



CCU Review

of BOOKS, CULTURE, MEDIA, LIFE

Volume 4
Issue 2



COLORADO CHRISTIAN
UNIVERSITY

Grace and Truth

August 2018

Reclaiming Your Time and Your Mind

Dear friends,



No time to read? According to the 2018 *World Almanac*, the average American racks up over 31 hours of television viewing time each week, not counting smart phone or computer time. Our television and internet habits are crippling book reading, shrinking our attention spans, and diminishing our capacity to think. Perhaps we need to change some habits and reclaim our time.

Colorado Christian University is about education — teaching students to learn. Learning, among other things, involves reading — not just any reading, but reading good books, great books, and important books. That's one reason why we publish the *CCU Review of Books, Culture, Media, and Life*. It aims to help you think, to discover significant books, to engage with culture, live wisely, and deepen your faith.

In this edition of the *CCU Review*, we feature a review and a critique of two anniversary books. First, *The Imitation of Christ* by Thomas à Kempis (reviewed by Dr. Matt Jones). Composed between 1418 and 1427, this year marks the 600th anniversary of this Christian classic, which has been one of the most popular Christian devotional books in history.

This year also marks the 150th anniversary of the publishing of Marx' and Engels' *Communist Manifesto*, originally published in 1848. Many have written about the horrible historical record of communism, and Professor Delana Dorough helps us understand the allure and the weakness of this movement's original manifesto.

We were glad to have Dr. Ryan T. Anderson of the Heritage Foundation join us on campus this Spring to discuss his provocative new book, *When Harry Became Sally*, (reviewed by Dr. John Wind) a study and response to the transgender movement. In addition, Dr. Debora Scheffel, dean of CCU's School of Education, reviews Dr. Everett Piper's book on the current state of the secular American university. It might help you get a sense of what's behind the craziness on many of our university campuses.

Finally, Dr. Kyle Usrey, newly appointed as Vice President for Academic Affairs in the College of Undergraduate Studies, wrote an editorial on the future of the U.S. Supreme Court and Justice Kennedy's legacy (originally published in the *Colorado Springs Gazette*).

So in the transformational words once heard by Augustine that led to his conversion and a revolution in his life — *Tolle Lege!* (Take up and read!)

Yours in His service,

A handwritten signature in black ink that reads "Don Sweeting". The signature is written in a cursive, flowing style.

DONALD W. SWEETING, Ph.D.

President

Colorado Christian University

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The CCU Review

The CCU Review of Books, Culture, Media, and Life, a values-driven journal of peer-reviewed scholarly and creative work, is published semiannually by the Office of the President and Communications and Creative Services department. While emphasizing articles of scholarly merit, the CCU Review is a collection of reviews and essays that are informed by and further enhance the values of Colorado Christian University as outlined in our Strategic Priorities and our Statement of Faith. We welcome suggestions on reviews and essays that are centered on ideas of interest that further the mission and vision of CCU as a Christian, liberal arts university.

CCU Review Production Team

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"Then the angel showed me the river of the water of life, bright as crystal, flowing from the throne of God and of the Lamb through the middle of the street of the city; also, on either side of the river, the tree of life with its twelve kinds of fruit, yielding its fruit each month. The leaves of the tree were for the healing of the nations. No longer will there be anything accursed, but the throne of God and of the Lamb will be in it, and His servants will worship Him."
– Revelation 22: 1-3 (ESV)

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The Imitation of Christ

Attributed to Thomas à Kempis

REVIEW BY DR. MATT JONES

Assistant Professor of New Testament Studies

SYNOPSIS

The Imitation of Christ, attributed to Thomas à Kempis, is a collection of four booklets on the spiritual life, the inner life, inward consolation, and the sacrament of the altar. Compiled into one text, this thought-provoking devotional demands self-reflection regarding topics necessary for spiritual growth and maturity.

The collection is a 15th century Latin text translated into over 50 languages. It endures as one of the most popular devotionals ever written. Thomas à Kempis, typically considered the author, was a Dutch Augustinian monk associated with The Brethren of the Common Life. If you read this text to ponder ways to imitate Christ pragmatically, you may be surprised by what you find because the title derives its name from the initial chapter.

REVIEW

Although several of the short chapters address the *imitatio Christi*, this classic devotional is better described as a compilation of Thomas à Kempis' thoughts on a number of topics. These varied topics make it possible to connect his insights to living like Jesus. However, as I reflect on *The Imitation of Christ*, his perspectives on spiritual growth and maturity will encourage spiritual formation provided one willingly engages its contents.

Divided into four books with multiple chapters, Thomas à Kempis' devotional should not be crammed into a week's reading, rather, it should be savored over time.

Each chapter deserves extensive meditation making this classic an ideal for devotions.

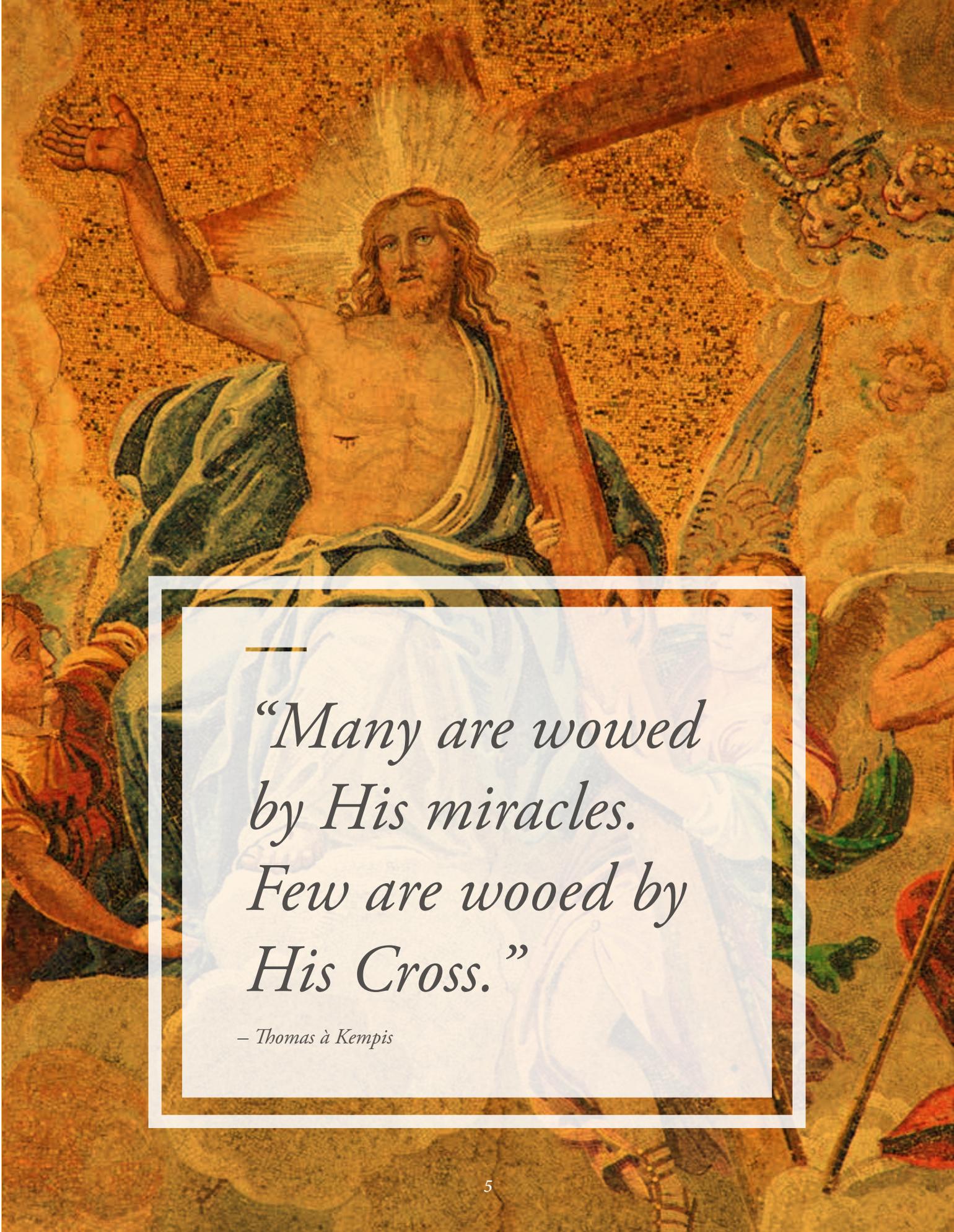
The reasons for this are two-fold. First, some translations rely on formal equivalence to provide a more literal translation of the Latin. This leads to reading "Thee's," "Thou's," and the "Verily's" typically associated with a more literal translation. Depending on the translation, this classic is not a simple read, and might require some work on the reader's part. However, the work involved is absolutely worth the time, and there are modern translations available, which make the message accessible.

The second reason this classic deserves contemplation is its richness and depth. In a society that fails to endure sound doctrine as Paul predicted (2 Timothy 4:3-4), Thomas à Kempis challenges us to consider thoughts that should not be glossed over in an attempt to "get through" this text. For example, when discussing the inward life, Thomas writes, "Nothing so defileth and entangleth the heart of man as impure love towards created things. If thou rejectest outward comfort thou wilt be able to contemplate heavenly things and frequently to be joyful inwardly."

Processing expressions such as these warrant and require time to reflect. The Triune God cares about joy and this devotional can assist in the process of experiencing abundant life if we take the time to consider, to self-reflect, and to apply its truths.

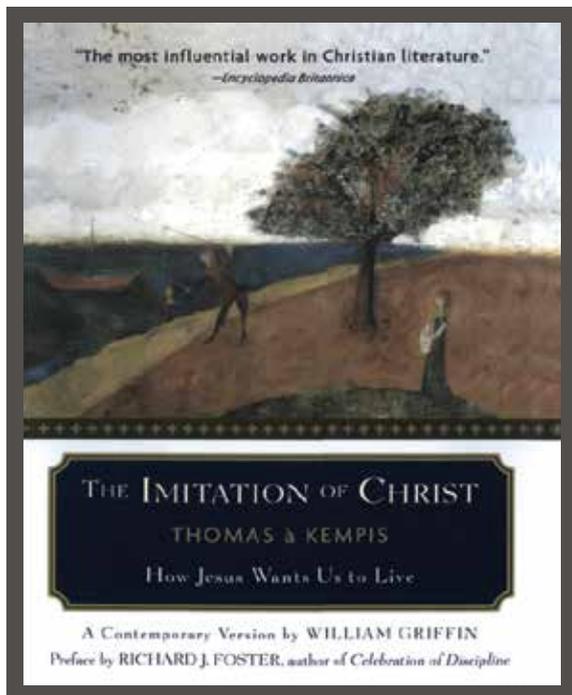
This classic text is over 500 years old, yet Thomas offers a perspective that should challenge us even today. Composed prior to the Reformation, this work dares us to contemplate the depth of what it means to live a life worthy of the love and life of Christ.

Consider a few of the chapter titles: "Of the imitation of Christ, and of contempt of this world and all its vanities." "Of thinking humbly of oneself." "Of the knowledge of the truth." "Of the danger of superfluity of words." "Of resisting temptation." "Of bearing with the faults of others." "Of the love of solitude and silence."



*“Many are wowed
by His miracles.
Few are wooed by
His Cross.”*

– Thomas à Kempis



These titles are found in the “Admonitions Profitable for the Spiritual Life” and that is just the first section. If those themes fail to pique your interest, I am unsure of what will! Written to encourage us to contemplate, to mature, and to change, this text can deepen one’s love for God, others, and oneself to experience life to the glory of the Triune God.

As followers of Jesus Christ and part of the Colorado Christian University community, my hope is purposeful life for the glory of God. Thomas à Kempis offers several fundamental reminders that we still need to hear in the 21st century. Two that stand out are: “My Son, patience and humility in adversities are more pleasing to Me [God] than much comfort and devotion in prosperity.” And:

“My Son, trust not thy feeling, for that which is now will be quickly changed into somewhat else.”

Engaging *The Imitation of Christ* can provide the impetus for us to step back and consider what really matters and seek the Holy Spirit to guide and to assist us to adjust accordingly.

As I read Thomas à Kempis’ text, the nagging question was whether this life changing text will endure as a must read for future generations. It is described in the Introductory Note as follows: “With the exception of the Bible, no Christian writing has had so wide a vogue or so sustained popularity as this.”

As I consider the difficulty of reading the text in combination with the importance of its message, my hope is that it will continue to endure. Its content not only nourishes but also challenges the reader to understand and to experience life through the filter of loving God and loving others.

Each chapter of *The Imitation of Christ* encourages a life lived in submission to the great commandments. Thomas à Kempis’ definition of loving God challenges us to consider what it meant to love the Triune God: “For the love of God thou must willingly undergo all things, whether labours or sorrows, temptations, vexations, anxieties, necessities, infirmities, injuries, gainsayings, rebukes, humiliations, confusions, corrections, despising; these things help unto virtue, these things prove the scholar of Christ; these things fashion the heavenly crown.”

Does Thomas à Kempis’ definition of loving God challenge you? If so, take up and read. ■

REVIEWER BIO



DR. MATT JONES

Matthew Jones (Ph.D., Regent University) serves as assistant professor of New Testament Studies in the School of Theology. His academic interests are the humanity of Jesus, the Synoptic Gospels, and the life of Christ. These interests pushed him to pursue his dissertation on the humanity of Christ in the Gospel of Matthew.

Written to encourage us to contemplate, to mature, and to change, this text can deepen one's love for God, others, and oneself to experience life to the glory of the Triune God.

– Dr. Matt Jones

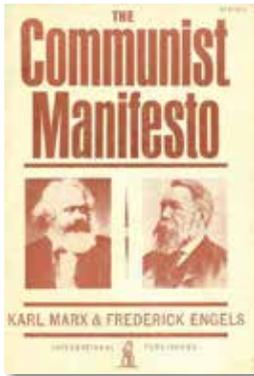
The Communist Manifesto

After 150 Years

by Karl Marx and Frederick Engels

REVIEW BY DELANA DUROUGH

Assistant Professor of Business and Economics



On September 6, 1871, *The New York Times* ran an obituary for Dr. Karl Marx. The obituary concluded: “Essentially a visionary, Dr. Marx never achieved any decided reputation as an agitator, and he frequently rendered himself obnoxious to those who happened to differ with him in his opinions.”¹

The Times was premature; Karl Marx did not die until March 1883, and his reputation as an agitator would eventually far exceed *The Times*’ assessment. Today, Marx is most likely to be remembered as the cantankerous author of *The Communist Manifesto*.

Originally published in February 1848 to limited acclaim, The Manifesto was part treatise and part stump speech, meant to invigorate the international Communist League workers’ movement with a clear articulation of its doctrine.

Though Marx’s philosophies of historical class conflict and economic organization were more thoroughly examined in his other voluminous works, *The Manifesto*’s relative brevity likely contributed to its eventual popularity.

In a 2016 search of one million syllabi, Marx’s *Manifesto* was the third most popular text assigned in American universities.² Marx’s claims have been tried and found wanting — the failed U.S.S.R. experiment comes to mind — yet *The Manifesto* still seduces readers some 170 years later with its revolutionary exhortations and utopian strains.

The Manifesto opened with an ominous announcement: “A spectre is haunting Europe — the spectre of Communism.”³ Marx warned European industrialists that dispossessed workers would soon dominate the continent. Marx exhorted these proletarians, his term for the working class of the industrial age, to join forces to topple the factory-owning bourgeoisie class. “Working men of all countries, unite!”⁴ Marx exclaimed, believing that the proletariat revolution would usher in a class-less, government-less, conflict-less, global Communist nirvana.

Despite his disgust at the vagaries of the industrial machine in Europe, Marx recognized its dynamism in *The Manifesto*:

“[The capitalist bourgeoisie] has accomplished wonders far surpassing Egyptian pyramids, Roman aqueducts, and Gothic cathedrals... The bourgeoisie, by the rapid improvement of all instruments of production, by the immensely facilitated means of communication, draws all, even the most barbarian nations, into civilization.”⁵

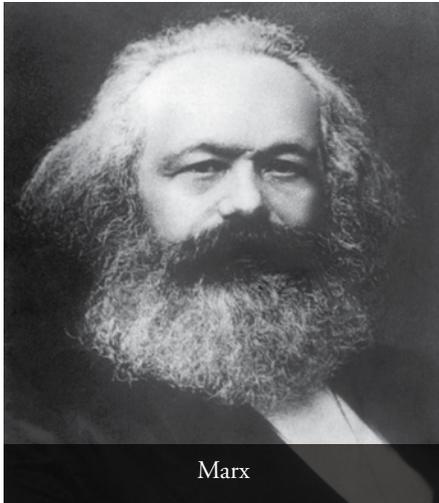
Though Marx admitted that the capitalists’ productive capability was driven by private property ownership and competition, he insisted that a fair and good society could only be accomplished if private property were abolished.



Marx's claims have been tried and found wanting — the failed U.S.S.R. experiment comes to mind — yet The Manifesto still seduces readers some 170 years later with its revolutionary exhortations and utopian strains.

— Delana Durough

Marx rejected Adam Smith's belief that self-interested men could produce mutually beneficial outcomes in free marketplaces, as if guided by an "invisible hand."⁶ Instead, Marx claimed that a new society, governed by the proletariat, could override these base impulses and administer a prosperous commune without any of capitalism's productive incentives — neither the ability to profit from one's own property nor the urgency of one's competitors nipping at the heels.



In effect, Marx wished to remove the gasoline fueling the industrial engine but expected the engine to run just as powerfully.

At Colorado Christian University, every student reads *The Manifesto* and generally finds it easy to poke gaping holes in Marx's arguments. First, he overestimated the natural capacity for benevolence in men and underestimated the management problem of communally-held property. Secondly, he ignored the enduring problem of scarcity, which forces all individuals to make choices and respond to incentives. Lastly, he conjured an atheistic utopia that any Christian knows is impossible without Jesus.

Marx's ultimately futile proposition promoted a vision of God's Kingdom without the King.

So why bother reading *The Manifesto* if it is so easy to debunk?

First, we desire to learn from Marx's perspective on the economic dislocations of his era, which are not unlike our own. Second, we wish to recognize the melody of Marx's false utopian gospel, lest we succumb to a similar tune now.

Consider mid-19th century Europe: the record-breaking increase in industrial production was paralleled by a rise in the squalor of its cities. Over crowdedness, promiscuity, and rampant disease escalated as rudimentary sewers and housing complexes burst at the seams. Novelists like Rebecca Harding Davis described the desperation, "incessant labor, sleeping in kennel-like rooms, eating rank pork and molasses, drinking — God and the distillers only know what; with an occasional night in jail, to atone for some drunken excess."⁷

The sometimes dehumanizing conditions weakened the social fabric and stole the dignity of many people, each one made in God's very image. In *The Manifesto*, Marx forced his readers to acknowledge the humanity of these downtrodden workers and the harsh reality of their working and living conditions. Marx noticed them and gave them a voice.

We, the Christians of the digital age, should follow Marx to the cramped apartments and seemingly hopeless workplaces of the "least of these" in our own society. We, too, live in a time where overall economic growth astounds, both nationally and globally. But many groups of workers struggle to find meaning in their work, often anxious that they will soon be replaced by machines or software.

The astonishing technologies of the digital age push wages lower in some sectors, and low-wage workers endure ever-longer commutes as affordable housing slips to the fringes of fast-growing urban areas. As transactions more frequently occur online, social relationships are dissolving and suicide rates are rising. We must notice these groups and give them a voice.

But, let us not follow Marx very far. His revolutionary utopia — no matter its idealistic allure — could offer nothing but more oppression to the workers of his day, and that remains true in ours.

He was tragically, undeniably wrong about the solution to the dislocations of rapid economic expansion. Such solutions are complex; they require

not only freer markets, but also wise and generous stewards who care more about the humans who can benefit from economic growth, and not the mere growth itself.

Indeed, the only true solution is found in Jesus. Christ, too, gave voice and dignity to the oppressed. He, too, offered a utopian dream. The difference is that Christ's vision of utopia is achievable, because Christ offers Himself as the empowering sacrifice that can accomplish the flourishing of mankind.

Read *The Manifesto* to awaken your compassion for those who struggle economically in our day. Read it again to gird yourself against any utopian urge that ignores the gospel. ■

REVIEWER BIO



DELANA DUROUGH

Delana Dorough (M.A., Johns Hopkins University) is assistant professor of Business and Economics in the School of Business and Leadership. With more than a decade of experience in corporate finance and public administration, she has gathered international experience working in both the Middle East and East Asia. In the classroom, she loves exploring the joys and challenges of economics and development with her students.

¹ Bulik, Mark. (2015, August 6). "1871: Karl Marx's Premature Obituary." NYTimes, Retrieved from <https://www.nytimes.com/times-insider/2015/08/06/1871-karl-marxs-premature-obituary/>

² Bemis, Tom. (2016, January 31). "Karl Marx Is the Most Assigned Economist in U.S. College Classes." Mar-keTWatch.com, Retrieved from <https://www.marketwatch.com/story/communist-manifesto-among-top-three-books-assigned-in-college-2016-01-27>

³ Marx, K. (1888). *The Communist Manifesto* (S. Moore & Engels, F., Trans.). (Original work published 1848). Para-graph 11.

⁴ Marx, K. (1888). *The Communist Manifesto* (S. Moore & Engels, F., Trans.). (Original work published 1848). Para-graph 196.

⁵ Marx, K. (1888). *The Communist Manifesto* (S. Moore & Engels, F., Trans.). (Original work published 1848). Para-graph 18.

⁶ Smith, Adam. (1776) *An Inquiry Into the Nature & Causes of the Wealth of Nations* [E-Reader version]. Retrieved from <http://www.gutenberg.org/files/3300/3300-h/3300-h.htm>. Book IV, Chapter 2.

⁷ Davis, Rebecca Harding. (1861, April). "Life in the Iron Mills." *The Atlantic*, Retrieved from <https://www.theatlantic.com/magazine/archive/1861/04/life-in-the-iron-mills/304543/>

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— Delana Dorough

When Harry Became Sally: Responding to the Transgender Moment

By Dr. Ryan T. Anderson

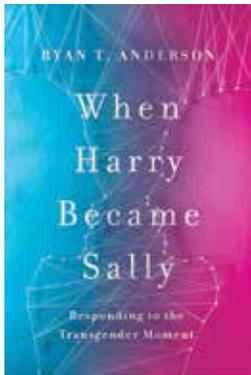
REVIEW BY DR. JOHN WIND

Assistant Professor of Theology

SYNOPSIS

Dr. Ryan T. Anderson provides a primer for grasping the emerging transgender movement and wisely responding to it. Anderson helps readers understand not only how this movement is impacting individuals and the larger society through popular culture, legal demands, and medical practices, but also uncovers the core beliefs about the human person that motivate this movement.

REVIEW



Just ten years ago, many Christians might have questioned the importance of accurately understanding concepts such as “transgender,” “gender dysphoria,” and “gender identity.”

Even today, some might still regard the transgender movement as a fringe matter and a passing fad that is best ignored. But as Ryan T. Anderson makes clear in *When Harry Became Sally: Responding to the Transgender Moment*, those who would prefer to ignore the movement will soon be made to care.

Anderson describes the ideology that guides transgender activists, and the impact that their efforts are beginning to have in different arenas of society — oftentimes at a breathtaking pace.

Whether it is debates over bathroom access in Target, North Carolina, or public schools, the vocal

presence of transgender celebrities like Bruce (now Caitlyn) Jenner in the popular imagination, or laws in eight states which now make it illegal for a counselor to help people embrace a gender identity in keeping with their biological sex, the transgender movement demands our attention.

While some of the concerns that motivated Anderson to research and write this book include questions of religious liberty, public safety, and parental and privacy rights, he identifies his deepest motivation as his concern for the victims of the transgender movement.

The most powerful chapter in his book is when he lets these victims speak for themselves. These are individuals who experienced “gender dysphoria” — deep emotional distress related to their perception of having a gender identity not in alignment with their biological sex.

These are also individuals who followed the solution to gender dysphoria which the transgender movement prescribes: first, social transitioning (beginning to dress and live in accordance with one’s perceived gender identity); second, hormone treatment (beginning to alter one’s body chemistry,

This concern for hurting people must therefore motivate us to extend our involvement in these matters beyond merely a concern for protecting our own rights and our own families.

– Dr. John Wind





including puberty blocking drugs for young children); third, sex re-assignment surgery (cosmetically removing or constructing body parts in order to create the appearance [though not full functioning or actual reality] of a body which corresponds to one's perceived gender identity).

Unfortunately, these individuals discovered that this path did not solve their emotional distress but only added to their problems, leading them to “detransition” — seeking a return to a life in accordance with their biological sex. Anderson writes, “I couldn't shake from my mind the stories of people who had detransitioned. They are heartbreaking. I had to do what I could to prevent more people from suffering the same way.”

Rather than approaching the transgender debate as most fundamentally a political issue (although it is unavoidably political), Anderson seeks to focus his readers' attention on the larger question of what leads to human flourishing, both for individuals and for societies.

In matters of gender, the question is, “What understanding of human gender and sexuality, marriage, and the family best leads to long-term human flourishing?”

In contrast to transgender ideology, Anderson attempts to cast a positive, alternative vision of a path for human flourishing in these matters; a path which also includes compassion for sufferers of gender dysphoria and the pursuit of therapeutic approaches seeking to understand the root causes of their personal distress and offering solutions which address those root causes rather than administering hormones and surgery.

Whereas transgender activists see human nature as malleable and the individual's subjective feelings as determining reality, Anderson sees human nature (including gender) as an objective and fixed reality and therefore sees true compassion as helping troubled people bring their subjective feelings in line with objective reality.

Anderson writes, “I couldn’t shake from my mind the stories of people who had detransitioned. They are heartbreaking. I had to do what I could to prevent more people from suffering the same way.”

This concern for hurting people must therefore motivate us to extend our involvement in these matters beyond merely a concern for protecting our own rights and our own families.

We, particularly as Christians, must be a part of this societal conversation out of loving our neighbor, out of care for those who already are victims of transgender ideology, and care for those who are its potential victims in the future.

Anderson’s book is an excellent resource to help us to do just that.

Anderson, himself a practicing Roman Catholic, does not write strictly for Christians and makes what might be described as “natural law” arguments concerning the transgender movement rather than explicitly biblical arguments. This is both the strength and weakness of his book.

On the one hand, Anderson provides arguments based on scientific study and careful reasoning that allow Christians to engage thoughtfully in the civic arena with individuals who, though they do not embrace the truths of biblical revelation, nevertheless share much with us as fellow creatures made in the image of God, dwelling within the shared reality created and ruled by God.

On the other hand, if, as Anderson rightly identifies, the underlying issues are the questions of human nature and true human flourishing, then Christians cannot limit their thinking to what science and reason can offer on these questions.

One opportunity to explore a robust biblical-theological understanding of the human person will be happening this September 17-18, 2018 at Colorado Christian University. This year’s Symposium — which is open to the public and will be live-streamed online — is entitled: “The Case for Being Human in a Post-Christian Age.”

Anderson’s book, when combined with the fuller biblical vision of human nature and human flourishing, will help us, as his subtitle states, in “responding to the transgender moment”—equipping us to respond to these issues with clarity, wisdom, and compassion. ■

REVIEWER BIO



DR. JOHN WIND

John Wind (Ph.D., The Southern Baptist Theological Seminary) has been an assistant professor of Theology at Colorado Christian University for three years. Previously, he served on the mission field in Asia with his family for eight years and as a youth pastor for four years. In addition to his teaching, Dr. Wind is a member of both the Evangelical Theological Society and the Evangelical Missiological Society. He also serves as CCU’s local church liaison.

Not a Day Care: The Devastating Consequences of Abandoning Truth

By Dr. Everett Piper

REVIEW BY DR. DEBORA SCHEFFEL

Dean of the School of Education

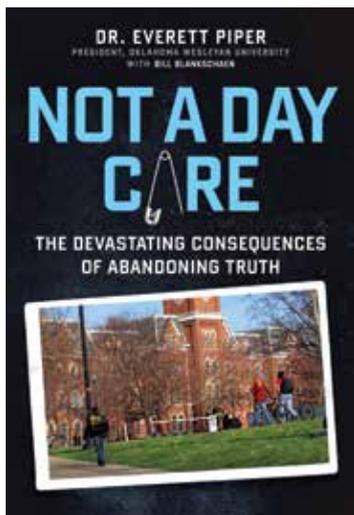
Dr. Piper's 2017 book *Not a Day Care: The Devastating Consequences of Abandoning Truth* is an incisive critique of much of American higher education, urging us to return to the true mission of the university — seeking truth. Grounding the academy in the *telos*, or goal of truth-seeking, redirects its future from suffocating, convergent ideological conformity, to thriving, vigorous discourse, shining a light on the choices of thought that can lead to truth. In turn, “the truth shall make you free,” as John 8:32 proclaims.

Dr. Piper, the current president of Oklahoma Wesleyan University, knows of what he speaks. As a leader in higher education, he is in the thick of issues that define the academy, from aspirational vision and mission statements, to the details of program requirements, course outcomes, curriculum, and student life.

The title of the book comes from a post Dr. Piper made in response to a student's suggestion that an advance warning, a “trigger warning,” should be provided for students prior to chapel sermons that might cause offense or cognitive discomfort. Dr. Piper begins with this story as illustrative of how academia has developed a preference for the narrowing of expression to avoid discussion of other-than-consensus beliefs. If a personal response of cognitive dissonance, guilt, a pricking of the conscience, even honest reflection, occurs, it must not surface given a preference for the comfort of social consensus.

The myth that we could create an atmosphere for truth-seeking, inquiry into fundamental human questions, in an emotionally flat environment, denies the reality that there really are different things to live for and value.

In succeeding chapters, the author goes on to provide examples from universities across the nation of ideological enforcement and intolerance in the name of avoiding offense. Truth no longer means a reflection of objective reality, but is rather a relative concept linked to whatever is normatively attractive.



Truth no longer means a reflection of objective reality, but is rather a relative concept linked to whatever is normatively attractive.

– Dr. Debora Scheffel



Dr. Piper points to a relentless self-absorption of many of the consumers of higher education as explanatory of this preoccupation with avoiding offense. Living one's life on social media, buried in inflated expectations of notoriety, shifts the focus away from ultimate things.

As Dr. Piper says, “True education is about learning there is something bigger and better, more trustworthy and enduring, than what we see in the mirror.”

Not a Day Care challenges Christian higher education institutions to retain their distinctiveness in retaining the pursuit of truth as their highest calling. Henry Dunster, Puritan clergyman and first president of Harvard College, our nation's oldest institution of higher education, believed the pursuit of life was the pursuit of truth. He embraced the Bible “as the foundation for comparison and understanding in seeking, learning and living the treasure of truths they (i.e., students) would yet discover.”¹

Dr. Piper directs us back to this essential focus of the academy and argues for the enduring value of

an education that is “profoundly God-centered ... in an atmosphere where students feel the faculty would gladly die for Jesus.” This book points to the value of an education that truly liberates, where the mind, soul and spirit are nourished, and a Savior is discovered. ■

REVIEWER BIO



DR. DEBORA L. SCHEFFEL

Debora Scheffel (Ph.D., Northwestern University) is the dean of the School of Education at CCU. She currently serves on the Colorado State Board of Education, representing Colorado's 4th Congressional district. Scheffel's professional affiliations include the International Neuropsychological Society, the Council for Exceptional Children, and the International Dyslexia Association. Her research interests include reading and oral language development and education reform policy. She serves as a national consultant in school reform and is passionate about quality education.

¹ <https://ldsmag.com/article-1-3693>



Justice Kennedy's Legacy in a post-Masterpiece Cake Era

EDITORIAL BY DR. KYLE USREY

Vice President of Academic Affairs
College of Undergraduate Studies



Justice Kennedy

Now that the dust has settled about the *Masterpiece Cake* decision, and with Justice Kennedy's announced retirement and replacement nominee Judge Brett Kavanaugh (former law clerk to Kennedy), perhaps it's time to ferret out the legacy of Constitutional tolerance and respect that Justice Kennedy elicited.

Justice Kennedy's legacy as a centrist on the Court will probably be summarily characterized by his focus on LGBT rights and religious liberty, along with his penchant for narrowly tailored opinions.

The latter is not bad adjudication, but it makes it difficult for pundits to predict the future of Court proceedings and outcomes. In *Masterpiece* (now seen in a different light with Kennedy's pending handover to Judge Kavanaugh), it's probably the Concurrences, in a practical sense, that provide just as much guidance to the future of religious liberty as did Kennedy's limited applicability, majority opinion. A careful reading of the full panoply of *Masterpiece* with all its moving parts from its various authors, indicates that at a baseline the Court will continue to look at cases without blatant animus toward religious practices. Thus, as many experts pointed out, it wasn't

the proper case to find the right balance between how LGBT lifestyle rights co-exist with the Free Exercise of religious rights in our Constitutional Republic. The search is on though!

So, what does that "ideal" or "perfect" case look like, post-Kennedy? That's hard to say. After all, citing *Obergefell*, Justice Kennedy noted that the First Amendment requires religious institutions and persons to be "given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths." Kavanaugh presumably would agree with that based on his decisions on the D.C. Circuit Court. The key is how might that all work out, though, for Christian evangelicals as well as the LGBT community to find common ground in our political society.

Left unsaid in *Masterpiece* is the underlying reality that Jack Phillips' convictions were based in his worship adherence at work, in his calling as an Evangelical Christian in the marketplace. Thus, Justice Gorsuch's Concurrence notes that the Colorado Civil Rights Commission's "judgmental dismissal of a sincerely held religious belief is, of course, antithetical to the First Amendment and cannot begin to satisfy strict scrutiny. The Constitution protects not just popular religious exercises from the condemnation of civil authorities. It protects them all." Moreover, Justice Gorsuch went on to explain that a person is "entitled to define the nature of his religious commitments — and that those commitments, as defined by the faithful adherent, not a bureaucrat or judge, are entitled to protection under the First Amendment." Justice Scalia in another Free Exercise case, *Employment Div. v. Smith*, warned that there are limits to Constitutional worship rights, though — a

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– Dr. Kyle Usrey



faithful adherent’s worship should not become “a law unto itself.”

While Kennedy’s enduring reputation will probably be his championing of freedom of choices across theological, social, and economic life, he’s left us with a terrible conundrum — which compelling Constitutional interests will be gored and found secondary to more compelling interests. Kennedy’s track-record of limited rulings has the Court (and now the Senate while evaluating Judge Kavanaugh) faced with the uncomfortable threat of a serious diminution of the primacy of the First Amendment’s Free Exercise Clause in deciding any future cases post-*Obergefell* and post-*Masterpiece*. Imagine a state and local civil rights action or decision being upheld where the Fourteenth Amendment’s Equal Protection and Due Process clauses trump the protected behaviors of the First Amendment. The First Amendment is primary for a whole host of reasons, including government-protected freedom of conscience in connection with worship — what some scholars say was truly unique to the American experiment’s Constitution at its creation.

It’s possible in this day and age that the core of the First Amendment could be broken...and that should be the major, over-riding concern to those engaged in evaluating Kennedy’s replacement.

Right now as it stands, it’s not a stretch of the imagination at all to envision a Free Exercise claim falling to a compelling interest to protect LGBT interests. Even the most rigorous “strict scrutiny” test might find that frighteningly rare case in the future that would restrain religious conduct during a commercial exchange by a fervent adherent. My guess is there is indeed a frantic search for the exact right set of facts to present to the Court and its soon-to-be newest member. I wonder if any of the founding fathers ever contemplated that a lifestyle behavior, LGBT or heterosexual, might gut the Free Exercise Clause?

Perhaps the wisdom of Justice Scalia could get us all out of this box we are in constitutionally, while we await the last shoe to drop, so to speak. As he noted in *Smith*, it might be wise not to discount the political process here. Perhaps Congress itself could delineate the limits of a “strict scrutiny” case in this arena. And maybe Congress could take even larger steps to delimit the Commerce Clause’s scope and effects on public accommodations statutes and regulations, rather than sit cowering every May-June wondering what group of five Justices (with a pending new associate justice) will ultimately draw societal lines in concrete. Christians should push to lock in *Masterpiece* somehow now in the absence of further certainties — that may be as good as it gets.

Neither side, the faith-based religious adherents nor the LGBT community, can claim the right not to be offended occasionally, nor the right not to be disrespected occasionally — tolerance surely doesn’t extend that far.

Heaven help us all, though, if bureaucrats or judges have the last word in delimiting the lawful, legitimate practices of the Evangelical faith, in and outside the Church...and Heaven help the LGBT community should it be unduly marginalized as has happened to disadvantaged minorities in the past. May the right person(s) emerge to help us find that path of true tolerance. Perhaps, those issues should be foremost in the inquiries of Judge Kavanaugh. Faithful worship adherents want to know. ■

REVIEWER BIO



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