

# Villanova University Charles Widger School of Law

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From the Selected Works of Patrick McKinley Brennan

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## Joseph Vining's From Newton's Sleep

Patrick McKinley Brennan



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## LAW, THEOLOGY &amp; CULTURE

*Joseph Vining, From Newton's Sleep (1996)*

The trilemma of formalism, realism, and process continues to pinion most of contemporary Anglo-American jurisprudence. Arbitrariness vitiates each of its three prongs. The arbitrary, however, is not the last word. There is a *quantum quid*, the one developed in *Persons and Masks of the Law* (1976) by John T. Noonan, Jr. The human person is an animal, to be sure, but one which is capable of *freely* discerning how to treat others reasonably, justly, and even with love. By unmasking persons and thus recovering their true place in law, Noonan liberates us to see that legal practice is no less than the struggle of persons authoritatively to respect persons (and other things) in the circumstances of our common life and aspiration.

The place of the person in law is nowhere more beautifully cultivated than in Joseph Vining's *From Newton's Sleep* (1996). The allusive title of Vining's book calls to mind William Blake's prayer: "May God us keep / From Single vision & Newton's sleep." Vining explains that "'Newton's Sleep' is from William Blake's imagination, as the state that comes when the mind is wholly occupied by the form of thought of which Newton is celebrated as the great source." The mechanism associated with Newton began as a scientific theory, but it became a worldview that asserts an all-encompassing determinism. It was toward a legal version of the latter that the legal formalists freely labored in vain.

Vining's contrarian and hopeful thesis, about what legal practice discloses, may catch us off guard. Law is "the great overlooked fact in modern thought," he contends. "Against Newton's Sleep, keeping us from it, is the presence of law in the human mind. Newton's Sleep can steal over us only as law withdraws." Law defies Newton's Sleep and the possibility of mechanistic formalism. "With law enters personification, in the large and in the small, substance that does not ultimately become form or process, responsibility that goes beyond the existence of things that consciousness reflects upon."

The proliferation of "theory" marks today's legal academy. Readers of *From Newton's Sleep* will not find there a theory of law. The book comprises, instead, "a distillation of vacillations,"

a series of *pensees* of varied lengths and styles. "Arranged under their several headings," Vining explains, "these studies together may be taken as a phenomenology of law, argued in the only way experience so connected to action and to identity will not be lost in the presentation." The genius of the book is to demonstrate how the nonlinear but disciplined particulars of lawyers' ways of doing and knowing -- including the professional debates about how lawyers should do and know -- are evidence of a struggle for nothing less than to create the very conditions that *make law possible*. Someone may say, for example, that Parliament's statute is law, but Vining shows how statutes are routinely only candidates for legal attention, not law as such. Law is the product of what Vining calls "caring mind" -- something personal, not something anyone can point to or touch.

To those who have already been contaminated by much contemporary legal theory, *From Newton's Sleep* offers a cure. To those who are new to law, the book offers a treasury of insights into how to avoid contamination. The book accomplishes these things by showing how if there is to be law here or there, there must be a person speaking here or there: "[T]he first and last thing we know, the ultimate object of knowledge and belief, is a person, not a principle. . . . This is what we know, what is real, what has meaning." The practice of law depends for its possibility on persons' not being absorbed into the processes of Newton's Sleep. What assures this possibility -- and it is *only* a possibility -- is that the caring mind authoritatively speaking law person to person is one that "draws [us] into the spirit of it." The spirit of the person speaking authoritatively is what gives life to law. *From Newton's Sleep* adumbrates -- and *all but names* -- that Trinity of Persons and the Spirit that has flooded our hearts.

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