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‘ONE CAN’T BELIEVE IMPOSSIBLE THINGS’:
A NEW DEFENCE OF PENAL SUBSTITUTIONARY
ATONEMENT IN LIGHT OF THE LEGAL CONCEPTS OF
VICARIOUS LIABILITY AND *RESPONDEAT SUPERIOR*

CHRISTOPHER WOZNICKI

FULLER THEOLOGICAL SEMINARY

Alice laughed: ‘There’s no use trying,’ she said; ‘one can’t believe impossible things.’ ‘I daresay you haven’t had much practice,’ said the Queen. ‘When I was younger, I always did it for half an hour a day. Why, sometimes I’ve believed as many as six impossible things before breakfast.’¹

Lewis Carroll

On any given Sunday congregations all over the world will gather to sing songs extolling the goodness of God for the sacrifice of his Son. They will boldly proclaim lyrics of hymns like, ‘And Can It Be, That I Should Gain,’ saying:

And can it be, that I should gain an interest in the Saviour’s blood?
Died he for me, who caused his pain?
For me, who him to death pursued?
Amazing love! How can it be that thou, my God, shouldst die for me!²

To many Christians in such congregations, the claims expressed in songs like this encapsulate glorious truths of the gospel. This, however, is not universally the case. There are Christians who for various reasons—be it personal experiences or intellectual objections—do not find such claims of the gospel to be ‘glorious.’ To such Christians penal substitution does not represent good news, rather, it perpetuates a distorted image of who God is.³ In many cases opponents of penal substitution reject the doctrine because of the supposedly abusive nature of the doctrine. The doctrine

¹ Lewis Carroll, *Through the Looking Glass: And what Alice Found There* (Philadelphia: Henry Altemus Company, 1897), pp. 102–3.

² Charles Wesley, ‘And Can It Be, That I Should Gain’, 1738.

³ For example, see: Rita Nakashima Brock and Rebecca Parker, *Proverbs of Ashes: Violence, Redemptive Suffering, and the Search for What Saves Us* (Boston: Beacon Press, 2001), pp. 30–31; Delores Williams, *Sisters in the Wilderness: The Challenge of Womanist God-Talk* (Maryknoll, NY: Orbis, 1993), p. 167.

makes God look too much like a child-abuser or an abusive husband who demands unthinking submission from his wife. Such objections ought to be addressed in pastorally sensitive ways. Afterall, personal experience of abuse—not mere intellectual opposition—might be at the core of some people’s rejection of penal substitution. In addition to rejecting the doctrine because of its supposed unsavoury ethical or pastoral implications some have rejected penal substitution on the grounds that penal substitution—in general and not simply as a theological doctrine—is by definition impossible. In this essay I attempt to address one version of this objection raised by Brent Kyle in ‘Punishing and Atoning: A New Critique of Penal Substitution.’

The essay proceeds as follows. In part one I define penal substitutionary atonement and distinguish between two versions of the doctrine: Penal Substitution *Simpliciter* and the Penal Consequences View of Atonement. With this distinction in place, part two examines Kyle’s argument which states that a necessary condition for punishment is that the person inflicting the punishment must believe that the person receiving the punishment is in some way responsible for the offence. I argue against this condition by appealing to the legal concept of vicarious liability. This concept serves as a counterexample to Kyle’s proposed condition for punishment, thereby undercutting his argument. In part three I argue that the concept vicarious liability can serve as more than a counter-example to Kyle’s proposed criteria for punishment. I make the case that vicarious liability along with the legal doctrine of *respondeat superior* provides a novel and helpful way for thinking about the theological doctrine of penal substitution. I motivate this claim by showing how being made in the image of God and being united to Christ can ground an appeal to these legal doctrines in a defence of penal substitutionary atonement.

1. DEFINING PENAL SUBSTITUTIONARY ATONEMENT

The doctrine of penal substitution can be stated pithily in eight words: Christ died in my place for my sins. Yet, given the doctrine’s significance, and its place in gospel proclamation, more nuance is necessary. This nuance involves distinguishing between different versions of the doctrine.

Current discussions of penal substitution suggest that there are at least two versions of the doctrine. Let us call the first version Penal Substitution *Simpliciter* (PSA) and the second version the Penal Consequences View of Atonement (PCA). Let us define PSA as the doctrine according to which:

Sinners deserve to be punished for their sin. Christ undertakes the punishment for sin that sinners deserved. Because of this, sinners do not need to undertake that punishment themselves because God's justice is satisfied by Christ's death.

This definition finds support in a number of important historical documents—e.g. The Belgic Confession and The Heidelberg Catechism—as well as contemporary articulations of the doctrine.⁴ This version of penal substitution, however, is not the only account that one could provide. There is, in fact, a second version that has recently received some attention and is consistent with several historical protestant articulations of atonement.

Let us define the second version of penal substitution, as follows:

Sinners deserve to be punished for their sin. Christ undertakes the consequences for sin, which had it fallen upon sinners, would be the punishment for sin that sinners deserved. Because of this, sinners do not have to undergo that punishment themselves, yet God's justice is satisfied by Christ.

This second version, which I am calling 'The Penal Consequences View of Atonement,' has recently been articulated by William Lane Craig and J.P. Moreland. They define penal substitution as the doctrine that 'God inflicted on Christ the suffering we deserved as the punishment for our sins, as a result of which we no longer deserve punishment.'⁵ What is significant about this articulation of the doctrine is that it leaves open whether Christ was actually punished for sin. That is, it is possible that 'God afflicted Christ with the suffering that, had it been inflicted on us, would have been our just desert and, hence, punishment. In other words, Christ was not punished but he endured the suffering that would have been our punishment had it been inflicted on us.'⁶ This version of penal substitution has also been articulated by James Denney and is consistent with the confessional statements of a number of traditions.⁷ With these

⁴ 'Thomas Schreiner, 'Penal Substitution View' in *The Nature of the Atonement: Four Views*, ed. James Beilby and Paul Eddy (Downers Grove, IL: InterVarsity Press, 2006), p. 67. Stephen Holmes, 'Penal Substitution' in *T&T Clark Companion to Atonement*, ed. Adam Johnson (New York: Bloomsbury T&T Clark, 2017), p. 295.

⁵ William Lane Craig and J.P. Moreland, *Philosophical Foundations for a Christian Worldview*, 2nd ed (Downers Grove, IL: InterVarsity Press, 2017), p. 613.

⁶ Ibid.

⁷ James Denney, *The Christian Doctrine of Reconciliation* (London: Hodder and Stoughton, 1917), pp. 187, 214, 208, 273. 'Westminster Confession of Faith', accessed March 14, 2019, <<https://students.wts.edu/resources/creeds/>

two definitions in place let us proceed to examine Brent Kyle's argument against the possibility of penal substitution.

2. 'ONE CAN'T BELIEVE IMPOSSIBLE THINGS' – THE BELIEF OBJECTION AND VICARIOUS LIABILITY

In a famous scene in Lewis Carroll's *Through the Looking Glass*, Alice addresses the Queen of Hearts saying, 'There's no use trying... One can't believe impossible things.' To which the queen, rather humorously replies, 'I daresay you haven't had much practice.' Some philosophers find themselves in Alice's position, exasperated in their attempts to believe impossible things, like the doctrine of penal substitution. Their exasperation only grows because believers in penal substitution seem to take the same route as the queen, forcing themselves to believe impossible things through 'practice.' What might this 'practice' consist of? Perhaps it consists of rehearsing the contours of penal substitution by listening to sermons, going through catechisms, reading books, or singing songs that extol the doctrine. In light of widespread belief in an 'impossible' doctrine, Brent Kyle sets out to prove that penal substitution is impossible. He does this by arguing for a necessary condition for punishment that falsifies the claims of the penal substitutionary theory.

Kyle's argument begins by assuming that punishment involves imposing harm onto someone.⁸ With this assumption in mind he considers two cases in which a person imposes harm towards another. The first is the case of a 19-year-old man who showed up late for work in a sporting goods store. This man, Ryan Wood, was punished by being forced to spend the morning dressed as a mannequin in the store's window. The second case is that of a masochist being flogged by a sadist. In these cases, only the case of Ryan Woods counts as a punishment. Even though the masochist receives harsh treatment, the masochist is not punished. Why is this the case? It is because there is no offence that has been committed by the masochist. Punishment, it is generally recognized, 'always involves an offense in some way or another.'⁹ This condition, however, is not by itself enough to establish the necessary conditions for punishment. According to Kyle,

westminsterconfession.html/>. See VIII.4. See also, The Southern Baptist Convention, 'On the Necessity of Penal Substitutionary Atonement', accessed March 14, 2019, <<http://www.sbc.net/resolutions/2278/on-the-necessity-of-penal-substitutionary-atonement/>>.

⁸ Brent Kyle, 'Punishing and Atoning: A New Critique of Penal Substitution', *International Journal for Philosophy of Religion* 74 (2013), p. 208.

⁹ Ibid.

it also seems clear that 'the punishing authority must at least believe that there was an offense.'¹⁰

In order to motivate this assumption, Kyle asks us to imagine a father who comes home from a bad day at work and spansks his child to 'let off steam,' knowing the child did nothing wrong. If this were to occur, we would call this treatment abusive, but we would not call it punishment. Now, imagine if the child had skipped school unbeknownst to the father. If, the father, like in the first scenario spansks his child for the sake of letting off steam but is unaware that his child skipped school that day we would still not call this punishment. This seems to indicate that the person doing the punishment must at least believe that there was an offence committed.¹¹

Kyle, helpfully, notes that penal substitution can account for what is said so far. God, in penal substitution, believes and knows that there was an offence, i.e. sin. But the knowledge condition is not enough to establish punishment. The punishing authority 'must believe that the intended recipient is responsible for the offense.'¹² If for example, the father had his wallet stolen earlier that day and spansks his child to 'let off steam' knowing that the child did not steal the wallet, this would not count as punishment because the father does not believe that it was the son who committed the offence. The principle we are led to believe from these scenarios is that 'the authority who imposes the harm must at least believe its intended recipient committed the offense.'¹³

Such a view, however, is too strong. There are cases where a person can be punished for an offence even though he is not believed to have committed it. Consider the case of a person who hires a hit-man to murder an enemy. The person who pays a hit-man to murder his enemy did not actually commit a murder. Nevertheless, the client is responsible for the fact that the murder was committed. No one would object to punishing the person who contracted the murder. So, it seems as though what we ought to say is that punishment occurs only if 'the authority believes that the recipient is *responsible* for the offense having been committed.'¹⁴ This does not require full responsibility, but it requires responsibility at least in part. Having worked through a number of scenarios, Kyle concludes with the following condition for punishment:

¹⁰ Ibid. Italics in the original.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid., p. 209.

P punishes S for (supposed) offense O only if:

(1) P believes that S is at least partly responsible for O having been committed.¹⁵

Let us call this the ‘belief condition.’ This condition, not only creates profound difficulties for penal substitution, it makes penal substitution impossible. Kyle explains, ‘In general, condition (1) could never be fulfilled when P is an omniscient being (e.g. God) and S is completely innocent (e.g. Christ). Surely God did not believe that Christ was at all responsible for human sin having been committed.’¹⁶ Given that God could not in fact believe that Christ is responsible for human sin, it is impossible for God to meet the belief condition. Given the impossibility of God meeting this condition we must also say that ‘it is not the case that God punished Christ.’¹⁷ Thus, penal substitution seems to be ruled out.

2.1 Responding to the Belief Condition

Given the belief condition of punishment it seems that the defender of penal substitution is in a difficult position. What is a penal substitution theorist to do? The penal substitution theorist could attempt to clarify what version of penal substitution is the target of this argument. Recall, there are at least two versions of penal substitution: PSA and PCA. PSA claims that Christ undertakes the punishment for sin that sinners deserved. If accepted, the belief condition rules out PSA. PCA on the other hand is not ruled out by this condition. Recall, PCA states that Christ undertakes the consequences for sin, which had it fallen upon sinners, would be the punishment for sin that sinners deserved. PCA, it seems, is immune to the belief condition objection. Yet, one could argue that PCA has a major shortcoming, namely, that it is not well recognized as a legitimate historical version of penal substitution.¹⁸

If penal substitution theorists are unwilling to accept PCA, what options might they have for responding to the belief condition objection? They can attempt to disprove the belief condition by providing examples of cases in which an agent is punished by an authority who believes that the agent being punished is not responsible for the wrongful act. Recently William Lane Craig has provided an example from legal studies that seems to be a counterexample to the belief condition: the concept of vicarious liability.

¹⁵ Ibid.

¹⁶ Ibid., p. 210.

¹⁷ Ibid.

¹⁸ See for example Holmes, ‘Penal Substitution’, p. 299.

2.2 Vicarious Liability

In the law court there are often cases involving what is called 'vicarious liability.' These cases invoke the legal doctrine of *respondeat superior* in order to impute the liability of a subordinate to his superior.¹⁹ How is the doctrine of *respondeat superior* defined in legal studies? The phrase can be translated as 'let the master answer,' however, it means that 'in certain cases a master is held liable for the wrongful acts of his servant.'²⁰ In modern legal cases in which the *respondeat superior* doctrine is invoked, an employer is held liable for acts done by his employee in his role as an employee, even though the employer did not do these acts himself and is in no way at fault.²¹ Historically, the concept of *respondeat superior* was used to impute liability when an individual was the owner of an instrument which caused harm or when he was the owner of an animal or slave which caused the harm.²² Most often, however, the doctrine was applied in a master-slave situation to make the master liable for the acts of his slaves. In the modern period, with the outlawing of slavery, the rule was broadened to include servants instead of slaves. There are numerous cases which illustrate this legal doctrine. The first case in modern English law was applied in 1709 *Hern v. Nichols*.²³ In this case a silk merchant was held liable for the fraud by his agent in the sale of silk. Consider also *Ruppe vs. City of Los Angeles*. The court found the employer liable for actions committed by its employee. In this case a city employee was assigned to wire a building and set the electricity meters. The plaintiff who was in charge of the building as a caretaker refused to let the employee enter. The city employee forced his way into the building and assaulted the plaintiff in an attempt to finish the job. According to this ruling, the city employee's actions were deemed contrary to the express instructions of his employer. Nevertheless, the court stressed that the assault was done in the course of employment. Young states that 'the court found that in such situations the master is responsible although the act is unauthorized or even contradictory to express orders.'²⁴ Other examples of vicarious liability

¹⁹ William Lane Craig, *The Atonement* (New York: Cambridge University Press, 2018), p. 65.

²⁰ Christine Young, 'Respondeat Superior: A Clarification and Broadening of the Current Scope of Employment Test', *Santa Clara Law Review* 30 (1990): 599.

²¹ Ralph Brill, 'The Liability of an Employer for the Wilful Torts of His Servants', *Chicago-Kent Law Review* 45 (1968): 1.

²² Young, 'Respondeat Superior', p. 600.

²³ *Ibid.*, p. 601.

²⁴ *Ibid.*, p. 605.

could be given.²⁵ The principle is in fact widespread. Craig, however, overstates how widespread the principle is when he says that it is a 'largely uncontroversial'.²⁶ This is simply not true. As a counter example to his claim that vicarious liability is uncontroversial one could point out the most famous case in American law involving vicarious liability: *Wright v. Wilcox*. This case involved the injuries caused by a wagon driver.²⁷ Wilcox, the wagon driver, was delivering goods for his employer when some boys attempted to board his moving wagon. Wilcox instructed his horses to go faster so that the boys would not board his wagon. However, in the midst of fleeing from the boys, one of the boys fell underneath the wagon and was seriously injured. The court departed from the *respondeat superior* principle and found that Wilcox's employer was not liable for the injury of the boys. The fact that the principle is controversial is bolstered when one looks at international applications of vicarious liability. French law dictates that 'the principle that the liability of an employer for the wrongful acts of his employees is in no way dependent on any fault of the employer'.²⁸ German law on the other hand has 'imposed a more limited liability upon the employer by connecting his liability with his personal fault; the master is liable only when he has engaged a servant whom he knew or should have known was unfit, or when he did not properly supervise the servant's activities'.²⁹ The differences between the application of vicarious liability in English, American, French, and German law just go to show that the principle is not in fact uncontroversial.

In addition to being incorrect about how 'uncontroversial' vicarious liability is, Craig is incorrect to say that 'it needs to be emphasized that the employer is not, in such cases, being held liable for other acts, such as complicity or negligence in failing to supervise the employee. Indeed, he may remain blameless in the matter'.³⁰ The German application of this law noted above falsifies this claim. Still, Craig's appeal to vicarious liability under the *respondeat superior* principle is significant for defending PSA. This is because the liability for crimes committed by a subordinate in the discharge of his duties is applied to the superior. As

²⁵ For other examples of cases in which *respondeat superior* was appealed to in order to ground vicarious liability see *Carr v. Wm. C. Crowell Co.* (1946) and *Fields v. Sanders* (1947). In both cases employees of the contracting companies assaulted the plaintiffs over the course of their employment.

²⁶ Craig, *Atonement*, p. 65.

²⁷ Young, 'Respondeat Superior', pp. 602–3.

²⁸ Robert Neuner, 'Respondeat Superior in the Light of Comparative Law,' *Louisiana Law Review* 4 (1941): 2.

²⁹ *Ibid.*

³⁰ Craig, *Atonement*, p. 65.

Craig says, ‘the vicarious liability that exists in the law suffices to show that the imputation of our guilt to Christ is not wholly without parallel in our experience.’³¹ Given that vicarious liability under the *respondeat superior* principle is commonly—although not universally—accepted, we have a counter-example to Kyle’s belief condition (BC). Courts sometimes punish employers for offences even though they believe that the employer was not responsible for committing the offence. Given that we have provided a counter example to the BC it seems, at least initially, as though Kyle’s belief condition objection fails.

2.3 Objecting to the Vicarious Liability Defence

Proponents of the belief condition objection might raise an objection to the vicarious liability defence. They could argue that vicarious liability has historically been applied only to cases of masters-slaves, masters-servants, or employers-employees. Penal substitution is not based on any of these relations, thus, the PSA theorist is misapplying this legal principle by applying it to PSA. This objection fails. The reason is that Craig’s use of the vicarious liability defence is not meant to show that PSA is in fact a case of vicarious liability. It is only meant to show that we commonly, knowingly, and wilfully violate the BC. If this is the case then the belief condition is falsified. This version of the vicarious liability argument succeeds in undercutting the belief condition objection to PSA.

There is, however, a stronger version of the vicarious liability argument available to the PSA theorist. If one could show that Christ bears vicarious liability for humanity’s sin as humanity’s *respondeat superior* then the PSA defender could make an even stronger case against the belief condition objection. Craig merely hints at this possibility but does not provide reasons for believing that PSA might be a case of vicarious liability and that Christ is humanity’s *respondeat superior*.³² Had Craig done this he would have provided a much stronger defence of PSA. In what follows I attempt to motivate the belief that vicarious liability applies to PSA because Christ is our superior in the *respondeat superior* doctrine; thereby showing that PSA can be considered a version of vicarious liability.

3. CHRIST AND THE RESPONDEAT SUPERIOR PRINCIPLE

If one were interested in establishing PSA as a version of vicarious liability then one would need to provide reasons for thinking that the relationship

³¹ Ibid., p. 66.

³² Ibid.

between humanity and Christ fits into a *respondeat superior* relationship. What might ground such a relationship?

3.1 *Slaves of the Lord*

One proposal for grounding Christ's *respondeat superior* relationship with human beings would be to appeal to a master-slave or master-servant relationship. The editors of the Harvard Law Review explain that, 'it is a fundamental principle of agency that the master is responsible for injuries to third persons cause by the negligence of his servants in the course of their employment.'³³ Although the journal editors recognize the 'well settled' nature of principle, they go on to explain that, 'it is often difficult to determine when the relation of master and servant exists.'³⁴ This difficulty arises partly because contemporary culture no longer operates within a system of master-servants or master-slaves, rather, it is the employer-employee system that provides the primary impetus for applying the doctrine of *respondeat superior*. This difficulty need not detain those who seek to establish PSA along the lines of vicarious liability. Why not? Because the doctrine of *respondeat superior* developed in ancient times in which master-slave relationships were commonplace, more specifically it developed as a part of Roman law.³⁵ The historical background of the principle is an asset for the PSA theorist because the New Testament – which was also written in 1st century Greco-Roman context – consistently employs the master-slave relationship to describe the Christian's relationship to Christ.

Paul for example employs this imagery to describe his relationship to Christ in Romans 1:1 and Philippians 1:1 – calling himself a *doulos* of Christ. James, Jude, and Peter also apply this designation to themselves.³⁶ That figures with such authority as apostles would identify themselves as 'slaves'—even of God—would have been offensive to Romans and Greeks. To be seen as a slave, in the eyes of the apostles' gentile audiences would have been met with contempt and would have been cause for shame.³⁷

³³ The Harvard Law Review Association, 'The Doctrine of Respondeat Superior', *Harvard Law Review* 17 (1903): 51.

³⁴ *Ibid.*, p. 51.

³⁵ 'Mr. Justice Holmes has traced the apparent origin of the doctrine to ancient Greek and Roman laws which made the master of the family responsible for the harm caused by his animals, his slaves, and by the members of his family.' Brill, 'The Liability of an Employer for the Wilful Torts of His Servants', p. 1.

³⁶ See Jas 1:1, Jude 1, 1 Pet. 1:1.

³⁷ S. Scott Bartchy, 'Slave, Slavery' in *Dictionary of the Later New Testament and Its Developments*, eds. Ralph P. Martin and Peter H. Davids (Downers Grove: InterVarsity Press, 1997), p. 1099.

On the other hand, Jewish Christians would have heard the term more positively. This is because ‘in the Hebrew Bible the phrase in the singular ‘slave of Yahweh’ identifies persons who came to enjoy an especially honoured relationship to Israel’s God, such as Abraham, Isaac, Jacob, Moses, David, and Paul.’³⁸ The apostles who self-identified as slaves of the Lord might have had this Jewish concept in mind as they described their relationship with the Lord. They—especially Paul—might have also employed the term knowing that their Gentile audiences might have heard allusions to the *Familia Caesaris*, that is, the household of Caesar which included slaves and freedpersons. Being a *doulos* of Caesar brought a certain amount of authority and power that derived merely from relating to Caesar.³⁹ By alluding to the *Familia Caesaris* and the *servus Caesaris* Paul might very well have been asserting the Lordship of Jesus Christ over and above all earthly powers.⁴⁰

At this point an objection could be raised. The objection is this: the primary application of the term ‘slaves of the Lord’ is to leaders not all Christians. Paul, Peter, James, Abraham, Isaac, Jacob, Moses are deemed slaves of the Lord, but the term isn’t applied to all of God’s people. Although it might be true that the term is most commonly used to designate leaders, the term and concept is applied to God’s people in general as well. Scott Bartchy writes that ‘Israelites are frequently identified as “slaves of Yahweh”... following his liberation of them from Egyptian chattel slavery in exodus.’⁴¹ The term is also used in the New Testament when Paul refers to believers as ‘slaves of the Lord’ in 1 Corinthians 7:22. More importantly, the concept is used by Paul to describe redemption and sanctification. According to Paul Christians have been purchased by Christ and now belong to him; ‘salvation is presented as a spiritual manumission involving a change of masters.’⁴² Additionally, Paul says that Christians are no longer slaves to sin but slaves to righteousness, to Christ, and to God’s law.⁴³

The idea that God’s people are slaves of the Lord could be used to ground Christ’s role as the superior in the *respondeat superior* principle. This possibility is weakened however if we examine the temporal order

³⁸ Ibid.

³⁹ Michael Brown, ‘Paul’s Use of *Doulos Christou Iēsou* in Romans 1:1’, *JBL* 120 (2001): p. 733.

⁴⁰ Ibid., p. 735.

⁴¹ Bartchy, ‘Slave, Slavery’, p. 1099.

⁴² ‘Slave, Slavery,’ in *Dictionary of the Later New Testament and Its Developments*, eds. Leland Ryken, James Wilhoit, and Tremper Longman III (Downers Grove: IVP Academic, 2010), p. 798. See 1 Cor. 6:19–20 and 7:21–23.

⁴³ Rom. 6:18, 22; 7:25.

of when God's people come to be called slaves of the Lord. In the cases of Israel and of New Testament believers, the designation is only used after redemption is accomplished and applied. In the Old Testament, Israel gets called 'slaves of the Lord' after the exodus event. In the New Testament believers are called 'slaves of the Lord' after Christ accomplishes redemption on the cross. Therefore, to base penal substitution on the ground that we are servants of the Lord is to reverse the temporal order of redemption, that is, it takes what is actually an effect of PSA as the grounds for PSA.

If we are going to develop PSA along the lines of vicarious liability using the *respondeat superior* concept we will have to appeal to another concept besides that of 'the slave of the Lord.' An alternative grounding will still be need to fulfil the criteria that there is a master-slave/master-servant relationship. In other words: 1) There needs to be a hierarchical relationship 2) in which an agent is supposed to carry out his superior's commands and, in some sense, represent his or her superior, and 3) this relationship must not be temporally posterior to atonement. I suggest that the concept the *imago Dei* meets these criteria.

3.2 The *Imago Dei*

It is now well recognized that terms *tselem* and *demut* in Genesis 1:26 ought to be understood in its ancient near eastern context. In its original cultural context, the term referred to a physical image that depicts the original it represents. The term could be used to refer to an idol made of wood or stone through which a deity would manifest its presence in the world.⁴⁴ As such, idols were one way for the divine being to be present in the world. The terms were also used of kings who were living images of God's on earth. Throughout the ancient near east the king was thought to be the embodiment of the divine ruler.⁴⁵ In an Egyptian context the image of God referred to the fact that the king was the embodiment of some divine being.⁴⁶ In a Mesopotamian context the king, who was the image of God, was simply a divinely appointed and empowered representative. In both contexts, 'the person served as a divine representative specifically for the purpose of exercising dominion.'⁴⁷ Given this ancient Near Eastern

⁴⁴ See, Marc Cortez, *Resourcing Theological Anthropology* (Grand Rapids: Zondervan, 2018), p. 109 and José Faur, 'The Biblical Idea of Idolatry', *The Jewish Quarterly Review* 69 (1978):1–15.

⁴⁵ John Walton, *Ancient Near Eastern Thought and the Old Testament* (Grand Rapids: Baker, 2006), p. 212.

⁴⁶ J. Gordon McConville, *Being Human in God's World: An Old Testament Theology of Humanity* (Grand Rapids: Baker, 2016), p. 19.

⁴⁷ Marc Cortez, *Theological Anthropology: A Guide for the Perplexed* (Edinburgh: T&T Clark, 2010), p. 21.

cultural context we are led to believe that that in the Biblical context, all human beings, being the *imago Dei*, have a particular role. God himself is king, and human beings serve as God's representatives and agents in the world. Richard Middleton explains: 'The *imago Dei* designates the royal office or calling of human beings as God's representatives and agents in the world, granted authorized power to share in God's rule or administration of earth's resources and creatures.'⁴⁸ On this reading, to say that human beings are the image of God is to say that they have a particular office or role. Their role is one in which they have been delegated power and authority by a superior, namely God himself.

Could this role, which has appropriately been understood as a 'vice-regent' type role, ground vicarious liability necessary for PSA?⁴⁹ I believe that it can. There are at least two reasons why. First, it has the hierarchical structure that the *respondeat superior* principle demands. McConville explains, 'the commission of the humans to 'rule' over creation therefore reflects an underlying metaphor in which the creator God is himself king.'⁵⁰ As vice-regents, human beings fall under the authority of their superior, namely the one whom they represent/image. They do not have authority to act on their own behalf, they have delegated authority. Second, the vice-regent role has built in responsibilities that humans can either faithfully fulfil or fail to accomplish and therefore be held liable for. As God's vice-regents humans are called to observe and understand the God-designed order of creation and conform themselves to that order.⁵¹ They are to rule creation according to God's will and his standard, reflecting his loving, benevolent, and wise character. Thus, the task that humans have been given as God's vice-regents in creation parallels the kind of tasks a servant might be given by their master. Finally, unlike the master-slave relationship used to describe God's people in the Old and New Testaments, the image/vice-regent relationship does not come into being after redemption. Rather, the image/vice-regent relationship comes into being temporally prior to penal substitution. It comes at creation. All human beings, regardless of whether or not they are believers stand in a particular relationship to the one whom they image: all human beings are

⁴⁸ Richard Middleton, *The Liberating Image* (Grand Rapids: Brazos, 2005), pp. 27–28.

⁴⁹ For the idea that the *imago Dei* should be understood as having a vice-regent function see: John Walton, *The Lost World of Adam and Eve* (Downers Grove: IVP Academic, 2015), pp. 56–57; Sean McDonough, *Creation and New Creation* (Peabody, MA: Hendrickson, 2017), p. 160.

⁵⁰ McConville, *Being Human in God's World*, p. 20.

⁵¹ James Turner, 'Temple Theology, Holistic Eschatology, and the Imago Dei', *Theologica* 2 (2018): 106.

made according to the image of God. Since all human beings are created according to the image of God all human beings have the responsibility of being God's vice-regents in creation. How then do we move from saying that God is the *superior* in the *respondeat superior* principle to saying that Christ is our penal substitute? The key to making this move is to recognize the Christological nature of the *imago Dei*. On such a view, properly speaking, 'the image of God is borne by one individual, Christ.'⁵² Christ himself is the embodiment of the invisible God.⁵³ Accordingly, Christ is the one through whom God's rule is manifested on earth. He is the Lord of lords and the king of kings. The rest of humanity is made in his image, such that we image God insofar as we image Christ. We are, therefore, properly speaking, vice-regents of God insofar as we are made according to the image of Christ, who is the ruler over all creation. It is through this relationship that humanity relates to Christ—our penal substitute—as his servants in a *respondeat superior* type relationship.

3.3 Union with Christ and The Respondeat Superior Principle

So far, I have argued that the grounds for applying the *respondeat superior* principle to PSA might be found in vice-regent relationship that humans have over creation in virtue of being made according to God's image. This argument could be further strengthened by appealing to the concept of union with Christ.

In a curious statement about the *respondeat superior*, 19th century legal scholar Oliver Wendel Holmes remarks that,

It is hard to explain why a master is liable to the extent that he is for the negligent acts of one who at the time really is his servant, acting within the general scope of his employment. Probably master and servant are 'fained [sic] to be all one person' by a fiction.⁵⁴

If a case for vicarious liability can be made based on the concept that a master and servant are feigned to be one in virtue of a legal fiction how much stronger would the case for penal substitution by means of vicarious liability be if in fact the master and slave were actually metaphysically one in the eyes of God? There are several ways to ground such an account.

⁵² Oliver Crisp, *The Word Enfleshed: Exploring the Person and Work of Christ* (Grand Rapids: Baker, 2016), p. 53.

⁵³ Col. 1:15–16.

⁵⁴ Cited in C.B. Labatt, *Commentaries on the Law of Master and Servant Including the Modern laws on Workmen's Compensation, Arbitration, Employers' Liability, Etc., Etc.* (Rochester, NY: The Lawyers Co-operative Publishing Company, 1913), p. 6669.

One way – let us call this the Union Account of Atonement – has recently been argued for by Oliver Crisp. He asks us to ‘consider the possibility that Christ and the elect together compose one metaphysical entity that persists through time, just as, on the Augustinian realist way of thinking, Adam and his progeny do.’⁵⁵ He calls this object, ‘Redeemed Humanity.’⁵⁶ On Crisp’s account, Christ transfers to himself the consequences for the sins of Redeemed humanity and atones for their sins through his death. As a result, all those who are members of the one metaphysical object, ‘Redeemed Humanity’ are reconciled to God. This includes those who lived and died prior to the atonement.⁵⁷

A second way might involve appealing to Jonathan Edwards’s metaphysics of personal identity. How so? According to Edwards ‘personal identity [...] depends on an *arbitrary divine constitution*.’⁵⁸ In other words, personal identity is a matter of *divine fiat*.⁵⁹ The Edwardsean can apply this understanding of personal identity to say that God simply regards the redeemed as being one with Christ, and therefore the redeemed are in fact one with Christ. We should stress that for Edwards, this union is not a legal fiction, but a metaphysical reality. This Edwardsean account, I believe, is strong enough to ground the union that Wendel Holmes suggests is necessary for vicarious liability.

Finally, if one remains unconvinced by the previous approaches one could opt for taking a ‘mysterian’ approach to union with Christ. A ‘mysterian’ approach to union with Christ claims that union with Christ is a metaphysical reality that we cannot fully or adequately explain, yet it ought to be faithfully believed on the grounds that it is taught by scripture.⁶⁰ The mysterian approach to union with Christ might appeal to passages like Galatians 2:15–21 or Romans 6:1–14 which teach that atonement is made in virtue of believers’ union with Christ, i.e. they are crucified and raised

⁵⁵ Crisp, *The Word Enfleshed*, p. 135.

⁵⁶ *Ibid.*, p. 136.

⁵⁷ *Ibid.*, p. 138.

⁵⁸ Jonathan Edwards, *Original Sin, The Works of Jonathan Edwards*, Vol. 3, ed. Clyde Holbrook (New Haven: Yale, 1970), p. 399. Italics added for emphasis.

⁵⁹ See Christopher Woznicki, “‘Thus Saith the Lord’: Edwardsean Anti-Criterialism and the Physicalist Problem of Resurrection Identity”, *Theologica 2* (2018).

⁶⁰ On mysterianism (especially in regard to the Trinity) see Dale Tuggy, ‘Trinity’ in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Winter 2016 Edition), accessed March 14, 2019, <<http://plato.stanford.edu/entries/trinity/>>.

with Christ.⁶¹ Addressing the topic of union and atonement, Robert Tannehill writes that believers are included in Christ who is ‘an inclusive or corporate person.’⁶² The notion of corporate personality builds upon the claim that ‘a single representative of a whole stands in relationship with said people such that they are identified with their representative.’⁶³ What a mysterian account of union requires is that the notion of corporate personality be based on a metaphysical and not merely legal union. The mysterian account need not provide the underlying metaphysics behind this metaphysically real union since the believer in mysterianism claims that the metaphysics of union cannot fully or adequately be explained. The mysterian account only needs to show that Scripture speaks of a metaphysically real union between Christ and the redeemed especially in regards to atonement.

3.4 Summary

There are several ways to argue for the claim that the relationship between humanity and Christ fits into a *respondeat superior* relationship. A promising way to move forward with such an argument would be to appeal to the king/vice-regent theology of the *imago Dei* taught in Genesis. Another would be to appeal to a metaphysical, and not merely legal, account of union with Christ. Combined, both manners of argumentation would be enough to ground the application of the *respondeat superior* principle to PSA.

4. CONCLUSION

Brent Kyle argues that penal substitution is impossible because a necessary condition of punishment is that the authority who imposes harm must at least believe its intended recipient is in some way responsible for the offence. This criterion, deemed the ‘belief condition,’ cannot be met in cases of penal substitution because God, being omniscient, knows that Jesus Christ is in no way responsible for humanity’s sin. Thus, according to Kyle, it is impossible for God to believe that Christ was responsible for humanity’s sin, and therefore the doctrine of penal substitution by definition is impossible. In response to this argument I have made the case that

⁶¹ See, for example, Constantine Campbell’s description of how union with Christ relates to penal substitution in Rom. 6:1–14; Campbell, *Paul and Union with Christ: An Exegetical and Theological Study* (Grand Rapids: Zondervan, 2012), p. 337.

⁶² Robert Tannehill, *Dying and Rising with Christ: A Study in Pauline Theology* (Eugene, OR: Wipf and Stock, 2006), p. 24.

⁶³ Campbell, *Paul and Union with Christ*, p. 341.

the legal principle of vicarious liability provides a counterexample to the belief condition. My argument, however, goes beyond simply providing a defeater to the belief condition, I have argued that the concept of vicarious liability along with the legal doctrine of *respondeat superior* provides a helpful way for thinking about the theological doctrine of penal substitution. I have argued that the defender of penal substitutionary atonement can appeal to the legal principle of *respondeat superior* based two relations: 1) the image of God/vice-regent relationship to God and 2) our union with Christ. By my lights, this argument provides a way for PSA theorists to avoid the accusation that they are acting like the Queen of Hearts, that is, they are wilfully believing impossible things. Accordingly, PSA is not 'one of six impossible things to believe before breakfast.'