

Legal Morality And The Two Kingdoms

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Every American Christian who is morally serious about the law of his land deserves two reminders: First, that being a Christian believer and being a good citizen, though he must be both, are two different things – and sometimes are two conflicting things; second, that being law-abiding and being moral are not two different things but are usually parts of the same thing. In other words, he must remember, first, that his life within God's creation and hence within human society operates according to principles which not only differ from but frequently conflict with the principles which govern his life in the holy Christian Church --even though in both realms the principles come to him from the same God. This is a reminder to keep *unlike* things distinct. The second reminder is about like things, which are often separated from each other though they should not be: namely, morality and law. To pretend, as we Americans are sometimes wont to do, that what is moral is separable from what is legal is to frustrate morality and emasculate the law. It is to cut asunder what God has joined together.

I. THE TWO KINGDOMS

First of all, then, the reminder to keep unlike things distinct. The rules of the game which govern one's membership in the

communion of saints are not the rules of the game which govern one's membership in the human race. It would be as incongruous to settle international disputes through the sacrificial crucifixion of a prime minister as it would have been incongruous to conciliate God and man with diplomacy or with deadly weapons. You could not conduct a successful business by selling all that you have and giving to the poor or by advising your disgruntled employees to consider the lilies of the field, anymore than you could secure the gifts of the Spirit through shrewd financial investment or collective bargaining.

It would be preposterous, would it not, to base the spiritual fellowship of Christians upon their sexual attraction to each other or their common ancestry or the fact that they inhabit the same country and speak the same mother-tongue and share the same national pride? It would be equally preposterous to base marriages and families and nationalities upon a Gospel which, like that of the Christians, makes no distinction between male and female, Jew and Greek. A university which prepared its students for graduation by washing them baptismally and feeding them sacramentally would be as unthinkable as a kingdom of heaven which had to depend on a grading system, scientific method, artistic taste, and an honor code. What sort of government would it be which proclaimed that its kingdom is not of this world and always kept its sword in its sheath and based its judicial system on the forgiveness of sins and the love of one's enemies? It would be as misguided as a communion of saints which had to rely for its saintliness on law enforcement or a two-party system. Our theological forefathers knew what they were doing when they distinguished between an order of grace and an order of creation, a kingdom of the right hand and a kingdom of the left.

SAINT PAUL

The oppositions between these two orders, as Werner Elert has shown, is abundantly illustrated in the New Testament. It is Saint Paul's one and the same Epistle to the Romans which insists on the one hand that Christians are not to seek revenge but rather are to love their enemies and, on the other hand and almost in the same breath, insist just as emphatically that the state does have the right of revenge and the duty to wield the sword (Romans 12:14, 19 f; 13:4). This antithesis is especially delicate if the judge who has to give the orders to wield the sword happens also to be a Christian: nevertheless, he has to give the orders. There is the case of the Nebraska judge who in the morning granted a divorce to a husband and wife and in the evening, at a congregational meeting, had to condemn their divorce and, exercising the office of the keys, had to vote to bar them from the Lord's Supper. The same Paul who wrote the Epistle to the Romans writes in another letter (Galatians 3:28) that there is no longer any distinction between the sexes and yet, in still other letters, movingly advances the cause of conjugal love (Ephesians 5:25ff.) and in good conscience justifies its physical expression (I Corinthians 7:4 ff.). Paul announces too that differences between nationalities have been abolished (Colossians 3:11), still he proudly refers to himself as an Israelite (II Corinthians 11:22). This is also the apostle who exalts the Christian's concern for the inner man (Ephesians 3:16), who praises the heavenly prize as the only one worth striving for (Philippians 3:14) – the same apostle, nevertheless, who will not let the Corinthians forget that he himself works with his hands (I Corinthians 4:12), admonishes others to do likewise (II Thessalonians 3:8 ff), and finds a common bond with those who like himself are by trade tentmakers (Acts 18:3). Christian freedom is for Paul a denial of slavery (Galatians 3:28; I Corinthians 7:22), yet he advises Christians

who are slaves that it is their duty to continue in their slavery (Ephesians 6:5).

JESUS

Not only in the epistles of Paul but also in the gospels, in the life and teaching of our Lord, do we find dramatic evidence of this opposition between the two realms. Think, for example, of the numerous secular occupations Christ mentions in His parables without His ever suggesting there is anything intrinsically wrong with these occupations – the architect (Luke 14:28), the banker (Matthew 25:14 ff.), the merchant (Matthew 13:45), the steward (Luke 16:1 ff), the householder (Matthew 20:1 ff), the farmer (Matthew 13:3 ff), the fisherman (Matthew 13:47 ff), the shepherd (Luke 11:21), the judge (Luke 18:2), the soldier (Luke 11:21), the prince (Matthew 18:23), the housewife ((Matthew 13:33) – and how He announces salvation to a revenue agent (Luke 19:9) and marvels at the faith of a centurion (Matthew 8:10) without so much as hinting that they should forsake their offices. Still, this is the same Master who requires of His followers that for Him they must give up their occupations (Luke 5:27 f.) and their civic relations (Luke 18:22). The principles by which men govern one another in state and society, He says, are to have no place in the group life of His disciples (Mark 10:42 ff), yet He commands them to support the government's tax program and to discharge their obligations to the emperor (Mark 12:17). The Master and the disciples who, as He says, are hated "because they are not of the world" (John 17:14) are nevertheless quite at home at a party which, even by our standards, must have been very worldly indeed (John 2:11 ff.). Christ warns against accumulating wealth and yet in the operations of those who do accumulate He finds a model for those who seek the Kingdom of God (Matthew 13:44 f.). He sharply scolds His hearers for being anxious about food and raiment

(Matthew 6:25 ff.) yet eats the food which is produced and prepared by just their kind of anxiety (e.g., Luke 14:1). He criticizes Jews for saluting only fellow Jews and yet, paradoxically, His own method of shaming them is to tell them that therefore they are no better than non-Jews (Matthew 5:47), elsewhere He compares non-Jews to dogs (Matthew 15:26) and unbelievers to swine (Matthew 7:6).

THE PRICE OF CONFUSION

Any veteran Christian knows that, if distinguishing these two orders is difficult, not distinguishing them is disastrous. Just try to live in the order of grace as though it were the order of creation (and this has been tried as recently as today) – what do you get? A woefully secularized Church. And the worst thing about secularizing the Church is not that you replace her old *gemuetlich* fellowship with a now impersonal bureaucracy, nor that you recreate her churchmanship in the image of Madison Avenue and Wall Street, nor that you vulgarize her good name in the community, nor even that you render her children ethically indistinguishable from the children of the world. Worse still than these is that you burden her with a task which by itself is indeed noble and imperative but which in no case is the essential task of the Church of Jesus Christ: the task, namely, of making people decent and of making the world safe for decent people to live in. This is a task all right for school boards, for juries, for stockholders' meetings, for married couples, for union locals, for private consciences, for non-Christian and sub-Christian religions. But a Christian Church which conceives this as *her* principal task is flirting with adultery and is no longer the faithful Bride of Christ. To be sure, the Church which had no concern for decency and safety would also be no Church. More than that, she could not make herself understood, she probably could not even survive, if she could not count on

some measure of that concern within the non-Christian world about her. But – and this is the whole point – this concern for human decency and safety is not what makes the Church what she essentially is.

Men lay violent hands also on the other order, the order of creation, when as religious men they look to it for redemption, which is not its responsibility, and piously mistake it for the kingdom of heaven. But it is not the kingdom of heaven, anymore than it is the kingdom of hell. That is, its business is not to save men or to damn them. It is a kingdom of productive work. As such, it is not interested in men as saints or as sinners. As good men and bad men, yes. But goodness in this case is not righteousness, it is not the measure of a man's standing in the divine favor or the divine disfavor. Human goodness in the creative order is rather a utilitarian thing. It is the measure of how faithfully a man performs in the service of the Creator. Do not misunderstand, this does not reduce goodness to a relative thing. If in his service to the Creator a man proves to be, say, dishonest, then dishonest he is and he stands condemned as for a transgression which is wrong not relatively but absolutely. Perhaps on top of this he loses his job, the esteem of his fellows, and his own self-respect. But such condemnation, though it may proceed from an absolute norm, has here a purpose which is largely pragmatic: to restore the dishonest servant to honest service, to fit him once more for the useful opportunities and joys of creation. In point of fact, he may thrive better on sympathy than condemnation. Charity is capable of both, of sternness as well as mildness, but charity is always the dear pragmatist. She has no interest in passing judgment, whether negative or affirmative simply for its own sake. She is interested in getting on with the business of creation.

But this magnificent business is spoiled when men with their misplaced religiosity distort the work at hand into a way of

salvation. People are anxious to justify their existence (as if they were even authorized, much less able, to do so.) So they ponder the creative and creditable things they do – keeping house, writing term-papers, indulging appropriate worries, praying for virtue, befriending their relatives, reading the editorial page – and wonder whether all these things might not help to establish their personal worth. Meanwhile their pondering and their wondering plays hob not only with their composure and their digestion but with the Creator's time-table and with His whole bounteous plan for them.

This can happen to everyone. It can happen to professors. It does happen to the professor for whom teaching is no longer the privilege of working with the Creator but is instead a grim life of self-sacrifice by which the Creator-turned-Judge is now to be appeased. For him teaching is the pious ordeal by which his life shall be made to count for something. "And gladly teach" means for him "and meritoriously teach." If as the Psalmist says the great God is moved to laughter by the kings and rulers of the earth who take counsel against Him, then what must His laughter be when He finds Himself competed with by this new self-savior, the lordly professor. See him, armed with his terrible red marking-pencil, separating the sheep from the goats with the kind of humorless and austere inflexibility that should properly be reserved only for the Last Judgment. See him bstride his platform as majestically as only he can who does daily battle with dragons like Darwin and Dante and Diesel and, oh yes, poor defenseless Decartes, or as he turns from his onslaught upon a quadratic equation or the third declension, still unbowed but bespattered with chalk dust, or as he leans back in the relaxed rumple of his tweeds while his students wait, pencils poised, for his next word and while he ponders – why the sophomore in the rear is whispering.

Or perhaps he is not the lordly professor at all, but the

professor of terrible meekness, anxious to save himself by professorial flagellation. In this academic vale of tears, with its lethargic students and its distracting extra-curriculars and its insufficient pay and its elusive truths and its daily unfinished business and his own limited abilities – oh, his own so limited abilities – he spends himself in holy martyrdom, never complaining about a thing except about the fact that his colleagues are forever complaining. About nothing is he so certain as about uncertainty, and it is his supreme act of self-abnegation to dwell, with his upset students, in *The Problem Insoluble*. What makes the good class or the good dean or the good lecture “good” is that it confers upon him the wan hope that, perhaps after all, he may yet amount to something- that is, if the lectures will just hold out a little longer and if the students will please not lose interest and if the dean remembers his name. How hard it is for him to utter that superbly creative utterance, “So what” – without uttering it cynically or irresponsibly or without wondering nervously just why he did utter it. Even life’s sheer delights, like humor and music and good drink and the joy of winning and the pleasure of twitting his friends and enjoying his wife – even these seem to be for him soterological acts, projects he is under obligation to “be good at.”

If this is the case with the professor – the professor, that is, who feels constrained to convert his profession into religious credit (and I chose the professor not because he is the favorite target but only because I happen to be familiar at first hand with his variety of sin) – then it is certainly also the case with all God’s other human servants, from the mother to the paper-hanger to the comedian. No wonder they find the work of creation so taxing. No wonder the Creator, in His displeasure, threatens to put an end to the whole thing sooner or later – and promises to replace it with a new creation and new men.

THEREFORE

No wonder, then, that it is important to distinguish the order of grace from the order of creation. This is not the place, or at least the time, to speak about the opposite and equally treacherous danger – the danger, namely, of widening the *distinction* between the two orders into a *separation*, thus destroying their mutual dependence – or about the bearing of all this upon the American “separation of church and state,” or about the ambiguous position of the historical Church which, like the individual Christian, has to operate within both orders simultaneously. Our purpose, you recall, was simply to remind ourselves to keep distinct two unlike things, the kingdom of the right hand and the kingdom of the left.

II. THE MORALITY OF LAW

Then there is the second reminder, to keep like things together. This is the forgotten truth that, within the natural order of human society, there is no hard and fast distinction between what is legal and what is moral. The law is but a means of applying and enforcing what is right. It is an extension of the ethical.

MINIMAL VERSUS IDEAL

Professor Edmond Cahn, in his recent excellent book, *The Moral Decision*, notes that one of the ways Americans commonly distinguish law and morals is to say “that the law enforces only those *minimum* standards of moral behavior that are indispensable for community existence, whereas morals deal with standards suitable to an *ideal* human being.” (39) But, as Professor Cahn rightly protests, is the law really as “minimal” as all that and so unconcerned with the “ideal”? His own answer (and we heartily concur) is No. One wonders, for example, just how many members

of Alabama's White Citizens;' Council would concede that the Supreme Court's ruling on segregation represents "those minimum standards of moral behavior that are indispensable for community existence," and just how often, in their murmurings against it, they have referred to it as "idealistic." Surely they would agree, though none too agreeably, that the law is capable of embracing the ideal.

There is another reason for this conclusion. If a community's moral ideals should happen to hover above the reach of its laws in a *given generation*, there is still every chance that, with enough time and a broad enough consensus, those ideals will wind up *in the next generation* on the community's law books. Duties which at an earlier time were merely moral duties have a way of changing, through subsequent history, into duties which are legal as well as moral. Many of the things which you and I and our parents formerly construed as just unethical have by now become not only unethical but also illegal. There was day not so long ago when an employer could get by without giving assistance to the unemployed, and perhaps have only his conscience to answer to. Nowadays he would also have to reckon with a statute which requires him to pay mandatory contributions to unemployment insurance. His moral duty has become also his legal duty. Formerly a broker, in advising an investor, may have deceived the investor regarding the present condition of the market, and perhaps the only thing wrong with that at the time was that it was not decent. Today it might also not be very legal, and the broker may find himself in trouble with the Securities and Exchange Commission. Listen to the searching way in which that commission's chairman recently condemned this sort of deception. Quoted in last November twenty-ninth's *Chicago Daily News*, he said: "It has been the position of the Commission that if an uninformed investor could be reasonably deceived, the manner of the fraud is immaterial, whether it takes the form of

a direct lie, or a half truth, or a question, or an innuendo; this has been sustained by the courts." As a moral judgment, not to say a legal judgment, this can hardly be said to be merely minimal.

To hermetically seal off ethics from law as though the one dealt with the most and the other with the least, is to forget that what was exclusively ethical yesterday may well become both ethical and legal tomorrow. Pessimists may try to explain this away by saying that the former moral duties have merely lost their old appeal and now in their weakness have to turn for help to the strong arm of the law. Is it not just as likely that what has taken place here is a rise in the moral level of the law itself?

EXTERNAL VERSES INTERNAL

Another popular distinction between law and morality is the one which says – and you have heard it before – that the law deals only with men's *external* behavior whereas morality is concerned with their *internal* motives and intentions. This distinction, too, is much too neat. In a court of law, as I understand it, it is frequently necessary, in order to establish guilt, to ascertain a person's subjective mental status. In a case of homicide, for example, does it not make considerable difference, not only morally but legally, whether the killing had been malicious and whether it had been premeditatedly malicious? Similarly, in questions of contracts, of dispositions in a last will, of tax evasion, it is often essential to the court's ruling to know just what the testator had in mind, or whether there was actual intent to defraud, or whether the evasion was "willful." These are largely questions of moral intention. The point is, they are also legal considerations.

Furthermore, quite apart from the law's passing *judgment* on a

man's intentions, there is the matter of the law's *influencing* his intentions. It is remarkable how a speed limit sign not only will cause a driver, externally, to reduce the speed of his car but also may instill in him, internally, a heightened respect for local pedestrians. What is legal is not external to what is moral. The law is not apart from but a part of morality.

SO THEN

The order of creation may be markedly different from the order of grace, but it is still the order of creation, ordained by a wise and just and bountiful Creator. Within this order, this kingdom of the left hand, His ordaining hand – though it be His left one – works unceasingly not only in the meek and the gentle private moralities but also, and perhaps most amazingly, in the public moralities of our legal institutions. If we sometimes have difficulty finding Him there, it may be that we do not sufficiently *expect* to find Him there. The man who ignores the law's divine origin and authorization, conjures with it flippantly or seeks to outsmart it or exploits it for evil ends, is ultimately not only lawless but godless. The man who *remembers* its origin – especially the Christian who remembers that its Creator is also his Reconciler – discovers in the law not only deep obligation but also new opportunity for his gratitude.

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