenced American legal thought, particularly regarding the nature of law, the role of judges, and constitutional interpretation.⁷ He hopes the book will serve as an introduction to law for undergraduates in law-related fields and for J.D. and LL.M. students (6). His chapters on Blackstone, Wilson, Joseph Story, Oliver Wendell Holmes, Christopher Columbus Langdell, and John Henry Wigmore, for example, provide insightful and thoroughly

4. No wonder Presser finds apposite Oliver Wendell Holmes' quip that "academic life is but half-life—it is withdrawal from the fight in order to utter smart things that cost you nothing except the thinking them from a cloister." STEPHEN PRESSER, *LAW PROFESSORS: THREE CENTURIES OF SHAPING AMERICAN LAW* 468 (2017).
5. The Eliot chapter, a fascinating piece of literary exposition, is the book's longest. But fictional Harvard Law Professor Michael Lightcap, the protagonist in the 1942 film *Talk of the Town*, might better have illustrated Presser's concerns about the contemporary state of the law. During the summer Lightcap is awaiting his confirmation hearings to become a Supreme Court justice, he finds his rather analytical view of the law challenged by Leopold Dilg, a political activist and, unbeknownst to Lightcap, a fugitive accused of murder. Lightcap's discovery that Dilg is being "railroaded" profoundly changes his view of the law. The implication is that personal experience is critical to becoming a good jurist and that legal scholarship is often irrelevant. Presser criticizes President Obama for seeking Supreme Court nominees who "knew what life was like" for a member of a minority or a single mother. PRESSER, *supra* note 4, at 12-13. And the perception of legal scholarship as irrelevant is perhaps not as unique to the late twentieth and early twenty-first centuries as Presser believes.
6. He disregards Bill Clinton, who taught at the University of Arkansas Law School from 1973 to 1976. PRESSER, *supra* note 4, at 440.
7. Surprisingly, given the nature of his concerns about contemporary law, Presser does not include a chapter on Harvard Law Professor Lon L. Fuller, Oxford's H.L.A. Hart, and their debate on legal positivism. Legal positivism pointedly challenges the proposition that law reflects an underlying deism or morality.

engaging introductions to their ideas and their competing positions on several fundamental jurisprudential questions.

Presser's other project is his search for an explanation of the law's current lack of authority both in the public mind and within the legal profession.⁸ In other words, he wants to know why the law is "broken," and who broke it. Presser argues that the legal academy has rejected a catechism well-understood in the eighteenth century: "[S]ocietal order require[s] law, law require[s] morality, and morality require[s] religion" (8). In his view, modern academic thought has "abandoned the Blackstonian notion[s] that the law could be a clear, certain, and binding constraint on judges" and reflect "universal principles, principles of morality that were dictated by the Deity" (456). Instead, the current conception of law reflects the view of "justice" offered by Greek rhetorician Thrasymachus: "Justice is nothing but the advantage of the stronger" (458 & fn. 1354).

Presser presents a list of culprits responsible for the current conception of law, most particularly critical legal scholars, President's Barack Obama's view of the law as infinitely malleable, the inadequately theorized constitutional jurisprudence of Justices Sandra Day O'Connor and Anthony Kennedy, Cass Sunstein's "liberal paternalism," and academics' attack on textualism and originalism in constitutional interpretation (illustrated by the work of Akhil Amar and Bruce Ackerman). Presser notes that these forces have not gone unopposed—Antonin Scalia, Mary Ann Glennon, and others have stood as modern-day versions of Horatio at the Gate, seeking to preserve the determinativeness, authority, and indeed majesty, of the law (457). Nevertheless, Presser asserts, the prevailing academic winds have made law professors irrelevant.⁹

**Does the law lack authority in the public and in the profession, and,
if so, who's responsible?**

The answer to the question implicit in Presser's book, whether the law lacks authority, differs depending on whether the focus is the public or the profession.

8. Presser sees "a crisis in legal education, and even more alarming, a broader crisis in the law itself"—"all three branches of government . . . appear routinely to ignore the dictates of the Constitution, and indeed, the requirements of the rule of law itself." PRESSER, *supra* note 4, at 4-5.
9. In support he cites D.C. Circuit Judge and former law professor Harry T. Edwards' criticism of legal scholarship. See as an example, Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992-1993). PRESSER, *supra* note 4, at 6-7. Edwards' criticisms do not seem to align with Presser's, and Presser does not explain how they do. Indeed, Presser's focus on theoretical legal scholarship as a source of the law's current maladies suggests that such scholarship has had all too great an impact on the profession's and the public's conception of law.

As for the public, a general skepticism toward a wide range of institutions and professions has long existed.¹⁰ Public cynicism toward law, courts, and other governmental institutions no doubt reflects these broader attitudes. With respect to the perception that law is radically indeterminate and influenced by judges' own contestable values, such high-profile matters as the *Bush v. Gore* decision (based on a "good for one ride only" equal protection principle) and the Office of Legal Counsel "torture" memos probably have a greater impact on the public perception than the scholarship of the professors Presser chronicles.¹¹ Books like *The Brethren* that offer an inside look at judicial decision-making surely contribute to a more cynical view of judging.¹² And the image derived from the adversarial process, that lawyers are "mouthpieces"¹³ or "hired guns" who will take any position that advances their clients' interests (and, relatedly, that lawyers view the law as something to be gotten around), has little to do with the culprits Presser identifies.

As to the profession, *do* most practicing lawyers (or sitting judges) view the law as radically indeterminate? I suspect in most cases lawyers can distinguish legal and illegal conduct in advising their clients.¹⁴ And often lawyers view the law as less malleable than their clients view it, frequently advising their clients that the law precludes a particular course of action (or at least will subject them to legal liability).

This is not to deny that lawyers have some cynicism about judicial decision-making, or at least question the Blackstonian conception that judges engage

10. *Confidence in Institutions*, GALLUP, <http://www.gallup.com/poll/1597/confidence-institutions.aspx> (results of polling regarding public confidence in the police, organized religion, the medical system, the public schools, banks, organized labor, the criminal justice system, newspapers, television news, and big business); see Brian Kennedy, *Most Americans Trust the Military and Scientists to Act in the Public's Interest* (Oct. 18, 2016), <http://www.pewresearch.org/fact-tank/2016/10/18/most-americans-trust-the-military-and-scientists-to-act-in-the-publics-interest/>.
11. *Bush v. Gore*, 531 U.S. 98 (2000) (precluding Florida from recounting votes in disputed presidential election on equal protection grounds); JACK GOLDSMITH, *THE TERROR PRESIDENCY: LAW AND JUDGMENT INSIDE THE BUSH ADMINISTRATION 141-72* (2007) (discussing Office of Legal Counsel memos finding that enhanced interrogation techniques, such as waterboarding, did not constitute "torture").
12. BOB WOODWARD & SCOTT ARMSTRONG, *THE BRETHERN: INSIDE THE SUPREME COURT* (1979). And how can the public not question the definiteness of law when the Supreme Court renders numerous 5-4 decisions that seemingly reflect relatively stable partisan voting blocks? Such doubts are magnified by the increasingly polarized confirmation process, a sure sign that, despite any professions to the contrary, legal elites believe that judges' subjective views strongly influence their decisions.
13. William Bryk, *Bill Fallon, the "Great Mouthpiece" and Archetypal Amoral Criminal Defense Lawyer* (Nov. 13, 2001), <http://www.nypress.com/bill-fallon-the-great-mouthpiece-and-archetypal-amoral-criminal-defense-lawyer/>; Robert H. Jackson, *The Lawyer; Leader or Mouthpiece*, *JUDICATURE* 70, 71, https://www.roberthjackson.org/wp-content/uploads/2015/01/The_Lawyer_Leader_or_Mouthpiece_.pdf (speech given Aug. 24, 1934).
14. Many judicial decisions *are* relatively unconstrained, not because of any indeterminacy in the *law*, but because of the indeterminacy of the *facts*. "Trial" judges' powers to resolve factual controversies (outside of the jury trial setting) give them great leeway in many cases.

in “finding” the law in value-neutral ways.¹⁵ Law professors teach and write that judges are not value-neutral and that there is more to judicial decisions than the explanations judges offer in judicial opinions. In particular, judicial opinions do not provide a complete picture of the conscious and unconscious influences on judges’ decisions. And a significant body of academic work treats judicial decisions not as fixed variables from which law must be ascertained, but as dependent variables to be explained using approaches borrowed from other disciplines.¹⁶

But if there is a perception of a radical indeterminacy in the law, it predates the era of legal scholarship that most concerns Presser. For example, a prime expression of the radical indeterminacy of statutes is *Chevron v. Natural Resources Defense Council*, in which the U.S. Supreme Court appears to equate statutory interpretation with policymaking, and accords administrative officials a prime role in interpreting statutes precisely because they are accountable to elected officials.¹⁷ Yet the justices who decided *Chevron* were surely not devotees of critical legal theory, critical race theory, feminist legal theory, or the like.

The view that the Constitution’s text is indeterminate took hold long before the Warren Court began or the schools of thought Presser finds most problematic established themselves. As early as 1819, in *McCulloch v. Maryland*, Chief Justice John Marshall noted that the Constitution was, of necessity, imprecise and that “only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects, be deduced from the nature of the objects themselves.”¹⁸ In the 1930s, for example, a Supreme Court majority stated matter-of-factly: “If by the statement that what the Constitution meant at the time of its adoption it means to-day, it is intended to say that the great clauses of the Constitution must be confined to the interpretation which the framers, with the conditions and outlook of their time, would have placed upon them, the statement carries its own refutation.”¹⁹

But what of Presser’s claims against the particular culprits he identifies?

15. 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND 68-71 (1769) (explaining that judges do not declare new law, but merely find the law that already exists). Even Blackstone seems to have viewed this as a pretense. *Id.* at 69 (when judges overrule precedents, they “pretend” that they are not making new law, but merely correcting an earlier misstatement of the law). And no less a purist than Justice Scalia seems to have agreed. *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 549 (1991) (Scalia, J., concurring) (“I am not so naive . . . as to be unaware that judges in a real sense ‘make’ law. But they make it as judges make it, which is to say *as though* they were ‘finding’ it—discerning what the law is, rather than decreeing what it is today changed to”).
16. Perhaps this is one source of the disjunction between judges, who must largely treat precedents as fixed variables, and scholars.
17. 467 U.S. 837, 865-66 (1984); see Bernard W. Bell, *The Model APA and the Scope of Judicial Review: Importing Chevron into State Administrative Law*, 20 WIDENER L.J. 801, 813-15 (2011).
18. *McCulloch v. Maryland*, 17 U.S. 316, 407 (1819).
19. *Home Building & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 442-43 (1934).

Judging Presser's culprits

Presser argues that Barack Obama's failures to enforce the law have undermined respect for "law" and the determinacy of law (445, 447-48). Presser seems most disturbed about the Deferred Action for Childhood Arrivals ("DACA") and the Deferred Action for Parents of Americans ("DAPA") programs providing relief for certain undocumented aliens.²⁰ (450-51, 460-61). But Barack Obama was not the first President to exercise regulatory forbearance or broadly interpret executive power.²¹ Indeed, the tightening of standing requirements beginning in the 1970s and 1980s was designed, at least in part, to provide government officials flexibility in complying with constitutional and statutory dictates. In essence, when no individual can show concrete harm, standing doctrine makes legal constraints on government judicially unenforceable.²² In 1983 then Circuit Judge Scalia colorfully explained the salutary effect of the Court's increasingly strict standing doctrine:

Does what I say mean that, so long as no minority interests are affected, "important legislative purposes, heralded in the hall of Congress, [can be] lost or misdirected in the vast hallways of the federal bureaucracy?" Of course it does—and a good thing, too. Where no peculiar harm to particular individuals or minorities is in question, lots of once-heralded programs ought to get lost or misdirected, in vast hallways or elsewhere. Yesterday's herald is today's bore—although we judges, in the seclusion of our chambers, may not be *au courant* to realize it.²³

Other aspects of the Burger/Rehnquist Court jurisprudence accentuated the executive branch's freedom from restraint, including doctrines cutting back on implied rights of action and making administrative inaction unreviewable.²⁴

Presser attacks Justices O'Connor and Kennedy for their incompletely theorized jurisprudence (437, 471-72). But there is something to be said for

20. Raquel Aldana, *Congressional Dysfunction and Executive Lawmaking During the Obama Administration*, 91 CHI.-KENT L. REV. 3, 5 (2016) (discussing the DACA and DAPA programs).

21. The nonenforcement of civil rights by the Reagan Department of Justice provides an example; see, Lani Guinier, *Keeping the Faith: Black Voters in the Post-Reagan Era*, 24 HARV. C.R.-C.L. L. REV. 393, 410-12 (1989); Drew S. Days III, *Turning Back the Clock: The Reagan Administration and Civil Rights*, 19 HARV. C.R.-C.L. L. REV. 309, 313 (1984). Another example can be found in the torture memos in the Bush administration, see note 11 *supra*.

22. *Valley Forge Christian Coll. v. Am. United for Separation of Church and State*, 454 U.S. 464, 471-76 (1982).

23. Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U.L. REV. 881, 897 (1983).

24. See *Cort v. Ash*, 422 U.S. 66 (1975); *Heckler v. Chaney*, 470 U.S. 821 (1985). President Obama's nonenforcement of certain aspects of the immigration laws and criminal prohibition on marijuana illustrate another point, namely that laws widely perceived as unduly harsh or cruel may well breed disrespect for law. See generally DOUGLAS HUSAK, *OVERCRIMINALIZATION: THE LIMITS OF THE CRIMINAL LAW* 12 (2008). Many states and localities have pursued policies that contravene aspects of the immigration laws and the prohibitions on marijuana. Aldana, *supra* note 20, at 9-10 (immigration); Todd Grabarsky, *Conflicting Federal and State Medical Marijuana Policies: A Threat to Cooperative Federalism*, 116 W. VA. L. REV. 1, 2-6 (2013) (marijuana).

judicial minimalism.²⁵ The tasks facing academics and judges differ. Focusing on the particulars of a case, an approach shared not only by Kennedy and O'Connor, but also by Judge Richard Posner, for example (301), is entirely appropriate for a judge. Such an approach is neither an embrace of radical indeterminacy nor even a reflection of the lack of an underlying broad conception of the law.²⁶

Presser views Sunstein's response to the insights of behavioral economics (namely that government should embrace nudging) as an imminent threat to liberty (427, 433). Nudging, which Sunstein describes as "liberal paternalism," involves managing presentation of information or setting defaults to counteract cognitive biases that can lead individuals to make decisions that do not reflect their own true preferences. Can nudging be abused? Of course.²⁷ But Presser too peremptorily dismisses Sunstein's approach as an excuse for government manipulation (427, 435-37). Sunstein's behavioral economics insights, properly applied, could help ensure true autonomy.²⁸ The nudges the federal government adopted while Sunstein headed the Office of Information and Regulatory Affairs have not remotely had the impact Presser fears.²⁹ In any event, Presser does not clearly explain the connection between this critique and the contemporary perception of law as indeterminate.

Presser reduces critical race theory to personal narratives expressing critical race scholars' disillusionment with law (406, 412, 418) and calls for a Thrasymachian redistribution of resources (458). He suggests that his chosen exemplar of the school, Patricia Williams, could be considered an "anti-law professor" (406). While creating and analyzing narratives is an important strand of critical race theory, surely it does not occupy quite so large a place in critical race studies and is not as solipsistic as Presser suggests.³⁰ And critical race theory is not an attack on the potential majesty of law or a mere justification

25. CASS R. SUNSTEIN, *ONE CASE AT A TIME: JUDICIAL MINIMALISM ON THE SUPREME COURT* (1999); CASS R. SUNSTEIN, *LEGAL REASONING AND POLITICAL CONFLICT* (1996). Presser views Sunstein's judicial minimalism as having a political tilt. PRESSER, *supra* note 4, at 431, 437.
26. Perhaps Presser's criticism of O'Connor and Kennedy is really aimed at their reluctance in the context of societal efforts to dictate certain personal choices, reflected in their opinions regarding abortion and same-sex intimacy. But recognizing that some decisions are a part of constitutionally protected liberty (or even embracing a "harm" principle) hardly severs the relationship between law and morality.
27. See Bernard W. Bell, *Simpler: The Future of Government—Cass Sunstein*, 64 J. LEGAL EDUC. 126 (2014).
28. Presser does not comment on Sunstein's public deliberation theory, which lays bare deficiencies in *group* decision-making and seeks to find ways to facilitate meaningful widespread participation in the polity. See, e.g., Cass R. Sunstein, *Beyond the Republican Revival*, 97 YALE L.J. 1539, 1574-75 (1988).
29. Bell, *Simpler*, *supra* note 27, at 129 (discussing modification of miles-per-gallon disclosures on new cars and the transformation of the food pyramid to the food plate). The supplementation of the warning on cigarette packs with graphic pictures of smoking's consequences is the most disturbing nudge implemented during Sunstein's tenure. *Id.* at 129, 132.
30. For a description of critical race theory, see RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* (2017).

for redistribution. It challenges subjective assumptions masquerading as the application of value-free, neutral principles. Such scholars argue that extant legal doctrines and principles do not merely treat certain groups less favorably than they might be, but are *unfair*, and unfair in a way that betrays the ideals of justice. They seek a “law” that is really majestic, not merely one that falsely purports to be.

Akhil Amar’s and Bruce Ackerman’s theories are certainly contestable, and reflect a trend toward viewing constitutional, or at least quasi-constitutional, principles as capable of establishment outside of the constitutional amendment process.³¹ Even skeptics might acknowledge that “popular constitutionalism” provides a narrative that can explain periods of rapidly shifting constitutional doctrine. Skeptics might also consider such theories a basis for Burkean conservatism in constitutional interpretation, namely acceptance of practices and doctrines that have proved salutary even if they might seem at odds with constitutional text or practices extant during the founding era.³² And ultimately, in terms of the majesty of the law Presser craves, it is an understanding of the Constitution fully constrained by text and original understanding, divorced from any broader concepts of justice, that undermines the law’s majesty.³³ Such a view is particularly problematic when the relevant text is ambiguous and the original understanding largely inaccessible.³⁴ Even with all the materials available from the founding period, to us the original understanding shared by those who framed and ratified the Constitution is surely radically indeterminate.

As to the critical legal studies movement, I have little to offer. However, I will say this: Presser does a poor job of explicating the movement and his

31. See, e.g., WILLIAM N. ESKRIDGE, JR. & JOHN FERREJOHN, *A REPUBLIC OF STATUTES: THE NEW AMERICAN CONSTITUTION* (2010); MARK TUSHNET, *TAKING THE CONSTITUTION AWAY FROM THE COURTS* (1999).
32. As then Professor Holmes said, “The life of the law has not been logic, it has been experience.” O.W. HOLMES, *THE COMMON LAW* 1 (1881). By way of contrast, Justice Thomas regularly asserts his desire to upend broad areas of constitutional doctrine based on his assessment of the Constitution’s text and “original understanding.” See, e.g., *Camps Newfound v. Town of Harrison*, 520 U.S. 564, 610-11 (1997) (Thomas, J., dissenting) (dormant Commerce Clause); *Hudson v. McMillan*, 503 U.S. 1, 18-22, 28 (1992) (Thomas, J., dissenting) (Eighth Amendment).
33. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2598 (2015) (Kennedy, J.) (“The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning.”).
34. Indeed, textualism, at least in statutory interpretation, is often associated with interest group theory, one of the most profound challenges to the concept that law has an underlying coherence. Interest group theory asserts that legislation results from the interplay of interest groups. It thus casts doubt upon the concept of a broader “public interest.” See Bernard W. Bell, *Legislative History Without Legislative Intent: The Public Justification Approach to Statutory Interpretation*, 60 OHIO ST. L.J. 1. 22-23 (1999). Indeed, the theory suggests that law generally reflects the interests of smaller groups rather than larger ones, a truly Thrasymachian result.

apparent conclusion that the movement had a major impact on the profession's and the public's view of the nature of the law.

Would law be more authoritative if the catechism that that law is a determinate, fixed, and certain set of rules embodying morality and inspired by God, *i.e.*, "societal order require[s] law, law require[s] morality, and morality require[s] religion," reemerged? In exploring the nature of authority, sociologist Richard Sennett observed: "Something incontestable and certain, something which brings people together: that is the bond of authority."³⁵ Indeed, Sennett observes, religious authority rests on the necessary illusions of miracle and mystery. He quotes Fyodor Dostoyevsky's Grand Inquisitor:

Men seek to worship only what is incontestable, so incontestable, indeed, that all men at once agree to worship it together. For the chief concern of these miserable creatures is not only to find something that I or someone else can worship, but to find something that all believe in and worship, and the absolutely essential thing is that they should do so together.³⁶

If *Law Professors* does not convince us that Presser's catechism is correct, Presser is asking the academy to teach and write as if his catechism were true so as to uphold the law's authority. Such an endeavor is unlikely to succeed, even if the legal academy were willing to embrace it—law too obviously lacks Blackstonian certainty. And ultimately, surely no academic discipline could commit itself to such deception.

35. RICHARD SENNETT, *AUTHORITY* 194 (1980).

36. *Id.*