

# NATIONAL PASTIME(S)

BASEBALL AS A ROAD TO GOD: SEEING BEYOND THE GAME. By John Sexton with Thomas Oliphant and Peter J. Schwartz. New York, NY: Gotham Books. 2013. Pp. 256. \$27.50.

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**Abstract:** In his new book, *Baseball as a Road to God*, New York University President and Professor of Law John Sexton submits that baseball can serve as a vehicle for living a more conscious life that elevates the human experience for lawyers and non-lawyers. This Essay examines the credibility of the book's thesis in a world where human intelligence, human deliberation, and human action is being replaced by artificial intelligence, mathematical models, and mechanical automation. It uses the preeminent national pastime of baseball, and the less eminent pastimes of law and finance as case studies for the book's thesis. It concludes that a more conscious and meaningful life is much harder to foster, but also much more important to cultivate in light of modern advances. This Essay ultimately offers a different narrative for lawyers and non-lawyers to think anew about modern law and society in light of ongoing changes in baseball, law, finance, and beyond.

## INTRODUCTION

*Baseball's status in the life of the nation is so pervasive that it would not strain credulity to say the Court can take judicial notice that baseball is everybody's business. . . . The game is on higher ground; it behooves everyone to keep it there.*<sup>1</sup>

—U.S. Supreme Court Justice Harry Blackmun

Baseball holds special residence in the law and life of America.<sup>2</sup> For more than a century the sport has served as a morality play for the great issues facing

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<sup>1</sup> Flood v. Kuhn, 407 U.S. 258, 266–67 (1972) (quoting Flood v. Kuhn, 309 F. Supp. 793, 797 (S.D.N.Y. 1970)).

<sup>2</sup> See *id.* (upholding antitrust exemption for professional baseball); Toolson v. N.Y. Yankees, Inc., 346 U.S. 356, 357 (1953) (same); Fed. Baseball Club of Balt., Inc. v. Nat'l League of Prof'l Baseball Clubs 259 U.S. 200, 208 (1922) (granting baseball a special antitrust exemption); STUART

our laws and our nation.<sup>3</sup> It has reflected and projected the enduring conflicts and tensions of American law and American life: between tradition and reform, individualism and collectivism, discrimination and inclusion, fairness and deception, war and peace, capital and labor, immigrants and natives, haves and have-nots, today and tomorrow.

In their new book, *Baseball as a Road to God*, New York University ("NYU") President and Law Professor John Sexton with his co-authors explain how baseball as a secular religion can help inform many of these continuing conflicts and dilemmas of time past, as well as instruct us on how to live a more meaningful life in the face of new and emerging tensions of time present.<sup>4</sup> With a law degree from Harvard Law School, a doctorate in History of American Religion, and decades as an educator, Sexton uses the skills and persuasions of a lawyer, theologian, and teacher to make his case.<sup>5</sup> The central thesis of the book is encapsulated by two recurring words in the book, *ineffable* and *hierophany*. According to Sexton, ineffable characterizes "that which we know through experience rather than through study, that which ultimately is indescribable in words yet is palpable and real,"<sup>6</sup> and hierophany describes a manifestation of the spiritual, "beyond self and the physical world."<sup>7</sup> The book suggests that baseball, our national pastime, offers us a path, in addition to re-

BANNER, *THE BASEBALL TRUST: A HISTORY OF BASEBALL'S ANTITRUST EXEMPTION*, at xiii (2013) (discussing "baseball's truly unique status in American culture"); DAVID MCGIMPSEY, *IMAGINING BASEBALL: AMERICA'S PASTIME AND POPULAR CULTURE* 8 (2000) (quoting Walt Whitman) ("I see great things in baseball; it's our game—the American game."); G. EDWARD WHITE, *CREATING THE NATIONAL PASTIME* 83 (1996) (noting the exceptional national status of baseball).

<sup>3</sup> Given baseball's special role in American law and society, it is not surprising that the game has provided fertile ground for lawmakers, lawyers, and law professors. See generally ROGER I. ABRAMS, *LEGAL BASES: BASEBALL AND THE LAW* (1998); *BASEBALL AND THE AMERICAN LEGAL MIND* (Spencer Weber Waller et al. eds., 1995); William D. Araiza et al., *The Jurisprudence of Yogi Berra*, 46 EMORY L.J. 697 (1997); Linda S. Beres & Thomas D. Griffith, *Do Three Strikes Laws Make Sense? Habitual Offender Statutes and Criminal Incapacitation*, 87 GEO. L.J. 103 (1999); Paul L. Caron & Rafael Gely, *What Law Schools Can Learn from Billy Beane and the Oakland Athletics*, 82 TEX. L. REV. 1483 (2004); Mark W. Cochran, *The Infield Fly Rule and the Internal Revenue Code: An Even Further Aside*, 29 WM. & MARY L. REV. 567 (1988); Robert A. McCormick, *Baseball's Third Strike: The Triumph of Collective Bargaining in Professional Baseball*, 35 VAND. L. REV. 1131 (1982); Morgen A. Sullivan, *"A Derelict in the Stream of the Law": Overruling Baseball's Antitrust Exemption*, 48 DUKE L.J. 1265 (1999); Richard H. Thaler & Cass R. Sunstein, *Market Efficiency and Rationality: The Peculiar Case of Baseball*, 102 MICH. L. REV. 1390 (2004); Howard M. Wasserman, *The Economics of the Infield Fly Rule*, 14 UTAH L. REV. 479 (2013); Charles Yablon, *On the Contribution of Baseball to American Legal Theory*, 104 YALE L.J. 227 (1994); Lawrence A. Zelenak & Martin J. McMahon, Jr., *Taxing Baseballs and Other Found Property*, 84 TAX NOTES 1299 (1999); *The Common Law Origins of the Infield Fly Rule*, 123 U. PA. L. REV. 1474 (1975).

<sup>4</sup> JOHN SEXTON ET AL., *BASEBALL AS A ROAD TO GOD: SEEING BEYOND THE GAME* (2013).

<sup>5</sup> Biography of John Sexton, NEW YORK UNIVERSITY, <https://www.nyu.edu/about/leadership-university-administration/office-of-the-president/bios/john-sexton.html>, archived at <http://perma.cc/SU8N-YE6C> (last visited Aug. 23, 2014).

<sup>6</sup> SEXTON, *supra* note 4, at 211.

<sup>7</sup> *Id.* at 212.

ligion, towards that which is captured by those two words, towards a deeper understanding and meaning of the human experience and its many comforts and challenges.<sup>8</sup>

This Essay explores the validity of Sexton's thesis in the face of contemporary realities in law and society. It considers Sexton's ineffable path to hierophany in a world where human intelligence, human deliberation, and human action is being replaced by artificial intelligence, mathematical models, and mechanical automation. This Essay utilizes the preeminent national pastime of baseball, and the less eminent pastimes of law and finance, as case studies for the thesis.<sup>9</sup> It leverages Sexton's thesis to examine the societal sea change fueled by new science and advanced technology, and its wide-ranging effects on our national pastimes. This Essay ultimately offers a different narrative for thinking anew about law, baseball, finance, and the changes unfolding around us.

This Essay reveals that narrative in three parts. Part I sets the stage. It describes Sexton's thesis and the book in greater detail. It summarizes how a lawyer found salvation through baseball, and how we may find similar grace within or without the game. Part I illuminates one lawyer's suggested path to a more conscious life of heightened human experience.

Part II introduces conflict. It examines Sexton's core concepts of the ineffable and hierophany in a world of Big Data<sup>10</sup> and advanced technology. Using recent developments in baseball, law, and finance as case studies, it reveals how contemporary realities complicate Sexton's proposed path to a more conscious and human experience. Part II tests the thesis against our national pastimes, and shows how the warm human element and the cold contemporary realities intertwine, how the ineffable and the deducible coexist in the modern world.

Part III offers resolution. It reveals that conflicts between the ineffable and the deducible are a recasting of two familiar dualities in law and religion: certainty and doubt, along with rules and standards. It contends that the apparent new tensions of modernity in our national pastimes are truly reinterpretations of timeless dialogues from law and religion. It ultimately argues that these legal and religious dualities offer a hopeful perspective, consistent with the book's thesis, for the future of lawyers and non-lawyers in the age of Big Data, smart machines, and advanced technology.

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<sup>8</sup> *Id.* at 220.

<sup>9</sup> See, e.g., Cleta D. Mitchell, *The Rise of America's Two National Pastimes: Baseball and the Law*, 97 MICH. L. REV. 2042, 2060 (1999) (discussing baseball and law as American pastimes).

<sup>10</sup> See generally VIKTOR MAYER-SCHONBERGER & KENNETH CUKIER, *BIG DATA: A REVOLUTION THAT WILL TRANSFORM HOW WE LIVE, WORK, AND THINK* (2013).

## I. A LAWYER'S ROAD TO GOD

Every narrative contains at least two stories: the story itself and the story of the storyteller, because every story is shaped by the tale of its teller. *Baseball as a Road to God*, as the title suggests, is a book about baseball and religion, but it is also a story about the lead author, John Sexton. The book opens with his boyhood memories of the 1955 World Series and closes with an echo of his core call of living a more mindful life through baseball. In twelve chapters—each representing the nine innings of a baseball game plus a pre-game session, a seventh-inning stretch, and a post-game gathering—Sexton tells us his story and the story of seeing baseball as a path to a more meaningful life.

A. *A Story of the Author*

*Baseball as a Road to God* reveals as much about its lead author as it does about the game. John Sexton is a devout Catholic and lifelong baseball fan. He is also the President of NYU, the Benjamin Butler Professor of Law, and NYU Law School's Dean Emeritus.<sup>11</sup> Prior to pursuing a life in law and academic administration, Sexton was a professor of religion.<sup>12</sup>

The book finds root in a popular class created and taught by Sexton bearing the same name at NYU.<sup>13</sup> The book's other authors also have ties to the course. Thomas Oliphant, a journalist and author of *Praying for Gil Hodges: A Memoir of the 1955 World Series and One Family's Love of the Brooklyn Dodgers*,<sup>14</sup> has lectured in the course; and Peter Schwartz was the first student enrolled in the course.<sup>15</sup>

Through more than two hundred pages, Sexton reveals his life through the lens of baseball. The book opens with his memories of listening with hope as his Brooklyn Dodgers beat the New York Yankees in game seven of the 1955 World Series.<sup>16</sup> The book traverses Sexton's experience of other memorable and important episodes in baseball history. Sexton describes his reaction to events like Jackie Robinson's integration of baseball, the Dodgers leaving Brooklyn for Los Angeles in 1958, the 1969 "Amazin' Mets," Kirk Gibson's walk-off homer in the 1988 World Series, and the 2004 American League Championship Series between the Boston Red Sox and Yankees.<sup>17</sup> He infuses important moments in baseball and his personal history with his perspectives

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<sup>11</sup> Biography of John Sexton, *supra* note 5.

<sup>12</sup> *Id.*

<sup>13</sup> See SEXTON, *supra* note 4, at 5; Samuel G. Freedman, *Baseball Has Its Worshipers, and at N.Y.U., You Get Credit*, N.Y. TIMES, Apr. 21, 2012, at A1.

<sup>14</sup> THOMAS OLIPHANT, *PRAYING FOR GIL HODGES: A MEMOIR OF THE 1955 WORLD SERIES AND ONE FAMILY'S LOVE OF THE BROOKLYN DODGERS* (2005).

<sup>15</sup> SEXTON, *supra* note 4, at 221.

<sup>16</sup> *Id.* at 1–2.

<sup>17</sup> *Id.* at 12–14, 39–42, 46–47, 77–84, 158.

as a theologian and law professor. For instance, in telling the story of his conversion from a Brooklyn Dodgers fan to a Yankees fan, Sexton connects and contrasts his experience with the conversion of Saint Paul, and references the works of religious writers like C.S. Lewis and Paul Tillich.<sup>18</sup> In articulating how baseball can create communities, he cites the famous 1972 U.S. Supreme Court case of *Flood v. Kuhn*, which opened the doors for free agency in the game.<sup>19</sup> Just as the book begins with a personal and hopeful recollection, it concludes with a similarly personal and hopeful call for readers to live more awakened and mindful lives.

### B. *A Story of the Game*

*Baseball as a Road to God* tells the story of the game as a vessel for a more meaningful life. It contends that the game offers *a* way and not *the* way to a better life.<sup>20</sup> The book argues that baseball, similar to Christianity and other organized religions, can lead to a more fulfilling life with experiences that cannot be fully captured by science, reason, and words. It makes its case by highlighting similarities between baseball and religion.

The book focuses on many of the parallels between baseball and religion in terms of the superficial as well as the substantive. For example, the book eloquently states that “a ballpark is a church and a ball game is a mass; there are three strikes to an out and three outs to an inning, another set of holy trinities.”<sup>21</sup> Further, the book asserts that baseball, like religion, contains a communal force that assembles friends, family, and strangers as one congregation.<sup>22</sup> (Anyone who has been a playoff game involving their favorite team could probably testify under oath to the religious experience that is the game.) Baseball, also like religion, can give us a nourishing hope beyond reason in the warmth of spring, a hope that is reflected in the timeless, disyllabic chorus of faithful baseball fans everywhere in the cool of autumn: “next year.” The long suffering and confounded baseball fans of teams like the Chicago Cubs and the Kansas City Royals are “saved by faith” year after year, generation after generation with a hope of something better next year.<sup>23</sup> As Saint Thomas Aquinas

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<sup>18</sup> See *id.* at 78–86.

<sup>19</sup> See *id.* at 192–93. See generally *Flood*, 407 U.S. 258.

<sup>20</sup> SEXTON, *supra* note 4, at 11.

<sup>21</sup> *Id.* at 7–8.

<sup>22</sup> See *id.* at 177 (“[Baseball] has the power to bring people together in expanding levels of relationship—parent and child, neighbor and friend, community and city, state and the nation. On some majestic summer days, the many who assemble are one.”).

<sup>23</sup> See REINHOLD NIEBUHR, *THE IRONY OF AMERICAN HISTORY* 63 (2010) (“Nothing which is true or beautiful makes complete sense in any immediate context of history; therefore we must be saved by faith.”).

wrote, “To one who has faith, no explanation is necessary. To one without faith, no explanation is possible.”<sup>24</sup>

To further strengthen the similarities between baseball and religion, the book alludes to the language and literature of religion. Sexton explains how words conventionally associated with religion, like faith, doubt, conversion, miracles, blessings, saints, and sinners are commonly used in talking about baseball and baseball players. Sexton also uses writings from the Bible and religious scholars such as Karen Armstrong, Rudolf Otto, and C.P. Snow, to explain important episodes in baseball history. For example, Sexton uses the Gospel of John’s exegesis on miracles, to explicate on Willie May’s amazing catch in the 1954 World Series and the Diamondbacks’ win in the 2001 World Series after September 11th.<sup>25</sup>

Through the overarching metaphor of baseball as a secular religion, the book asserts that the appreciation of baseball can “teach us to experience life more deeply.”<sup>26</sup> Unlike many sports, the game of baseball, which has no time limits or game clock, can teach us to slow down and be more mindful of the important experiences that may be lost in the fog, rush, and blur of modern living.<sup>27</sup> Just as believers praying for guidance or batters waiting for a pitch focus their minds, the game of baseball can sharpen our awareness of that which we neglect and take for granted in the course of our daily lives. Ultimately, the book suggests that the game’s timelessness, its serendipities, and its ineffable moments can arouse deeply experiential elements of religious and intellectual life that are frequently lost or dormant in “our contemporary world of hard facts and hard science.”<sup>28</sup>

## II. EMERGING CROSSROADS

Modern advances in artificial intelligence, information technology, and computer science present a challenge for Sexton’s thesis of baseball as a path towards a more conscious life that heightens the human experience. The traditional human elements in the arenas of baseball, law, and finance have each been tested with the emergence of new science and advanced technology. Examining recent developments in these arenas, this Part explores the plausibility of the book’s core thesis in the face of modern realities.

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<sup>24</sup> SEXTON, *supra* note 4, at 37–38 (quoting St. Thomas Aquinas).

<sup>25</sup> *Id.* at 123.

<sup>26</sup> *Id.* at 220.

<sup>27</sup> *See id.* at 217 (“Baseball calls us to live slow and take notice.”).

<sup>28</sup> *See id.* at 220.

### A. In Baseball

Baseball is a most human of endeavors, but it has not been impervious to modern technological advances. Traditional human scouting in baseball has gradually ceded ground to emerging information sciences.<sup>29</sup> On its face, the game continues to be played by men on a field of grass and dirt as it has been for more for than a century, yet how the game is viewed and how the players are chosen to play the game have inextricably changed.

Human intuition and human experience have long been at the core of baseball.<sup>30</sup> Baseball players, managers, coaches, and scouts have historically relied on their innate judgments when it comes to the game.<sup>31</sup> They evaluated in-game situations and players based on their professional powers of observation. Some scouts have even stated that “you can tell if the player is a hitter or not by shaking hands with him.”<sup>32</sup> Beyond physical attributes, intuitive judgments are also used to assess a player’s intangibles—such as grit, courage, confidence, and determination.<sup>33</sup> For most of baseball’s history, the game largely moved on human intuition, observation, and judgment.<sup>34</sup>

Over the last decade, the game has shifted away from subjective decisions making based on human experiences towards objective, computerized analytics.<sup>35</sup> Advances in computing power and information technology over the last few decades have elevated a new application and understanding of baseball decision making known as sabermetrics,<sup>36</sup> which uses statistical analysis to judge players and strategies.<sup>37</sup> Sabermetrics aims to divorce human subjectivity and its fallacies from the game by focusing on objective and measurable data to judge players and strategies.<sup>38</sup> Because baseball is so rich in data, advances in computing and information technology, together with a wealth of available data, have made it possible for sabermetricians to unearth baseball decision making with new

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<sup>29</sup> See BENJAMIN BAUMER & ANDREW ZIMBALIST, *THE SABERMETRIC REVOLUTION: ASSESSING THE GROWTH OF ANALYTICS IN THE GAME* 23–37 (2014).

<sup>30</sup> See, e.g., CAN HE PLAY? A LOOK AT BASEBALL SCOUTS AND THEIR PROFESSION I (Jim Sandoval & Bill Nowlin eds., 2011) (discussing the important role played by scouts in the early days of baseball).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 51.

<sup>33</sup> *Id.*

<sup>34</sup> See MICHAEL LEWIS, *MONEYBALL: THE ART OF WINNING AN UNFAIR GAME* 68 (2004).

<sup>35</sup> *Id.* at 45.

<sup>36</sup> Baseball analyst Bill James coined the term “sabermetrics” to describe this approach to baseball analysis. See Phil Birnbaum, *A Guide to Sabermetric Research*, SOCIETY FOR AMERICAN BASEBALL RESEARCH, <http://sabr.org/sabermetrics>, archived at <http://perma.cc/6JQN-XYBW> (last visited Aug. 20, 2014). See generally BILL JAMES, *1977 BASEBALL ABSTRACT: FEATURING 18 CATEGORIES OF STATISTICAL INFORMATION THAT YOU JUST CAN’T FIND ANYWHERE ELSE* (1977); BILL JAMES, *THE NEW BILL JAMES HISTORICAL BASEBALL ABSTRACT* (2003).

<sup>37</sup> See GABRIEL B. COSTA ET AL., *PRACTICING SABERMETRICS: PUTTING THE SCIENCE OF BASEBALL STATISTICS TO WORK* 5–8 (2009).

<sup>38</sup> LEWIS, *supra* note 34, at 62–66.

understandings and metrics of every facet of the game—like the spin rate of pitches, wins-above-replacements, and defensive-runs-saved—using new cameras and sensors.<sup>39</sup>

As famously chronicled in Michael Lewis's *Moneyball*, Billy Beane, the general manager of the Oakland Athletics, was one of the first baseball executives to bring the sabermetric approach to Major League Baseball.<sup>40</sup> As a small-market team, the Athletics stood at a significant disadvantage compared to some of their big-market competitors.<sup>41</sup> Despite this significant disadvantage, Oakland finished sixth, second, first, and fourth in total wins from 2000 through 2003, respectively.<sup>42</sup> Through the use of sabermetrics, Beane successfully exploited the inefficiencies that were present in the game due to the heavy reliance on human intuition and judgment.<sup>43</sup> Beane's mechanical, data-driven approach was initially met with much skepticism, but his success led to wider adoption of data analytics in baseball. Today, almost every major league baseball team uses some form of computerized, data-driven analysis.<sup>44</sup>

It is important to note the ascendancy of data in baseball has not reduced the game into a series of complex equations and forecasts, nor has it reduced the drama and suspense of the game. Baseball is still played on fields of grass by flawed creatures of original sin, not on screens of computers by lines of data. And it is still subject to the whims of pressure, randomness, and luck.<sup>45</sup> As Sexton notes in the book, some of the most important elements in baseball are "immeasurable."<sup>46</sup> How does a box score capture the ecstasy or agony of a walk-off homer? How do statistics begin to assess the joy of a young fan's first experience of a major league game in the cathedral that is Yankee Stadium? How do reams of data begin to quantify the significance of the Red Sox's winning the 2004 World Series to break the eighty-six-year-long Curse of the Bambino?<sup>47</sup>

In sum, the evolution of baseball from a game driven by human intuition to one driven by data analytics may suggest that the human element is now of

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<sup>39</sup> See BAUMER & ZIMBALIST, *supra* note 29, at 23–37; Richard Sandomir, *Giving Umpires the Best Angles on Challenges*, N.Y. TIMES, Mar. 27, 2014, at B14 (discussing new camera and instant replay systems in Major League Baseball).

<sup>40</sup> LEWIS, *supra* note 34, at xi–xv.

<sup>41</sup> *Id.* at 221–22; Caron & Gely, *supra* note 3, at 1489–90.

<sup>42</sup> Caron & Gely, *supra* note 3, at 1495–96.

<sup>43</sup> See *id.* at 1493–95; Jahn K. Hawkes & Raymond D. Sauer, *The Moneyball Anomaly and Payroll Efficiency: A Further Investigation*, 2 INT'L J. OF SPORTS FIN. 173 (2007).

<sup>44</sup> See Don Peck, *They're Watching You at Work*, ATLANTIC, Dec. 2013, at 72, 84 ("Twenty-six of the league's 30 teams now devote significant resources to people analytics."); see also Scott Cacciola, *Eyes on Stats, Players Hire Help to Crunch Them*, N.Y. TIMES, May 28, 2014, at A1 (reporting on the rise of statistical awareness in professional basketball).

<sup>45</sup> See Yablon, *supra* note 3, at 231 (stating that "[l]uck is recognized as an essential element of the game").

<sup>46</sup> SEXTON, *supra* note 4, at 64.

<sup>47</sup> See DAN SHAUGHNESSY, *THE CURSE OF THE BAMBINO* (2004).



secondary importance, but in reality it has become more important to the game as most teams adopt sabermetric methods. For example, no data or metric, to date, can accurately measure and forecast a player's character, impact on team chemistry, and mental constitution. One of the best ways to gather salient information to make such assessments is through interviews, meetings, and investigations, all of which remain largely human in nature. As the inefficiencies and deficiencies of the old approach are identified and eliminated by the new application of sabermetrics, the human element becomes the difference maker once again.<sup>48</sup>

### B. In Law

Law is a quintessentially human profession, but, like baseball, it has not been immune to the advances of modernity. Facially, it appears improbable that the role of lawyers can ever be diminished by new technology. After all, computers or robots cannot persuade a judge, juror, client, or counterparty. Yet, developments in information technology over the last decade have irrevocably changed the legal profession into an arguably less human endeavor.<sup>49</sup>

Traditionally, lawyers have been viewed as moral actors who utilize their intuition and experience for the sake of justice and fairness.<sup>50</sup> Lawyers are frequently perceived as professionals impervious to the whims of market pressures and technological change.<sup>51</sup> Fact and fiction are full of stories reflecting this ideal lawyering model with real and imagined attorneys like Oliver Wendell Holmes, Jr., Thurgood Marshall, Atticus Finch, and Jack McCoy summoning justice with their personal intellect and eloquence. A lawyer's critical skills of counsel and persuasion seem unlikely to ever be outsourced, in whole or in part, to machines. For most of the legal profession's history, this has been the case.<sup>52</sup>

<sup>48</sup> See Peck, *supra* note 44, at 72.

<sup>49</sup> See generally RICHARD SUSSKIND, *TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* (2013) (arguing that changes in the legal market, including the emergence of disruptive technologies, will continue to alter the landscape of the legal profession).

<sup>50</sup> See Andrew J. Wistrich & Jeffery J. Rachlinski, *How Lawyers' Intuitions Prolong Litigation*, 86 S. CAL. L. REV. 571, 594 (2013).

<sup>51</sup> See Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1, 115 (2004) ("Lawyers have always sought to set themselves apart from market pressures, offering their commitment to public service as a way of justifying professional privilege."); Eli Wald, *An Unlikely Knight in Economic Armor: Law and Economics in Defense of Professional Ideals*, 31 SETON HALL L. REV. 1042, 1047 (2001) ("[I]deals are cast as a force working against market pressures assisting lawyers to adhere to standards of professionalism in light of increasingly threatening business constraints."); David B. Wilkins, *Who Should Regulate Lawyers?*, 105 HARV. L. REV. 799, 866 (1992) (finding that compliance failures "undermine the disciplinary system's ability to encourage lawyers to resist market pressures when the relevant norms are ambiguous or in conflict.").

<sup>52</sup> For further discussion, see generally R. BLAIN ANDRUS, *LAWYER: A BRIEF 5,000 YEAR HISTORY* (2009); LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 633–55 (1986).

In recent decades, the emergence of new information technology and advances in empirical studies in law has fundamentally altered the legal profession.<sup>53</sup> Oliver Wendell Holmes, Jr. may have been incredibly prescient when he wrote decades ago: “For the rational study of the law the black-letter man may be the man of the present, but the man of the future is the man of statistics and the master of economics.”<sup>54</sup> Traditional legal functions conducted by lawyers are now being conducted by computers running smart analytic programs.<sup>55</sup> Computerized models can now advise lawyers and clients on the potential strength of cases and arguments, including those before the Supreme Court, with greater accuracy and success than their human counterparts.<sup>56</sup> Similarly, computer programs are now capable of initiating discovery, reviewing documents, conducting training, drafting contracts, and monitoring compliance more quickly and cheaply than their human counterparts.<sup>57</sup> Moreover, advances in empirical legal studies have changed the way the law is understood, studied, and practiced.<sup>58</sup> For instance, the law of democracy and the law of corporations has benefited immensely by new insights uncovered by empirical studies.<sup>59</sup>

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<sup>53</sup> See BRIAN TAMANAHA, *FAILING LAW SCHOOLS* 169 (2012); Daniel E. Ho & Larry Kramer, *Introduction: The Empirical Revolution in Law*, 65 STAN. L. REV. 1195, 1195–96 (2013) (discussing the proliferation of empirical legal studies); Daniel Martin Katz, *Quantitative Legal Prediction—Or How I Learned to Stop Worrying and Start Preparing for the Data-Driven Future of the Legal Services Industry*, 62 EMORY L.J. 909 (2013).

<sup>54</sup> O.W. Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897).

<sup>55</sup> RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* 270 (2008).

<sup>56</sup> See, e.g., Christina L. Boyd & David A. Hoffman, *Disrupting Limited Liability*, 104 NW. U. L. REV. 853, 892–93 (2010); Blakeley B. McShane et al., *Predicting Securities Fraud Settlements and Amounts: A Hierarchical Bayesian Model of Federal Securities Class Action Lawsuits*, 9 J. EMPIRICAL LEGAL STUD. 482, 508 (2012); Theodore W. Ruger et al., *The Supreme Court Forecasting Project: Legal and Political Science Approaches to Predicting Supreme Court Decisionmaking*, 104 COLUM. L. REV. 1150, 1151–52 (2004) (noting that a formula designed to predict the outcome of Supreme Court cases significantly outperformed the predictions of legal experts).

<sup>57</sup> See, e.g., Paul D. Carrington, *Virtual Civil Litigation: A Visit to John Bunyan’s Celestial City*, 98 COLUM. L. REV. 1516, 1534 (1998); Joe Dysart, *A New View of Review: Predictive Coding Vows to Cut E-Discovery Drudgery*, 97 A.B.A. J. 26, 26 (2011); Katz, *supra* note 53, at 935–46; Milton C. Regan, Jr. & Palmer T. Heenan, *Supply Chains and Porous Boundaries: The Disaggregation of Legal Services*, 78 FORDHAM L. REV. 2137, 2150 (2010); Larry E. Ribstein, *Delawerying the Corporation*, 2012 WIS. L. REV. 305, 316 (describing how corporate compliance software reduced the need for lawyers); William Henderson, *Why Are We Afraid of the Future of Law?*, NAT’L JURIST, Sept. 2012, at 8–9.

<sup>58</sup> See Ho & Kramer, *supra* note 53.

<sup>59</sup> See, e.g., Pamela S. Karlan, Symposium, *Answering Questions, Questioning Answers, and the Roles of Empiricism in the Law of Democracy*, 65 STAN. L. REV. 1269, 1289 (2013) (“There clearly is an important role for empirical work on the law of democracy.”); Michael Klausner, Symposium, *Fact and Fiction in Corporate Law and Governance*, 65 STAN. L. REV. 1325, 1326 (2013) (“In corporate law and governance, the impact of empirical work has been pervasive . . .”).

The clash of traditional, human lawyering with modern, data-driven machine-aided lawyering foreshadows both a fall and rise for humans in the legal profession. In terms of decline, traditional legal tasks that can be better performed by smart machines today may lead to a decrease in the population of lawyers.<sup>60</sup> But that general population decline of lawyers also enhances the significance of attorneys who possess skills that cannot be readily outsourced to machines.<sup>61</sup> This evolution in the legal industry gives rise to a new breed of lawyers who can counsel and persuade using all the traditional and modern tools of law.<sup>62</sup> These tools include new information technology and advanced legal empiricism, but also traditional methods of legal analysis, “situation sense,” and mindfulness.<sup>63</sup> In fact, the emergence of new legal technologies has coincided with the emergence of a legal field known as law and mindfulness that aims to use traditional mindfulness practices to enhance the professional and personal lives of lawyers by focusing on the human mind.<sup>64</sup> In sum, the human element remains an important ingredient in law and lawyering despite seismic, technological shifts in the profession.<sup>65</sup>

### C. In Finance

Finance has traditionally been viewed as an industry dominated by humans, yet in recent years the human component has played a diminishing role. Advances in information technology and artificial intelligence have replaced human execution and human analysis in many areas of finance.<sup>66</sup> A financial

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<sup>60</sup> See generally SUSSKIND, *supra* note 55 (examining the effect of emerging technologies on the legal profession).

<sup>61</sup> See Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749, 761.

<sup>62</sup> SUSSKIND, *supra* note 55, at 272.

<sup>63</sup> See KARL N. LLEWELLYN, *THE COMMON LAW TRADITION* 60 (1960) (characterizing situation sense as a form of informed legal intuition); Christopher K. Germer, *Mindfulness: What Is It? What Does It Matter?* in *MINDFULNESS AND PSYCHOTHERAPY* 11–14 (Christopher K. Germer et al. eds., 2013); ELLEN J. LANGER, *MINDFULNESS* 133–52 (1990) (describing mindfulness techniques for improving professional success).

<sup>64</sup> See generally SCOTT L. ROGERS, *MINDFULNESS FOR LAW STUDENTS: USING THE POWER OF MINDFUL AWARENESS TO ACHIEVE BALANCE AND SUCCESS IN LAW SCHOOL* (2009) (examining fundamental contemplative practices and emerging research to show how incorporating mindfulness techniques can alter the physical structure and function of the brain and benefit lawyers and law students); William S. Blatt, Symposium, *What's Special About Meditation? Contemplative Practice for American Lawyers*, 7 HARV. NEGOT. L. REV. 125 (2002) (discussing mindfulness and meditation as means of combating the ails of the legal profession); Leonard L. Riskin, Symposium, *The Contemplative Lawyer: On the Potential Benefits of Mindfulness Meditation to Law Students, Lawyers and Their Clients*, 7 HARV. NEGOT. L. REV. 1 (2002) (opining that mindfulness meditation can help lawyers and law students deal with problems like anxiety and depression).

<sup>65</sup> See Katz, *supra* note 53, at 930 (“The equation is simple: Humans + Machines > Humans or Machines.”).

<sup>66</sup> See Frank J. Fabozzi et al., *High-Frequency Trading: Methodologies and Market Impact*, 19 REV. FUTURES MARKETS 7, 9–10 (2011) (describing the essential role of computerization in financial trading); Jonathan Keats, *Thought Experiment*, WIRED, June 2013, at 164–71 (reporting on plans to

industry once monopolized by humans has evolved into one where humans and machines share control.<sup>67</sup>

Traditionally, finance was viewed largely as a human enterprise, and has been dominated by human actors.<sup>68</sup> Investment bankers, money managers, and traders operated the gears of the financial industry with their skills, efforts, and connections. On the higher end of the industry, men like John Pierpont Morgan, Nathan Rothschild, and Warren Buffett leveraged their superior judgments and valuable networks to move billions of dollars in capital and assets. On the other end of the industry, thousands of brokers, advisors, and analysts played important roles in the marketplace.

Over the course of the last two decades, advances in financial technology have transformed the financial industry into one where machines are playing larger roles in areas previously controlled by humans.<sup>69</sup> Smart machines operating on complex algorithmic programs run much of modern finance.<sup>70</sup> Many of these programs can operate exclusively on artificial intelligence without any human input.<sup>71</sup> Many of these programs are also capable of executing financial decisions in fractions of a second.<sup>72</sup> Moreover, those decisions are frequently better informed than those made by their human counterparts given the programs' unparalleled capacity to process large volumes of data. Such faster and better-informed executions can also be more rational and profitable than those made solely by humans. After all, smart machines are not subject to the cognitive flaws, emotional whims, and mental strains that plague humans in finance.<sup>73</sup>

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"build on a supercomputer replica of the human brain"); Felix Salmon & Jon Stokes, *Bull vs. Bear vs. Bot*, WIRED, Jan. 2011, at 91 ("Algorithms have become so ingrained in our financial system that the markets could not operate without them.").

<sup>67</sup> See Tom C.W. Lin, *The New Investor*, 60 UCLA L. REV. 678, 687 (2013); Salmon & Stokes, *supra* note 66, at 90, 93 ("It's the machines' market now; we just trade in it.").

<sup>68</sup> See generally CHARLES R. GEISST, *WALL STREET: A HISTORY* (2012); JONATHAN BARRON BASKIN & PAUL J. MIRANTI, JR., *A HISTORY OF CORPORATE FINANCE* (1999) (detailing the development of corporate finance with a focus on the institutions and individuals who shaped the industry).

<sup>69</sup> See, e.g., Tom C.W. Lin, *The New Financial Industry*, 65 ALA. L. REV. 567, 572–76 (2014) (examining the impact on the financial industry caused by technologies that alter or replace human decision making).

<sup>70</sup> See, e.g., DAVID J. LEINWEBER, *NERDS ON WALL STREET: MATH, MACHINES, AND WIRED MARKETS* 31–64 (2009); Salmon & Stokes, *supra* note 66, at 91 ("Algorithms have become so ingrained in our financial system that the markets could not operate without them.").

<sup>71</sup> See SCOTT PATTERSON, *DARK POOLS: HIGH-SPEED TRADERS, A.I. BANDITS, AND THE THREAT TO THE GLOBAL FINANCIAL SYSTEM* 128–30 (2012) (discussing automated financial trading programs).

<sup>72</sup> See, e.g., MICHAEL LEWIS, *FLASH BOYS* 63–64 (2014); Graham Bowley, *The New Speed of Money*, N.Y. TIMES, Jan. 2, 2011, at BU1 (discussing the astounding velocity of modern finance).

<sup>73</sup> See, e.g., IAN AYRES, *SUPER CRUNCHERS: WHY THINKING BY NUMBERS IS THE NEW WAY TO BE SMART* 115 (2007) ("Unlike self-involved experts, statistical regressions don't have egos or feelings."); ROBERT A. G. MONKS & ALEXANDRA REED LAJOUX, *CORPORATE VALUATION FOR PORTFOLIO INVESTMENT: ANALYZING ASSETS, EARNINGS, CASH FLOW, STOCK PRICE, GOVERNANCE,*

Given the advantages of smart machines in finance, not surprisingly, many in the industry have substituted away from traditional, human models towards more artificial, algorithmic models. Many hedge funds, investment banks, and other financial institutions have replaced human analysts and traders with automated computer programs.<sup>74</sup> Similarly, stock exchanges have also moved away from human actors to automated programs and electronic networks.<sup>75</sup> Even the world famous New York Stock Exchange has shifted significantly into electronic trading.<sup>76</sup> In 2013, it even made preparations to operate entirely without human traders.<sup>77</sup>

In sum, the emergence of modern financial technologies has significantly changed the role of humans in finance. Similar to the changes in baseball and law, the changes in finance do not mean an elimination of the human element from finance. Humans are still needed to create the codes, strategies, and programs for the machines.<sup>78</sup> Human ingenuity is still needed to create a regulatory infrastructure to meaningfully manage the emerging financial technology.<sup>79</sup> Financial regulation and reform efforts are inherently political efforts endeavored by human actors.<sup>80</sup> Likewise, corporate governance and political governance relating to finance and other industries are generally filled with so many challenges and promises because they are inherently human exercises devoid

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AND SPECIAL SITUATIONS 229 (2011) ("The goal of algorithmic trading is to take the human factor out of trading as much as possible to avoid the irrational aspects of fear (economic panics) and greed (irrational exuberance)."); Tom C.W. Lin, *A Behavioral Framework for Securities Risk*, 34 SEATTLE U. L. REV. 325, 340–49 (2011) (cataloging the cognitive limitations of investors); Andrew W. Lo & Dmitry V. Repin, *The Psychophysiology and Real-Time Financial Risk Processing*, 14 J. COGNITIVE NEUROSCIENCE 323 (2002); Anandi Mani et al., *Poverty Impedes Cognitive Function*, SCI. MAG. Aug. 2013, at 976, 976–80.

<sup>74</sup> See BRIAN R. BROWN, CHASING THE SAME SIGNALS: HOW BLACK-BOX TRADING INFLUENCES STOCK MARKETS FROM WALL STREET TO SHANGHAI 11 (2010).

<sup>75</sup> Jerry W. Markham & Daniel J. Harty, *For Whom the Bell Tolls: The Demise of Exchange Trading Floors and the Growth of ECNs*, 33 J. CORP. L. 865, 866 (2008).

<sup>76</sup> See Ben Protess & Nathaniel Popper, *Exchange Sale Reflects New Realities of Trading*, N.Y. TIMES, Dec. 21, 2012, at A1.

<sup>77</sup> Jacob Bunge, *NYSE Revamps Disaster Plan*, WALL ST. J., Mar. 9, 2013, at B1.

<sup>78</sup> See RISHI K. NARANG, INSIDE THE BLACK BOX: A SIMPLE GUIDE TO QUANTITATIVE AND HIGH-FREQUENCY TRADING, at xiii–xvi (2009); Steve Lohr, *Google Schools Its Algorithm*, N.Y. TIMES, Mar. 6, 2011, at WK4 ("Computers are only as smart as their algorithms—man-made software recipes for calculation . . .").

<sup>79</sup> See, e.g., Nat Durlach et al., *Source Separation, Localization, and Comprehension in Humans, Machines, and Human-Machine Systems*, in SPEECH SEPARATION BY HUMANS AND MACHINES 221, 225 (Pierre Divenyi ed., 2005) (explaining how humans are needed to monitor and correct errors in machine-driven processes); Lin, *supra* note 67, at 595–96; Andrea M. Matwyshyn, *Corporate Cyborgs and Technology Risks*, 11 MINN. J.L. SCI. & TECH. 573, 579 (2010) (discussing the need to have humans manage technological risks).

<sup>80</sup> Adam J. Levitin, *The Politics of Financial Regulation and The Regulation of Financial Politics*, 127 HARV. L. REV. 1991, 2068 (2014).

of simple, mechanical formulas that can be performed precisely by machines.<sup>81</sup> Machines, after all, cannot write code out of ether or regulate themselves in accordance to a moral, political system. Thus, despite the emergence of smart machines, the human element, while different in role, remains a critical component in finance.<sup>82</sup>

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The changes in baseball, law, and finance caused by modern science and technology test Sexton's thesis that baseball can serve as a vehicle for living a more conscious life that elevates the human experience for lawyers and non-lawyers, but such changes are not relegated only to those arenas. Instead, these changes are affecting almost every aspect of our society and our lives. Smart machines are doing more and more, and allowing us to act like self-isolating bystanders in our own lives.<sup>83</sup> Although it may be easy and understandable to relegate the human experience and the human component to a secondary role in the new age of machines, that sentiment would be misplaced and wrong.<sup>84</sup> Modern developments in science and technology have made Sexton's call to live a more conscious life that heightens the human experience much harder, but also much more important.

Artificial intelligence, despite its advances, still lacks the awareness, judgment, and sophistication of human intelligence.<sup>85</sup> Machines still cannot do all that we can do.<sup>86</sup> The human brain, after all, with its billions of neurons and trillions of synaptic connections, remains one of the most sophisticated of machines.<sup>87</sup> Human ingenuity in persuasion, culture, spirit, emotion, and all the other ineffable matters that are difficult to capture by data, but are quintessen-

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<sup>81</sup> See, e.g., Tom C.W. Lin, *CEOs and Presidents*, 47 U.C. DAVIS L. REV. 1351, 1364–88 (discussing the promises and perils of corporate and political governance).

<sup>82</sup> See NARANG, *supra* note 78, at xiii–xvi.

<sup>83</sup> See ERIK BRYNJOLFSSON & ANDREW MCAFEE, *THE SECOND MACHINE AGE: WORK, PROGRESS AND PROSPERITY IN A TIME OF BRILLIANT TECHNOLOGIES* 57–71 (2014); SHERRY TURKLE, *ALONE TOGETHER: WHY WE EXPECT MORE FROM TECHNOLOGY AND LESS FROM EACH OTHER* 279–81 (2011).

<sup>84</sup> JARON LANIER, *YOU ARE NOT A GADGET: A MANIFESTO* 24–30 (2010). For further discussion, see generally, Patrick McKinley Brennan, *Realizing the Rule of Law in the Human Subject*, 43 B.C. L. REV. 227 (2002).

<sup>85</sup> See STEPHEN BAKER, *FINAL JEOPARDY: MAN VS. MACHINE AND THE QUEST TO KNOW EVERYTHING* 148–69 (2011) (discussing the limitations of artificial intelligence).

<sup>86</sup> See BRIAN CHRISTIAN, *THE MOST HUMAN HUMAN: WHAT TALKING WITH COMPUTERS TEACHES US ABOUT WHAT IT MEANS TO BE ALIVE* 5–10 (2011) (discussing the limitations of computerized communications with humans); CHRISTOPHER STEINER, *AUTOMATE THIS: HOW ALGORITHMS CAME TO RULE OUR WORLD* 5–6 (2012) (opining on the need for humans to manage processes run by algorithms); John Markoff, *How Many Computers to Identify a Cat? 16,000*, N.Y. TIMES, June 26, 2012, at B1 (reporting on efforts to replicate human visual recognition with artificial intelligence).

<sup>87</sup> ELLEN E. PASTORINO & SUSANN M. DOYLE-PORTILLO, *WHAT IS PSYCHOLOGY?* 355 (2011).

tial to being human, remain key ingredients in any successful enterprise.<sup>88</sup> This is true for baseball, law, finance, and beyond. As science and technology reduce more of our lives into bits and bytes of data and code, the ineffable and irreducible components of the human experience have been made much harder to sustain, but also much more important to living a meaningful, spiritual, and balanced life for lawyers and non-lawyers.<sup>89</sup>

### III. THE ROAD AHEAD

The information superhighway of modern life and Sexton's road to God appear to present diverging crossroads, but two familiar dualities from law and religion offer us a different and more hopeful perspective. The duality of certainty and doubt, along with the duality of rules and standards, suggests that these crossroads are truly a recasting of timeless dialogues from law and religion that can offer us a meaningful path forward.

#### A. *Certainty and Doubt*

The information superhighway of modern life paved by technology, and science and Sexton's road to God paved by spirituality and awareness, are in many ways a recasting of the critical duality of certainty and doubt from both law and religion. Like baseball, both law and religion are moved by certainty and doubt.<sup>90</sup> As certainty and doubt intertwine, leaps of faith in both law and religion envelop both concepts. Criminal defendants are freed if a jury finds "reasonable doubt" as to their guilt, even though a jury may never be absolutely certain of the defendant's innocence.<sup>91</sup> The legal doctrine of double jeopardy enshrined in the Fifth Amendment to the U.S. Constitution gives finality to litigants and defendants even though there is rarely indisputable certainty to

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<sup>88</sup> See, e.g., AYRES, *supra* note 73, at 117 (discussing the role of human expertise in a data-driven world); DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE: WHY IT CAN MATTER MORE THAN IQ* 60–72 (1995) (explicating on the importance of emotional intelligence in human relationships); NEIL POSTMAN, *TECHNOPOLY: THE SURRENDER OF CULTURE TO TECHNOLOGY* 71–72 (1993).

<sup>89</sup> Advances in science and technology have frequently challenged the values of human spirituality and human experience. See JAMES BARRAT, *OUR FINAL INVENTION: ARTIFICIAL INTELLIGENCE AND THE END OF THE HUMAN ERA* 3–4 (2013); RICHARD HOLMES, *THE AGE OF WONDER: HOW THE ROMANTIC GENERATION DISCOVERED THE BEAUTY AND TERROR OF SCIENCE* 94 (2008). Yet, many prominent scientists and technologists can agree that, like in previous times in history, there will remain an important role for human spirituality and human experience in future times despite unparalleled advances in science and technology. See, e.g., WALTER ISAACSON, *EINSTEIN: HIS LIFE AND UNIVERSE* 390 (2008) (quoting Albert Einstein) ("[S]cience without religion is lame, religion without science is blind."). But see RICHARD DAWKINS, *THE GOD DELUSION* 139–80 (2008) (arguing against the existence of God and the importance of religion given the emergence of science).

<sup>90</sup> See, e.g., SEXTON, *supra* note 4, at 55 ("Doubt is at the core of baseball . . . . And doubt is central to the religious experience.").

<sup>91</sup> See Jon O. Newman, *Beyond "Reasonable Doubt,"* 68 N.Y.U. L. REV. 979, 981–90 (1993) (discussing the "reasonable doubt" standard).

the resolution of a legal proceeding.<sup>92</sup> Similarly, believers and apostles of the world's great religions place their faith in higher powers that they cannot see despite their doubts.<sup>93</sup> Just as law and religion have learned to embrace both certainty and doubt, and their comforts and challenges, we can also learn to heed Sexton's call to live "simultaneously the life of faith and the life of the mind" in the face of modernity.<sup>94</sup>

The speed, accuracy, and convenience of modern information technology and its data-driven models have led many in baseball, law, finance, and beyond to idolize such technology, with its elegant models as antidotes to the uncertainties and doubts of human action and human folly.<sup>95</sup> But such idolatry is misplaced, as complex, elegant models do not eliminate uncertainty and doubt, nor do they generate truth.<sup>96</sup> Uncertainty and doubt are ultimately immeasurable and ineffable necessities of the human experience.<sup>97</sup> A juror never truly knows with absolute certainty the guilt of a defendant he or she just convicted. Similarly, a believer never knows for sure that a forgiving God hears their prayers of penance. Doubt exists infinitely and cannot be reduced or eliminated by models. The financial crisis of 2008 occurred, partially, because many financial models failed to properly account for this truism.<sup>98</sup> As a result, many institutions, executives, and financiers full of certainty and confidence suffered catastrophic losses by investing based on their high-powered computer models.<sup>99</sup>

Despite all the modern advances in information technology and artificial intelligence, there exists no model so refined that it generates flawless fore-

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<sup>92</sup> See U.S. CONST. amend. V ("[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb."); see also Carissa Byrne Hessick & F. Andrew Hessick, *Double Jeopardy as a Limit on Punishment*, 97 CORNELL L. REV. 45, 59 (2011) (discussing how the doctrine of double jeopardy is intended to create finality for litigants).

<sup>93</sup> See JENNIFER MICHAEL HECHT, DOUBT: A HISTORY 45, 86, 169 (2004).

<sup>94</sup> SEXTON, *supra* note 4, at 220.

<sup>95</sup> EMANUEL DERMAN, MODELS BEHAVING BADLY: WHY CONFUSING ILLUSION WITH REALITY CAN LEAD TO DISASTER, ON WALL STREET AND IN LIFE 143–87 (2011).

<sup>96</sup> See, e.g., Paul Krugman, *How Did Economists Get It So Wrong?*, N.Y. TIMES MAG., Sept. 6, 2009, at 36 ("[E]conomists, as a group, mistook beauty, clad in impressive-looking mathematics, for truth.").

<sup>97</sup> See FRANK H. KNIGHT, RISK, UNCERTAINTY, AND PROFIT 347 (1921).

<sup>98</sup> See, e.g., ANTHONY SAUNDERS & LINDA ALLEN, CREDIT RISK MANAGEMENT IN AND OUT OF THE FINANCIAL CRISES: NEW APPROACHES TO VALUE AT RISK AND OTHER PARADIGMS 31 (2010); Amir E. Khandani & Andrew W. Lo, *What Happened to the Quants in August 2007?*, 5 J. INV. MGMT. 5, 5–9 (2007); Krugman, *supra* note 96, at 36 ("There was nothing in the prevailing models suggesting the possibility of the kind of collapse that happened last year.").

<sup>99</sup> See, e.g., Khandani & Lo, *supra* note 98; Tom C.W. Lin, *Too Big to Fail, Too Blind to See*, 80 MISS. L.J. 355, 371–73 (2010) (discussing the role of overconfidence in financial models in connection with the financial crisis); Joe Nocera, *Risk Management*, N.Y. TIMES MAG., Jan. 4, 2009 (opining on the flawed prevailing risk models prior to the 2008 financial crisis).



casts in an uncertain world filled with human whimsy.<sup>100</sup> This is because doubt and randomness are inherent aspects of the human experience.<sup>101</sup> After losing a large sum of his investments during the South Sea Bubble in 1720, Isaac Newton remarked: “I can calculate the motion of heavenly bodies but not the madness of people.”<sup>102</sup> That said, when properly utilized, computer models can be incredibly instructive tools in baseball, law, finance, and beyond. However, even when properly utilized, they are not failsafe because uncertainty and doubt remain.<sup>103</sup> And they should, because scientific knowledge and discovery necessary for human progress frequently require doubt and uncertainty as key ingredients.<sup>104</sup>

Therefore, humans should not surrender their doubts, their wills, and their minds to the emerging technological certainties of modern life. Just as baseball, law, and finance have learned to combine modern technology with timeless, innate human attributes, we must do the same in the course of living and designing our daily lives.<sup>105</sup> Rather than surrender our doubts, our curiosities, and our humanity in whole or in part, we should leverage modern conveniences in ways that permit us to rededicate more of ourselves to experiencing the timeless, ineffable joys and wonders of learning and living.<sup>106</sup>

### B. Rules and Standards

Similar to how the duality of certainty and doubt reflected the path of modern living and Sexton’s road to God, the duality of rules and standards also offers a recasting of these two paths. Similar to how law and religion learned to embrace both rules and standards, and their comforts and challenges, we too

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<sup>100</sup> See Mark Whitehouse, *Economists’ Grail: A Post-Crash Model*, WALL ST. J., Nov. 30, 2010, at A1 (reporting on the fallacies of financial models in light of the financial crisis of 2008).

<sup>101</sup> See JAMES OWEN WEATHERALL, *THE PHYSICS OF WALL STREET: A BRIEF HISTORY OF PREDICTING THE UNPREDICTABLE* 36–39 (2013); Andrew W. Lo & Mark T. Mueller, *Warning: Physics Envy May Be Hazardous to Your Wealth!*, 8 J. INV. MGMT. 13, 21 (2010).

<sup>102</sup> SCOTT PATTERSON, *THE QUANTS: HOW A NEW BREED OF MATH WHIZZES CONQUERED WALL STREET AND NEARLY DESTROYED IT* 12 (2010) (internal quotation marks omitted).

<sup>103</sup> See, e.g., Lo & Mueller, *supra* note 101, at 14.

<sup>104</sup> See RICHARD P. FEYNMAN, *THE PLEASURE OF FINDING THINGS OUT: THE BEST SHORT WORKS OF RICHARD P. FEYNMAN* 146 (2005) (“The scientist has a lot of experience with ignorance and doubt and uncertainty, and this experience is of very great importance . . . . Scientific knowledge is a body of statements of varying degrees of certainty—some most unsure, some nearly sure, none absolutely certain.”)

<sup>105</sup> See TOM KELLEY & DAVID KELLEY, *CREATIVE CONFIDENCE* 89 (2013) (advocating for “human-centered” designs that couple qualitative, human elements with quantitative insights from Big Data).

<sup>106</sup> See, e.g., EREZ AIDEN & JEAN-BAPTISTE MICHEL, *UNCHARTED: BIG DATA AS A LENS ON HUMAN CULTURE* 10–15 (2013); CLIVE THOMPSON, *SMARTER THAN YOU THINK: HOW TECHNOLOGY IS CHANGING OUR MINDS FOR THE BETTER* 6 (2013) (“At their best, today’s digital tools help us see more, retain more, and communicate more.”).

can also learn to live a spiritual life of the mind in the presence of modern realities.

The discourse of choosing between a modern life guided by smart machines and a traditional life guided by human experience echoes the discourse surrounding the choice between rules and standards from law and religion. In the arena of law, the rules and standards duality has enriched the legal canon.<sup>107</sup> Legal rules, like machines, are often appreciated for their clarity, precision, and predictability<sup>108</sup> but criticized for their rigidity and obtuseness.<sup>109</sup> Conversely, legal standards, like humans, are often appreciated for their flexibility, nuance, and empathy<sup>110</sup> but are criticized for their uncertainty and amorphousness.<sup>111</sup>

In the arena of religion, there exist comparable sentiments about religious rules and religious standards. For instance, the Book of Exodus articulates a mandatory rule of rest on the Sabbath, punishable by death.<sup>112</sup> The rule is clear and precise, but also rigid and blunt. And in the Gospel of Matthew, Jesus articulates the humane standard for the Greatest Commandments,<sup>113</sup> which is filled with empathy, but also expansive and open to multiple valid interpretations.<sup>114</sup>

The treatment of rules and standards in law and religion suggest a hopeful perspective for living a more conscious life, and a more modern life. Both law and religion recognize that the clarity, precision, and predictability of rules must be balanced with the nuance, flexibility, and empathy of standards to achieve their respective ends. Advances in information technology and artifi-

<sup>107</sup> See generally Colin S. Diver, *The Optimal Precision of Administrative Rules*, 93 YALE L.J. 65 (1983); Louis Kaplow, *Rules Versus Standards: An Economic Analysis*, 42 DUKE L.J. 557 (1992); Seana Valentine Shffrin, *Inducing Moral Deliberation: On the Occasional Virtues of Fog*, 123 HARV. L. REV. 1214 (2010); Kathleen M. Sullivan, *The Justices of Rules and Standards*, 106 HARV. L. REV. 22 (1993); Cass R. Sunstein, *Problems with Rules*, 83 CAL. L. REV. 953 (1995).

<sup>108</sup> Shffrin, *supra* note 107, at 1214.

<sup>109</sup> See Sullivan, *supra* note 107, at 26; Sunstein, *supra* note 107, at 991–92.

<sup>110</sup> See Shffrin, *supra* note 107 (arguing that legal standards are “often valued for their flexibility and their susceptibility to nuanced, context-sensitive interpretation”).

<sup>111</sup> See, e.g., Alice G. Abreu & Richard K. Greenstein, *It’s Not a Rule: A Better Way to Understand the Definition of Income*, 13 FLA. TAX REV. 101, 130–32 (2012); Russell B. Korobkin, *Behavioral Analysis and Legal Form: Rules vs. Standards Revisited*, 79 OR. L. REV. 23, 37–38 (2000); Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175, 1178–79 (1989).

<sup>112</sup> See Exodus 35:2 (“On six days work may be done, but the seventh day shall be sacred to you as the Sabbath of complete rest to the Lord. Anyone who does work on that day shall be put to death.”).

<sup>113</sup> See Matthew 22:36–40 (“‘Teacher, which is the greatest commandment in the Law?’ Jesus replied: ‘Love the Lord your God with all your heart and with all your soul and with all your mind. This is the first and greatest commandment. And the second is like it: ‘Love your neighbor as yourself.’ All the Law and the Prophets hang on these two commandments.”).

<sup>114</sup> See, e.g., Richard Beck, *Love in the Laboratory: Moving from Theology to Research*, 31 J. PSYCHOL. & CHRISTIANITY 167, 167–74 (2012) (discussing varying interpretations of the Greatest Commandments).

cial intelligence may have reduced many modern activities into elegant mathematical rules for smart machines, where human input is not necessary or welcome. But those smart machines and elegant mathematical rules cannot begin to capture the very essence of being human.<sup>115</sup> Beyond machines and rules, humans and standards are needed for a more meaningful, modern existence. Standards, because of their nuanced and amenable constitution, require and encourage human deliberation and judgment.<sup>116</sup> And such deliberation and judgment enhances and encourages moral development.<sup>117</sup> Collectively, rules and standards form a more optimal, complimentary, and balanced structure for thinking and choosing, in law and society.<sup>118</sup>

Analogous to the symbiotic coexistence of rules and standards in law and religion, the modern life of cold science and technology must be balanced with the spiritual life of heightened awareness and presence for greater satisfaction and meaning.<sup>119</sup> For believers and non-believers, a spiritual life with greater meaning need not come from organized religion, which is not without its flaws.<sup>120</sup> Rather, advances in modern technology must be matched with advances in “technologies of the self,” whether it finds root in religion or elsewhere, in order for there to be meaningful human progress.<sup>121</sup> In the final analysis, all of the advanced technology in the world cannot truly give purpose and fulfillment to someone bereft of meaning in their lives. Thus, just as law and religion need both standards and rules,<sup>122</sup> lawyers and non-lawyers need both a life of the mind and a life of the spirit.

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<sup>115</sup> See JEROME FRANK, *LAW AND THE MODERN MIND* 129 (2009) (“The acts of human beings are not identical mathematical entities; the individual cannot be eliminated as, in algebraic equations, equal quantities on the two sides can be cancelled.”).

<sup>116</sup> See Shiffrin, *supra* note 107, at 1222.

<sup>117</sup> *Id.* at 1224.

<sup>118</sup> See Yuval Feldman & Alon Harel, *Social Norms, Self-Interest and Ambiguity of Legal Norms: An Experimental Analysis of the Rule vs. Standard Dilemma*, 4 REV. L. & ECON. 81, 81 (2008) (suggesting that legal standards and rules balance one another to symbiotically create more optimal decisions).

<sup>119</sup> See, e.g., Angelina R. Sutin et al., *Personality and Career Success: Concurrent and Longitudinal Relations*, 23 EUR. J. PERSONALITY 71, 71–84 (2009) (finding that individuals with higher conscientiousness possess higher levels of income and job satisfaction).

<sup>120</sup> See generally ROBERT D. PUTNAM, *AMERICAN GRACE: HOW RELIGION DIVIDES AND UNITES US* (2012).

<sup>121</sup> See Michael Foucault, *Technologies of the Self*, in *TECHNOLOGIES OF THE SELF: A SEMINAR WITH MICHAEL FOUCAULT* 16–20 (Luther H. Martin et al. eds., 1988) (referring to methods of personal improvement as “technologies of the self”).

<sup>122</sup> See FRANK, *supra* note 115, at 129 (“The law is not a machine and the judges not machine-tenders. There never was and there never will be a body of fixed and predetermined rules alike for all.”).

## CONCLUSION

Contrary to its title, *Baseball as a Road to God*, offers no path to heaven for lawyers and non-lawyers. Instead, it suggests that the national pastime of baseball can serve as a vehicle for living a more conscious life that elevates the human experience here on earth. This Essay examined the credibility of the book's suggested path to a better life in the face of contemporary realities in baseball, law, finance, and beyond. As modern living becomes more and more moved by the blur, bluster, and burden of science and technology, the ineffable and irreducible components of the human experience become much harder to sustain, but also much more important to living a meaningful, awakened life. Baseball, a timeless game about leaving home and coming home, can perhaps remind us of what is truly important to living a good life.<sup>123</sup> And may be by merely reimagining and seeing our national pastime as a path to a more meaningful existence, we as lawyers and non-lawyers can perhaps begin to reimagine and see our personal paths there.

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<sup>123</sup> See A. Bartlett Giamatti, *Recall as the Series Ends, The Afternoon of the Fall*, in THE BASEBALL WRITINGS OF A. BARTLETT GIAMATTI 29–30 (Kenneth S. Robson ed., 1998) (“Baseball is about going home . . . . Its wisdom says you can go home again but that you cannot stay. The journey must always start once more, the bat an oar over the shoulder, until there is an end to all the journeying.”).