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The Journal of Christian Reconstruction

This journal is dedicated to the fulfillment of the cultural mandate of Genesis 1:28 and 9:1—to subdue the earth to the glory of God. It is published by the Chalcedon Foundation, an independent Christian educational organization. The perspective of the journal is that of orthodox Christianity. It affirms the verbal, plenary inspiration of the original manuscripts (autographs) of the Bible and the full divinity and full humanity of Jesus Christ—two natures in union (but without intermixture) in one person.

The editors are convinced that the Christian world is in need of a serious publication that bridges the gap between the newsletter-magazine and the scholarly academic journal. The editors are committed to Christian scholarship, but the journal is aimed at intelligent laymen, working pastors, and others who are interested in the reconstruction of all spheres of human existence in terms of the standards of the Old and New Testaments. It is not intended to be another outlet for professors to professors, but rather a forum for serious discussion within Christian circles.

The Marxists have been absolutely correct in their claim that theory must be united with practice, and for this reason they have been successful in their attempt to erode the foundations of the non-communist world. The editors agree with the Marxists on this point, but instead of seeing in revolution the means of fusing theory and practice, we see the fusion in personal regeneration through God's grace in Jesus Christ and in the extension of God's kingdom. Good principles should be followed by good practice; eliminate either, and the movement falters. In the long run, it is the kingdom of God, not Marx's "kingdom of freedom," which shall reign triumphant. Christianity will emerge victorious, for only in Christ and His revelation can men find both the principles of conduct and the means of subduing the earth—the principles of Biblical law.

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Editor's Introduction

Gary North

One of the most important aspects of the ministry of Chalcedon is its concern with the restoration and extension in modern society of the principles of biblical law. The topic has been forgotten in the Christian West for over a century, and in many respects, for over three centuries. The implications and applications of biblical law in every area of society, including the sphere of civil government, have been ignored by both Christian and secular scholars in our era. As a result, the breakdown in secular legal structures throughout the world—a legal crisis which is becoming increasingly obvious to voters, politicians, and humanistic scholars—has not brought with it a cry for the restoration of biblical law, the only alternative which has any possibility of survival in the long run. Because Christians have been baptizing the established humanistic legal structures for three hundred years, in nation after nation, they are now immersed in a secular culture which is in the process of decay. Like the salt which has lost its savor, Christians have become impotent to build alternative institutions that are based on explicitly biblical revelation. The emphasis on personal piety and holiness in the narrow settings of the family and the church has, in effect, left the world to the Devil. Now that the world has seemingly gone to the Devil, Christians find that neither their families nor their churches are immune to the cultural infection which is rapidly becoming an epidemic.

In 1850, Karl Marx presented an address to the Communist League (which later became the Communist International). This is one of the most important pieces of Communist strategy ever written, for it outlined a system of subversion that has proven to be incredibly effective. Marx recommended terrorism, but only within the framework of order. The key to success, Marx said, would be the creation of a secret underground government which could then take over the functions of civil government once the established bourgeois government was destroyed by revolutionary violence. Marx could therefore make a tem-

porary alliance with an anarchist like Bakunin, just as Lenin was to make similar alliances during the initial stages of the Russian Revolution. But the anarchists were invariably doomed to failure, for they never had an organizational alternative to the fallen civil government. They had no structure ready to replace the political power of the defeated class. The account of the Russian Revolution by the anarchist who participated in it, Voline's *The Unknown Revolution* (1947), is a testimony to the impotence of anarchistic violence. The anarchists, because of their very principles, could not provide leadership. Therefore, the most unprincipled of the violent groups, the Bolsheviks, triumphed. Lenin's party, ready to {2} take over in the political vacuum, swept over the "merely terroristic" participants and silenced them.

Christian organizations need not be secret societies. Christians must slowly develop leadership capabilities, first demonstrating to lost men in local settings that the Bible *does* speak to every area of life. Mouthing platitudes about the whole counsel of God, modern pietistic Christians have been fearful of spelling out exactly *how* the Bible provides specific alternatives—workable alternatives—in every area of life. Leadership must begin in the family (1 Tim. 3); then it spreads out to the other areas of life: school, church, business, charitable organizations, professional associations, craft guilds, and civil government. Without practical experience based on explicit biblical alternatives to secularism, Christians can have little hope of victory.

Social change, if it is to be biblically progressive, requires two essential factors. *First,* it requires optimism on the part of the remnant. It requires the future orientation of Jeremiah, who in the midst of social and political disaster was told to purchase a field—God's covenantal sign to him of the ultimate restoration of Israel (Jer. 32:7–9). It is not enough simply to list the responsibilities of Christians in every sphere of life; men must believe that such responsibilities can be fulfilled and will be fulfilled, on earth and in time. It is not enough, therefore, for men to preach an amillennial view of men's kingdom responsibilities, stripping them of hope concerning Christian victory in human history, for such preaching only makes men feel guilty, and guilty men can seldom take effective positions of leadership. The prayer of men, "thy kingdom come," must have conviction behind it, for without such conviction, James tells us, prayer is ineffectual (Jas. 1:6–7). It was the post-

millennial hope of the Puritans that enabled them to begin the transformation of the American continent. That eschatological perspective was not shared by the other Christian groups that had begun colonization at the same time, and they did not see their labors prosper. *Second,* men need a system of law which is unique. Without a special legal system encompassing every area of life, the tool of directed social change is missing. This, too, the Puritans had, as the *Abstract of the Laws of New England* compiled by **John Cotton** demonstrates. If Christians are to act as cultural leaven, they must proclaim a uniquely biblical system of law. Without it, they can merely parrot the various secular systems, all of which have been weighed in the balance of history and have been found wanting.

The importance of biblical law in the history of Western Civilization is a fact usually ignored by modern historians. **R. J. Rushdoony's** introductory essay drives home the point that all justice means law, and for Christians this should mean the law of God. The advent of pietism in the seventeenth century began to erode the faith in biblical law which had undergirded Western Civilization from Augustine's day forward. Nevertheless, as **John W. Robbins** argues, this commitment to revealed law had always been clouded by a concept of *natural law*—the logic of the autonomous, unregenerate, neutral mind. There is no neutrality, {3} Robbins argues, and therefore any attempt to fuse biblical law and any system of hypothetically neutral law is doomed to failure. It was the Reformation which provided legal principles that could later be used by Puritans and others to replace the collapsing systems of natural law.

Lawlessness, concludes Professor **Charles Rice**, is the mark of modern legality. We are witnessing the collapse of secular law in America, and this gives Christians the opportunity to offer alternatives to a confused and desperate world. **Frederic N. Andre** and **R. J. Rushdoony** provide further documentation for Professor Rice's point: by focusing on a hypothetical metaphysical dualism between good and evil, rather than the *moral* nature of the division, modern legal theorists have drifted into relativism. Statute law, rather than the Bible-based common law, triumphed in America after the Civil War, and the result has been legal chaos. **T. Robert Ingram** concludes that the common law principle of equality before the law was grounded in biblical revelation (Deut. 10:17), and that the abandonment of this principle has led to the

creation of a gangster State. Common law, therefore, was in origin a Western application of biblical law. **Greg L. Bahnsen** provides supporting evidence for this thesis: the rule prohibiting a second trial for a man declared innocent. This rule has protected men from continual harassment, and by abandoning it, churches and civil governments have created a world in which innocent men are far less safe from scurrilous attacks than before. By ignoring common law principles because they are supposedly secular, church leaders have abandoned a formidable body of applied biblical law.

The application of biblical law to specific instances of modern life is always a difficult problem, but an inescapable one for any serious Christian. My essay on the problem of *pornography* focuses on the question of community. Specifically, can a community survive if it cannot enact moral legislation? Can the civil government become morally neutral? Can a godly society, or any society, survive in the face of the destruction of the family unit—the real area of concern for those who would prohibit pornographic literature—and if not, should the State take a position of neutrality? Chief of police **Edward M. Davis** asks the reverse question: Can the people of the community defend themselves against tyranny if they have been denied a basic constitutional freedom, the right to bear arms? He admits openly that the police forces of America cannot possibly defend property and human life apart from an armed citizenry. Disarmed law-abiding citizens would be at the mercy of armed criminals. The protection of the family, concludes Chief Davis, requires the right to own weapons. Davis's skepticism concerning the ability of policemen to provide all the protection we need is echoed by former policemen **Edward Powell**. The basic investigative techniques used by police since the days of the Patriarchs have not changed, although technology has. By making the use of *informants* too difficult (mainly by exposing them to criminal retaliation), the courts have begun to erode the most important single factor in the investigation of criminal activity. The informant, not scientific {4} analysis, is the key element. Without him, we face the revival of pagan techniques of investigation: terror, torture, and pretrial incarceration for years rather than days. Men will have order; if the courts make Christian order illegal, then pagan tyranny looms ahead.

The subject of *restitution* comes up in **Mitchell C. Lynch's** frightening account of what happens to the victims of crime in America. The endless delays in trials, as well as the inability of the victims to gain restitution, has led to a crisis in information: victims often prefer to remain silent, knowing that there is little to be gained by testifying, reporting, or in any way dealing with the police. **Paul A. Doepke** offers the biblical remedy: restitution by the criminal. Without restitution, there is neither heavenly forgiveness nor earthly forgiveness. A society which tries to promote justice while abandoning personal responsibility and personal restitution by the criminal is a doomed society. In the case of the execution of Saul's seven sons, concludes **Greg Bahnsen**, the issue was *atonement* for sin. Without public atonement in the civil order, Christian society would not be possible. Atonement by Christ on the cross was the ultimate form of restitution. (It is extremely enlightening to note that Bahnsen's article was rejected for publication in the *Westminster Theological Journal* by Robert Knudson, the editor, who regards himself as one of the primary American interpreters, if not *the* primary interpreter, of the philosophy of Herman Dooyeweerd.)

John Cotton's *Abstract of the Laws of New England* was published in 1641. This is a rare document, seldom read even by specialists in colonial American history. Bahnsen's introduction provides the best background to it that I have come across, and I am (so the certificate says) a specialist in the field. As a primary source for a study of biblical law in American history, Cotton's abstract cannot be overestimated.

1.
SYMPOSIUM:
BIBLICAL LAW

Biblical Law and Western Civilization

Rousas John Rushdoony

In the ancient world, to serve a god meant to obey his law. Every religion and every god, or unified group of gods, had its own body of laws, its political order and loyalties, its family and sexual code, its commercial code, and its way of life. To accept a new religion meant the acceptance of a new set of laws, rulers, and lifestyles. If a country was conquered, its gods were also conquered and supplanted, as were its laws. If alliances were made, then religions too were merged, the major party absorbing the lesser party and its religion; hence the prophetic denunciation of all alliances. If an imperial power recognized a religion other than its own, as Rome often did, it was only if the religion and its people subordinated themselves to Rome and its emperor.

Unless we recognize this unity of religion and law, we can neither understand the world of the Old and New Testaments, nor our own times. *Every law structure or system is an establishment of religion. There can be no separation of religion and the State.* Law is enacted morality, and procedures for the enactment of morality, and every system of morality is an expression of religion, of ideas about ultimacy and values.

In the modern world, civil governments are no less religious than in antiquity. Their established religions are forms of humanism, and, in terms of this established religion, they are increasingly hostile to Christianity. This hostility takes two forms. *First,* there is outright opposition and efforts to destroy Christianity. Marxist countries are most obvious in this direction, but they are not alone. For example, in Denmark, public funds are used to promote pornographic and anti-Christian films. Thus, in 1975, the Danish Film Institute, a publicly financed but semi-independent body, authorized funds for a production guarantee to producer Jens Jorgen Thorsen for a film entitled *The Many Faces of Jesus.* "Thorsen plans to show Jesus in several nude and love-making

scenes."[1] Through a variety of such efforts as textbook subsidies to books which promote humanism and undercut Christianity, the Western democracies work to destroy Christianity. *Second,* the churches are subsidized and controlled in order to convert them into humanistic churches. This is routine practice in Marxist countries and in the West. Thus, in the United States, in 1969 the federal government alone spent about $6.5 billion on church-related subsidies, as compared with $8 to $9 billion in voluntary giving. Much of this was to church-related colleges and seminaries as scholarships and building funds, and the gifts required that, for example, buildings {6} erected with the funds have no connection with Christian teaching or services.[2]

The converts to Christianity in the early church had no problems with this issue. For them, conversion to Christianity meant conversion to a new kind of law, sexuality, family life, community, and way of life. In fact, many problems within Christianity since then have been due to the uncritical or ignorant acceptance of Old Testament and Jewish practices. Thus, the Jewish custom, a product of their temperate habits, of cutting wine with water, was adopted in communion services, and justified in terms of the doctrine of Christ's two natures. Again, the Council of Quinisext, 692, condemned, in Canon XXXII, the Armenian custom of celebrating communion without mixing water with the wine. However, the Armenian Church adopted the Old Testament practice of a hereditary priesthood only, and only later made provisions for a nonhereditary clergy in addition to the hereditary lines.

So seriously did the early church take the law that it created problems for itself by its unwillingness to compromise where it did not understand. Thus, many Christians very early observed two Sabbaths, the Jewish Sabbath and the Lord's Day. This was clearly accepted practice to the Synod of Laodicea, 348–381, as Canon XVI makes clear. However, this Synod, in Canon XXIX, condemned resting on the Jewish Sabbath, but not formal worship. The Jewish Sabbath still had a place in the Christian calendar in Canon LII of Quinisext in 692.

1. "Film Folly: A New Low," *Christianity Today,* June 20, 1975, 21.

2. Will Oursler, *Protestant Power and the Coming Revolution* (Garden City, NY: Doubleday, 1971), 94–95.

Christians felt so close to the Jews that many went not only to church but also to the synagogues to worship and pray. The Apostolical Canons, LXIV, finally condemned this practice. How far-reaching this practice and fellowship went is apparent from Canon LXX:

> If any bishop, presbyter, or deacon, or any one of the list of clergy, keeps fast or festival with Jews, or receives from them any of the gifts of their feasts, as unleavened bread, or any such things, let him be deposed. If he be a layman, let him be excommunicated.[3]

The long-standing problem with usury, from the early church through the Reformation, rested on the fact that the church took seriously the laws on usury without fully understanding their meaning.

The principle of restitution was very early adopted in its biblical form, and, together with it, penance and excommunication. Protestants are so intensely geared to reacting negatively to the word *penance* that they too seldom look behind the later corruptions to understand the earlier practice. The law requires excommunication for certain offenses. Other offenses call for restitution (Ex. 22:1–17), and the prophets made clear the necessity for an inner change as well. Very early, repentance was accompanied by fasting, and by special assemblies for prayer and appeals to God's mercy (Joel 2:13–17). The law had only one formal {7} day of fasting, the Day of Atonement. Other days of repentance and fasting were called as the occasion required them. For repentant individuals, the synagogue elders imposed, unless the sin led to excommunication, the requirements of restitution and penitence. The church adopted these, and their early practice was Hebraic and in conformity to Scripture.

So important were Jewish precedents to the early church that many of the non-Biblical practices which crept into the church were adopted directly from Jewish practice and were justified by their presence in apocryphal books. Thus, prayers for the dead, works of supererogation, the merits of the saints (originally, the merits of Abraham), and many other such practices were not inventions of Rome but direct borrowings from the Jewish beliefs of our Lord's day. Jesus had declared that

3. Henry R. Percival, ed. "The Seven Ecumenical Councils of the Undivided Church: Their Canons and Dogmatic Decrees," in *Nicene and Post-Nicene Fathers,* vol. XIV, 2nd series (Grand Rapids, MI: Eerdmans, 1956), 598.

all Jewish traditions apart from Scripture were a "transgression" of the law of God (Matt. 15:3). By the eleventh century, not only had the traditions gained a firm rooting, but also, as hostility to the Jews began to replace the earlier respect, the law was undermined to a degree and the traditions were strengthened! In the modern era, Protestantism has become antinomian also, and has rejected not only the traditions Christ condemned but also the law He came to put into force (Matt. 5:17–18; Luke 16:17).

So seriously did the early church regard the law of God that it was concerned about the spiritual welfare of students and scholars who of necessity had to practice or study civil law. Canon LXXI of Quinisext declared in part, "Those who are taught the civil law must not adopt the customs of the Gentiles." An ancient epitome of this canon is still more strongly worded:

> Whoever devotes himself to the study of law, uses the manner of the Gentiles, going to the theatre, and rolling in the dust, or dressing differently to custom, shall be cut off.[4]

It should be noted that the church here speaks of the ungodly as *Gentiles.* In terms of Scripture, Christians saw themselves as the true Israel of God. As the true Israel of God, Christians held that no true law is possible apart from God's law, biblical law. To be a Christian meant to believe in Christ as Lord and Savior, and the Bible as their King's law-book.

St. Augustine stated nothing new but rather summarized the Christian perspective when he saw justice as the service of God according to Scripture.

> 44. What of justice that pertains to God? As the Lord says, "Ye cannot serve two masters," and the apostle denounces those who serve the creature rather than the Creator, was it not said before in the Old Testament, "Thou shalt worship the Lord thy God, and Him only shalt thou serve?" I need say no more on this, for these books are full of such passages. The lover, then, whom we are describing, will get from justice this rule of life, that he must with perfect readiness serve the God whom he loves, the highest good, the highest wisdom, the highest peace; and as regards all other things, must either rule them as subject to himself, or treat them with a view to their subjection. {8} This

4. *Ibid.*, 397.

> rule of life, is, as we have shown, confirmed by the authority of both Testaments.[5]

Earlier in the same work (ch. 15), Augustine defined justice as "love serving God only, and therefore ruling well all else, as subject to man."[6] Without justice, the love of God and His righteousness, and dominion in terms of this, there can be no true civil order. The canon or rule of justice is God's law, and canon law was simply the application by the church of God's law to all problems and conflicts. Without the rule of God's law, kingdoms or states are simply bands of robbers, because justice is necessary to the true state. As Augustine declared,

> Justice being taken away, then, what are kingdoms but great robberies? For what are robberies themselves, but little kingdoms? The band itself is made up of men; it is ruled by the authority of a prince, it is knit together by the pact of the confederacy; the booty is divided by the law agreed on. If, by the admittance of abandoned men, this evil increases to such a degree that it holds places, fixes abodes, takes possession of cities, and subdues peoples, it assumes the more plainly the name of a kingdom, because the reality is now manifestly conferred on it, not by the removal of covetousness, but by the addition of impunity. Indeed, there was an apt and true reply which was given to Alexander the Great by a pirate who had been seized. For when that king had asked the man what he meant by keeping hostile possession of the sea, he answered with bold pride, "What thou meanest by seizing the whole earth; but because I do it with a petty ship, I am called a robber, whilst thou who dost it with a great fleet art styled emperor."[7]

Justice means God's law: this was understood by Christians through the centuries, and it was the basis of their political action. The efforts of the church, in the West especially, to influence or command the state had as their purpose the rule of God's law in the state. We may disagree with what methods Rome, and, later, the Calvinists, used to attain that goal; we may make note of the fact that sometimes other purposes intruded in that goal; we can add further that God's law was often defined so as to include a natural law version of biblical law. But we can

5. St. Augustine, "Of the Morals of the Catholic Church," in "The Writings Against the Manichaeans and Against the Donatists" in *Nicene and Post-Nicene Fathers,* vol. IV, 2nd series, 54.

6. *Ibid.,* 48.

7. St. Augustine, *The City of God,* (New York: Modern Library, 1950), 112–113.

only overlook, at the peril of misreading history, that, in spite of these shortcomings, errors, or what you will, a continuing purpose remained: the rule of all society by God's law, and the submission of the state in particular to God's law. The state as the ministry of justice had to become an instrument of God's law or become a band of robbers. Basic to the struggle between church and State from Constantine's time into the seventeenth century was this question of God's law: Would the state be ruled by God's law, or would it become a band of robbers, a plague to society?

In the seventeenth century, two new ideas began to emerge. *First,* the church {9} began to limit itself to "spiritual" concerns and therefore to limit God's law to the church. The result of this new concern was pietism, the belief progressively that Christianity's only concern was soul-saving, and matters of law belonged to the State. *Second,* the State began to assume a humanistic basis, although not openly so until the French Revolution. The concern of the State was less and less with the law of God and more and more with reasons of state. Protests against the humanistic state were also very often simply another form of humanism. King Charles I of England, for example, while morally superior to his father, James I, had a less theological view of the State, although, it should be added, his views were a development of the implications of his father's position. He disliked both Rome, whose views he described as superstitious tyranny, and Puritanism, which he saw as fantastic anarchy. His faith was in a church "in the control of and at the service of the secular State."[8] Charles's idea of the State was not secular in the modern sense, i.e., divorced from Christianity, but rather independent from Christianity while invoking it and professing it. The new source of law was the king, ruling by divine right. He could not be subjected to interference from God either by Rome's canon law or by the Puritan's insistence on the supremacy of Scripture.

In contrast, in Cromwell's army some men, like Major William Rainborough, held to an emerging doctrine of the State, not as the ministry of justice, nor the principle of order in the person of the king, but as the protector of life and property. According to Rainborough, "the chief end of this government is to preserve persons as well as estates, and if

8. Christopher Hibbert, *Charles I* (New York: Harper & Row, 1968), 143.

any law shall take hold of my person it is more dear than my estate."[9] Life and property are also concerns of biblical law, but hardly their chief end, which is, rather, the Kingdom of God.

The French Revolution was the logical conclusion to this withdrawal of Christianity from the world to the soul. Only the soul now remained as the province of Christ, and, as a result, the church began to drift into open antinomianism. The very idea of biblical law being relevant to society, once a common concern of all Christians, now became a strange notion.

As a result, the State was on its way to becoming a band of robbers. Very early, it made alliances with criminal brotherhoods. This first began in Spain, as Ferdinand and Isabella worked to create a national state. The Garduna, a criminal brotherhood, became a state within the State and a working ally of the monarchy. The Inquisition in Spain served primarily the purposes of the crown, not the church, and the Garduna became a working partner.[10] The rise of the criminal brotherhoods was a product of the decline of feudalism, the rise of the modern state, and the growth and emergence to power of humanism.[11] {10} Where the State becomes a band of robbers, other thieves are sure to flourish. But the task of civil government cannot be successfully discharged by such essentially lawless agencies. As a result, as order in the form of personal faith, discipline, and piety diminishes among the people, society moves steadily towards a condition of ungovernability. This condition is a growing reality in communist countries and in democracies. Moreover, where men feel that the powers that be, both legal and illegal, are essentially corrupt, are bands of robbers, then they too join in the general love of theft and opportunism.

Clearly, the world crisis is in essence a matter of law, and therefore of theology. Earlier efforts of Christianity to establish justice by means of God's law were often flawed by a variety of factors. No more opportune time has ever existed than the present to establish the rule of law, bibli-

9. A. S. P. Woodhouse, ed. *Puritanism and Liberty: Being the Army Debates* (*1647-9*) *from the Clarke Manuscripts* (London: J. M. Dent & Sons, 1938), 67.

10. David Leon Chandler, *Brothers in Blood: The Rise of the Criminal Brotherhoods* (New York: E. P. Dutton, 1975), 7ff., 208, etc.

11. *Ibid.,* 1–2, 226-29.

cal law, untainted by Hellenic, Manichaean, and other influences. The very ready reception accorded to my study, *The Institutes of Biblical Law* (1973), indicates the hunger for authoritative and godly law in a world increasingly dominated by injustice. More and more people are beginning to recognize that the State can only be either a band of robbers or a ministry of justice under God. Theologically, no other alternative is tenable or possible.

Moreover, the modern idea of law, both in the church and in openly humanistic circles, is radically flawed and rests essentially on a Hegelian and Darwinian worldview. Because for the Hegelian, which is to say modern thinkers of every stripe, there is an essentially evolutionary and dialectical process in history, the major fact of history is *the conflict of interests* rather than *the harmony of interests.* The idea of the harmony of interests rests upon an implicit belief in God's eternal decree of predestination whereby all things are made to work together for good (Rom. 8:28). Such a belief in harmony withers or becomes rootless apart from biblical faith. In terms of Scripture, there is no conflict between love, justice, and faith as they are set forth in Scripture. The cross of Christ is the supreme coincidence of love, justice, and grace, and this coincidence is known by faith.

However, where the Hegelian dialectic prevails, there can only be conflict. Not only is there conflict, but there is a necessary and mandatory conflict. This conflict is between classes, between love and justice, between the sexes, between man and man, and within man. Freud's schizoid view of man is good Hegelianism but without any synthesis, only conflict.

In such a worldview, the claims of law are clearly suspect. Law or justice is seen as harsh and cold as against the claims of love, or of faith. Property rights are denied in the name of human rights. To affirm faith is held to require the denial of the law.

Earlier, theological antinomianism had fed on Neoplatonism with its emphasis on the spiritual (faith) as against the material (law). Manichaeanism had radically divided love and justice. With Hegelianism, a more modern basis led to a more radical division and atomization of reality. Unity required the sacrifice of {11} something, the surrender of law to love, or vice versa, or of one group to another, and so on. The locale of unity, in Hegelianism, is the State.

This idea was not new in Hegel, although it began to dominate history because of him. Pagan states had seen unity in terms of themselves. Frederick II, in *The Liber Augustalis* (1231), had not only set forth himself as the principle of divine unity, but also declared criticism to be comparable to sacrilege:

> No one should dispute about the judgment, plans, and undertakings of the king. For to dispute about his decisions, deeds, constitutions, plans, and whether he whom the king has chosen is worthy is comparable to sacrilege.[12]

However, the assertion of the State's prerogative to unify all things in itself does not have any natural or supernatural right, necessity, or sanction to it, and, instead of unity, it leads to a growing atomization and polarization in society. Biblical law, however, points to the unity of all things in God, who, as the maker of heaven and earth, is the necessary center of all reality and its inevitable determiner. The State's demand for the unity of society under its fiat law is a mere expression of arbitrary will; God's law is an expression of the very conditions of creation.

In *The Laws and Liberties of Massachusetts* (1648), the necessity of grounding civil law in God's law is clearly set forth:

> So soon as God had set up political government among his people, Israel, he gave them a body of laws for judgment both in civil and criminal causes. These were brief and fundamental principles, yet withal so full and comprehensive as out of them clear deductions were to be drawn to all particular cases in future times. For a commonwealth without laws is like a ship without rigging and steerage. Nor is it sufficient to have principles or fundamentals, but these are to be drawn out into so many of their deductions as the time and condition of that people may have use of. And it is very unsafe and injurious to the body of the people to put them to learn their duty and liberty from general rules; nor is it enough to have laws except they be also just.[13]

12. James M. Powell, ed. and trans., *The Liber Augustalis or Constitutions of Melfi Promulgated by the Emperor Frederick II for the Kingdom of Sicily in 1231* (Syracuse, NY: Syracuse University Press, 1971), bk I, title iv, 11.

13. Alden T. Vaughan, ed. *The Puritan Tradition in America, 1620-1730* (New York: Harper & Row, 1972), 163.

This is a far cry from President Eisenhower's statement, "Our government makes no sense unless it is founded on a deeply felt religious faith—and I don't care what it is."[14] In such a view as Eisenhower's, *religion* (any religion) is a prop to the State; in *The Laws and Liberties of Massachusetts,* because God is the absolute sovereign, *His word* is the source of all law.

Only as God is sovereign can there be any regard for, use of, and obedience to biblical law. The use of biblical law in Western history has risen and fallen {12} in terms of the acknowledgement of and obedience to God's sovereignty. As Aristotelianism and Arminianism have gained in influence, sovereignty has been transferred to man or to an agency of man, such as church or State.

In any system of thought, the source of law is the sovereign. If the sovereign is man, then existential man is his own law. If the sovereign is the State, or the dictatorship of the proletariat, then that agency is the source of law. Law is inseparable from sovereignty, and the god of any system can be quickly identified by locating the source of law.

"Christians" or church members who professedly hold to the sovereignty of God, but seek another source of law, manifest clearly that other masters rule over them and that their theology has in it a schizoid or Manichaean element.

It is of critical importance that biblical law be restored to its rightful place of authority because humanism is in radical decay, as is its law. Humanistic law has as its logical sovereign every man as his own god, and therefore his own law. The result is anarchy, and anarchy is only tenable if all men are naturally good and all act in terms of enlightened self-interest. These two principles of faith, the natural goodness of man, and his natural, enlightened self-interest, have had a powerful influence on Western political and economic thought, but their day is virtually done. As far back as Karl Marx, these principles were challenged by humanism itself. Marx's savage attack on Max Stirner and his anarchism manifested a radical distrust of these principles. True, they represent the *logical* course of humanism, but the practical outcome is chaos. The need, rather, as Marx saw it, was for communism or social-

14. Russell E. Richey and Donald G. Jones, eds., *American Civil Religion* (New York: Harper & Row, 1974), 23.

ism, the submission of all men to the version of humanism of an elite group of philosopher-kings. Natural goodness and enlightened self-interest were withdrawn from almost all men and reserved to an elite few.

After Sigmund Freud, it was necessary, logically, to deny the possibility of such rational and good judgment to any man. Men are ruled by the irrational *id,* lacking as it is in any sense of reality and governed entirely by its own demands. The *ego* seeks to impose a sense of reality on the *id,* but with no possibility of real success. The id is in essence the will to live, but its lack of concern for reality makes it in essence suicidal.

Even among the dissenters from Freudianism, man increasingly comes to be viewed in terms that make Calvinism look like gross optimism. Science fiction, once filled with glowing accounts of man's glorious future in terms of his own sovereignty and his independence from God, now frequently views the future as ultimate horror. True, some writers still evidence the old faith in anarchism, as witness the popular writings of Robert Heinlein or Eric Frank Russell's *The Great Explosion.*[15] Much more representative is a collection of stories edited by Roger Elwood, *Future Corruption,* whose theme is described on the cover thus: "When science expands man's powers, who knows how depraved he can {13} become? Twelve original stories exploring the outer limits of our potential evil."[16] Precisely because man is sovereign in these stories, and the source of his own law, his power for evil is unlimited because man is unlimited. Having become his own god, man finds himself to be instead an absolute devil.

Calvin's doctrine is *total depravity;* the depravity is not absolute but is rather total, in that it infects *every aspect* of man's being, his reason, will, etc. Because man is created in the image of God, he manifests, according to Calvin, remarkable intelligence and virtue even in his fallen estate. However, because man is fallen, the image of God in him is a perverted (not eradicated) image, and therefore at every point in his life, the factor of perversion or corruption is determinative. *The*

15. See Eric Frank Russell, *The Great Explosion* (New York: Pyramid Books, [1962] 1963).

16. Roger Elwood, ed., *Future Corruption* (New York: Warner Books, 1975).

perversion is total in its extent, but not absolute in its nature. The evil in man is limited, because man is a creature.

For the modern humanist, man's depravity is both total and absolute, and this is the "gospel" of *Future Corruption.* Because man is sovereign, there is no hope outside of man, but because man is absolutely depraved, there is no hope for man anywhere. The death of God is the death of law and the death of man.

The false note in Orwell's *1984* and in *Future Corruption* is the assumption that, with man's radical perversity, totalitarian regimes will still be the order of the day in the future. They presuppose the disappearance of all Christian virtues save one: obedience. In the Soviet Union, precisely because total terror is irrational and strikes at guilty and innocent alike, there is an increasing resistance to the required order. If an innocent man is so readily tossed into a slave labor camp to provide slave labor, as Solzhenitsyn's *Gulag Archipelago* has shown, why bother to be innocent or obedient?

The pattern in every part of the world, as humanism spreads its cancer, is of a growing lawlessness. Evangelical Christianity, and most forms of the faith in the twentieth century, by their antinomianism manifest both their implicit humanism and evidence the spread of this sickness unto death of humanism. *Impotence* is the hallmark of antinomian religion: it is, in fact, the death of any religion, for to surrender law is to surrender any claim to ultimacy and sovereignty for the faith and for the god of that faith.

But man cannot live without law. The cry of the ancient Persians, "We are men, and must have laws," is the increasing hunger and need of the twentieth-century man. Only biblical law can meet that need for law. All other systems are in radical decay.

Some Problems with Natural Law

John W. Robbins

Logic is God thinking.
History is God's decreeing.
Law is God's commanding.

Against these propositions, secular philosophers muster all the forces at their command. The Greek mind—the anti-Christian mind at its clearest—denied every one of these propositions. *Logic* was a tool that could be wielded properly by natural men; it was illogical to believe in a creation *ex nihilo.* However, logic was suspect. It was a siren that lured men into philosophy and deluded them into thinking that men could know the truth. *History* was formed by the free actions of men, or, alternatively, by the irresistible and impersonal force of fate. Either free will or fatalism was the shaper of history. *Law* was an unwritten code that bound both gods and men. Law, not the lawgiver, was supreme. And yet, the lawgiver was human; what the ruler or governor, the Solon, commanded was law; the State was total. Both natural law and legal positivism were asserted by the pagans, just as fatalism and free will, and omnipotent and impotent logic, were simultaneously held. None of the pagans believed the three propositions written above; they are unique to Christianity, and it is this uniqueness that suggests the importance of Christian philosophy.

1. Christianity teaches that the Lawgiver, not the law, is supreme. As Calvin put it:

> How exceedingly presumptuous it is only to inquire into the causes of the divine will, which is in fact, and is justly entitled to be, the cause of everything that exists. For if it has any cause, then there must be something antecedent on which it depends; which it is impious to suppose. For the will of God is the highest rule of justice, so that what he wills must be considered just, for this very reason, because he wills it. When it is inquired therefore why the Lord did so, the answer must be, because he would. But if you go further and ask why he so deter-

> mined, you are in search of something greater and higher than the will of God, which can never be found.[17]

Law is not something that can be discovered in "nature"; it must be and has been revealed by God. Christian law is supernatural law, not natural law. The phrase "natural law" itself is capable of so many interpretations that anyone who advocates natural law must expend a great deal of effort explaining what he means. As Hume wrote, {15}

> ... in the second place, should it be ask'd, Whether we ought to search for these principles in *nature,* or whether we must look for them in some other origin? I would reply, that our answer to this question depends upon the definition of the word Nature, than which there is none more ambiguous and equivocal.[18]

2. Nor is Christian law positivist law. Law cannot be discovered by men; neither can it be made. Its source is neither the university nor the legislative chamber. Governments may enact statutes; judges may pronounce decisions; juries may deliver verdicts. None can make law but God. All honor due to statutes, decisions, and verdicts is itself commanded by God. There is nothing in the things themselves that warrants honor. Our compliance with them is mandated by law, by God's commands (Romans 13:1–7). Where they contravene law, *they* are not to be obeyed, for we ought to obey God rather than men (Acts 5:29).

3. As pernicious as illegal statutes may be in the short run, and as dangerous as the positivist belief that governments are sovereign and can make law may be in the longer run, the worst delusion of all—for it is the most subtle and subversive—is that men, using their "autonomous" reason, can discover natural law or the law of nature. It is this belief—that nature is normative and that man's unaided intellect is efficacious—that has heavily infected Christianity and distorted and obscured the idea of the Sovereign God. Beginning with "divine" sanction in the times of the Greeks and the Romans, the checkered career of natural law theory may be traced through the Medieval Schoolmen, Renaissance figures, the Enlightenment, the Hegelians, anarchists, and the Marxists, where its gradual convergence with the positivist theory

17. John Calvin, *Institutes of the Christian Religion,* bk. III, ch. xxiii, sec. 2.
18. David Hume, *A Treatise of Human Nature,* bk. III, pt. 1, sec. 2.

became complete. In one of the most widely quoted passages of natural law theory, Cicero wrote:

> True law is right reason in agreement with Nature.... We cannot be freed from its obligations by Senate or People, and we need not look outside ourselves for an expounder or interpreter of it ... there will be one master and one ruler, that is, god, over us all, for he is the author of this law, its promulgator, and its enforcing judge.[19]

The Canonists of the Middle Ages went so far as to say that "Mankind is ruled by two laws; Natural Law and Custom. Natural law is that which is contained in the Scriptures and the Gospel."[20] The identification of God's commands with natural law may have been caused by a motive similar to that which caused Marx to term his doctrine scientific: the desire to co-opt a term with favorable connotations. Nevertheless, this identification indicates the degree of confusion prevailing in Medieval thought on the subject of natural law. This confusion, this eclecticism, is subversive of true religion. The Reformation was the recovery of the distinction between the Creator and the creature, and the elimination of the {16} idea that God's commands are natural.[21]

The Medieval idea of natural law reached its zenith in the speculation of Thomas Aquinas, who wrote:

> Rational creatures are subject to divine Providence in a very special way; being themselves made participators in Providence itself, in that they control their own actions and the actions of others. So they have a certain share in the divine reason itself, deriving therefrom a natural inclination to such action and ends as are fitting. This participation in the Eternal Law by rational creatures is called the Natural Law.[22]

One would do well to note the implicit rejection in this passage of the doctrine of total depravity, for rational creatures, Thomas says,

19. *De Republica,* bk. III, ch. xxii, sec. 33.

20. *Decretum Gratiani. Corpus Iuris Canonici.*

21. The tragedy is that both Luther and Calvin were inconsistent on this point. But they were explicit enough, particularly Calvin, to cause one scholar to say that "... it seems obvious enough that the Thomist conception of natural law, as a mediatory element between God and man, and as an assertion of the power and dignity of human nature, would have been out of place in the Reformers' theology, and actually they found little or no room for it." A. P. d'Entrenes, *Natural Law,* 70.

22. *Summa Theologica,* la, 2ae, quae. 91, art. 1, 2.

have "a natural inclination to such actions and ends as are fitting." One of the principal objections to any theory of natural law is that it fails to take into account the fact that nature is cursed and man depraved. Nature is not normative; it is abnormal.

4. Let us continue with this criminally brief overview of the history of natural law theory by pointing out that one implication of the nature-grace schema of Thomas Aquinas was not wholly lost on the later Scholastics. If, as natural law theorists hold, man can discover ethical truths by his own efforts, then what need have men of revelation? The hypothesis of God and the necessity of his commands becomes superfluous or positively detrimental: superfluous, because if God is reasonable, He can simply and only command those things which we can discover on our own anyway; and detrimental, because He may command things that we cannot discover using our own reasons and even things that may be contrary to our own reasons. God can only be superfluous or irrational. The Spanish Jesuit Suarez reported the conclusions of other Romanist writers this way:

> These authors seem therefore logically to admit that natural law does not proceed from God as a law-giver, for it is not dependent on God's will, nor does God manifest himself in it as a sovereign (*superior*) commanding or forbidding.[23]

Some of these Romanist authors have gone so far as to say that

> even though God did not exist, or did not make use of his reason, or did not judge rightly of things, if there is in man such a dictate of right reason to guide him, it would have had the same nature of law as it now has.[24]

The latent paganism of Romanist natural law theory is here made explicit; no {17} longer is there a suggestion that the source of the law is God; the source of the law is the nature of things. Law inheres in nature. It is not law over nature. Samuel Pufendorf (1632–1694), the first holder of a chair of Natural Law in a German university, mistakenly identified the Arminian Hugo Grotius (1583–1645) as the author of the idea that natural law would retain its validity even though God did not exist. But Grotius was simply repeating a suggestion made by

23. Franciscus Suares, *De Legibus ac Deo Legislatore* (1619), bk. II, ch. vi.

24. *Ibid.*

the Romanists much earlier. His motive for making this claim was to construct a plausible system of natural law theory free of theological presuppositions, or at least theological presuppositions that were controversial. In the twentieth century we are seeing a similar effort being undertaken once again. Reason, not faith, we are told, must be the means of constructing a theory of natural law that will appeal to all men irrespective of their theological positions. If anyone persists in believing in God, he must admit that even God could not change the rational laws of nature. As Grotius put it:

> Measureless as is the power of God, nevertheless it can be said that there are certain things over which that power does not extend.... Just as even God cannot cause that two times two should not make four, so He cannot cause that that which is intrinsically evil be not evil.[25]

Grotius explicitly makes the moral law superior to God; hence, God can no longer be called the lawgiver. No progress has been made beyond Plato.

5. Let us skip from Grotius to an eighteenth century writer, a man who has not been welcomed by the natural law theorists as one of their own, a regrettable though understandable lack of intellectual hospitality on the part of the natural lawyers. The man I have in mind belongs to the Enlightenment, the Marquis de Sade, for he, perhaps more than any thinker before or since, has elucidated the implications of natural law theory. He wrote that

> Nature teaches us both vice and virtue in our constitution ... we shall examine by the torch of reason, for it is by this light alone that we can conduct our inquiry.[26]

Accepting the premise that nature is normative, that there has been no ethical fall and no curse, and that God is therefore a superfluous hypothesis as far as ethics goes, de Sade concludes that

> there is just as much harm in killing an animal as a man, or just as little, and the difference arises solely from the prejudices of our vanity.[27]

25. Hugo Grotius, *De lure Belli ac Pacis,* I, i, x.

26. Comte de Sade, *La Philosophie dans le Boudoir,* trans. Donatien Alphonse Francois, reprinted in *French Utopias,* ed. Manuel and Manuel, 219, 222.

27. *Ibid.,* 236.

Since it is nature that prompts us to murder, steal, slander, and fornicate, and since we have a "natural inclination to such actions and ends as are fitting"—to quote Thomas Aquinas—none of these things can be wrong, for nature is normative. The logic is commendable.

6. Sade has worked out the implications of natural law theory just as Hume {18} has worked out the implications of empiricism. It is to Hume that we now turn, for he presents the central logical difficulty of natural law theories, the derivation of normative statements from descriptive propositions. He presents the problem in this way:

> In every system of morality, which I have hitherto met with, I have always remark'd, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surpriz'd to find, that instead of the usual copulations of propositions, *is*, and *is not,* I meet with no proposition that is not connected with an *ought,* or an *ought not.* This change is imperceptible; but is, however, of the last consequence. For as this *ought,* or *ought not,* expresses some new relation or affirmation, 'tis necessary that it shou'd be observ'd and explain'd; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it. But as authors do not commonly use this precaution, I shall presume to recommend it to the readers; and am persuaded, that this small attention wou'd subvert all the vulgar systems of morality, and let us see, that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceiv'd by reason.[28]

Hume's Gap, that gulf between observational data and ethical commands, has never been bridged by a secular philosopher. This is simply because there are two distinct logical categories of statements involved: propositions and commands. One cannot move directly back and forth between the two types of statements, because, among other things, propositions have truth-value, and commands do not. Commands can be neither true nor false; only propositions may be. So the natural law theorists are beset not only by ethical difficulties, in that man is depraved and nature cursed, but also by an insurmountable logical difficulty, Hume's Gap. One can only conclude that natural law theories are learned ignorance, and that all the weighty tomes written on the

28. David Hume, *A Treatise of Human Nature,* bk. III, pt. 1, sec. 1.

subject should be consigned to the dustbin of philosophy—except, of course, that they are useful as syllabi of errors.

7. To bring our overview of natural law theory up to the twentieth century, I would like to mention a typical article that appeared in a recent issue of *Reason* magazine, a publication dedicated to, *inter alia,* a revival of natural law theory in one form or another. The article, authored by William Marina of Florida Atlantic University, is entitled, "Surviving in the Interstices." Marina writes:

> In the final analysis, there are only three bases upon which to construct values and thus a system of legitimacy: supernatural law, natural law, and statist, positive law. While pockets of believers in supernatural law exist, it is unlikely they will ever form a majority capable of challenging the dominance of statist, positive law. We are, therefore, left with natural law as a possible source for new legitimacy.[29] {19}

Please note that Marina cares not a whit for the truth of the matter: natural law is chosen as a basis for legitimacy because Marina has a hunch that believers in supernatural law will never be able to challenge the statists. This is much the same hunch that Grotius operated on in the late sixteenth and early seventeenth centuries, coupled with a desire, of course, to avoid fruitless and controversial theological discussions. Expediency and hunches seem to be the criteria for choosing an alternative to statist law. But there is something more surprising than this cavalier neglect of logic by a professed defender of "reason". In his efforts to show by historical example how a "new system of legitimacy" can be successfully erected on the basis of natural law, Marina writes:

> Christianity came to dominate, before its own unfortunate co-optation by the State, because it developed a superior ethic based upon natural law.... It rejected suicide as unnatural....[30]

Not only has Marina failed to perceive the absurdity of natural law, he compounds his error by saddling Christianity with the absurdity, and then attributing the conversion of the world to the absurdity. He dismisses supernatural law with these words:

29. *Reason,* June 1975, 66.

30. *Ibid.,* 68.

> Neither do I find the notion that Christianity triumphed because of its other-worldly emphasis very satisfying. Other sects also took that orientation, too.[31]

Unfortunately, Marina does not point out that the established order was informed by natural law, as were many of the competing sects. Why the order did not remain or why another sect did not turn the world upside down are questions ignored by Marina. His facile categorization of Christianity as one of a number of similar sects is a serious historical and philosophical error, to which he is completely oblivious. Like most, if not all, natural law theorists, he is intent upon obscuring the differences between Christianity and other religions by attributing its strength to natural law.[32] The fatuous remark that Christianity rejected suicide because it was unnatural is typical of the deliberate evasion in which one must engage to classify Christian law as natural law.[33] The next thing one expects to be told is that Moses stumbled over stone tables on which the wind and the rain had etched the Ten Commandments. *That* would be natural law—in some sense.

8. Is it not clear that the naturalists are at the ends of their ropes when they must use Christianity as an example of natural law? Is it not obvious that *only* Christianity can furnish a valid ethical system precisely because it does *not* purport to derive law from logic or experience? David Hume, himself a naturalist, has laid an axe to the root of all efforts to devise a valid system of ethics from human experience. Is it not evident that we must go out of—or rather, Someone {20} must break into—our experience in order to establish law? Only revelation—only commands from the lawgiver—can provide us with the needed ethical guidance. Gordon Clark has formulated the Christian ethical principle in four words: God's precepts define morality. Jerome Zanchius wrote that God

> did not therefore will such things because they were in themselves right and he was bound to will them; but they are therefore equitable and right because he wills them.[34]

31. *Ibid.*
32. A good example of this is the last section of C. S. *Lewis's Abolition of Man.*
33. Cf. 1 Corinthians 3:16-17, *inter alia.*
34. Jerome Zanchius, *Absolute Predestination,* 18.

Those professing Christians—the Romanists and the Arminians—who believe that natural law theory is compatible with the Bible or is even taught in the Bible itself have not grasped the implications of the first two chapters of Romans. Paul there wrote that

> when the Gentiles (who do not have the law) do by nature the things of the law, they are a law to themselves, showing the work of the law written in their hearts, their conscience bearing witness with them. (Romans 2:14–15)

Romanists and Arminians illogically conclude from this that natural law theory is found in and sanctioned by the Bible. Paul also says that men suppress the truth in unrighteousness; they refuse to glorify God; they are ingrates, fools, and do not like to retain God in their knowledge. He is describing the Gentiles, i.e., the natural law theorists, among others. Now of course men do know some rudimentary principles of the law of God—the "work of the law"; Paul teaches this in the second chapter of Romans. In fact, we may say on the basis of I Corinthians 11:7 that men can only lose the *imago dei* by ceasing to be men. As long as they are men and are the *imago dei,* they are responsible for their actions. Men cannot, however, construct theories upon this rudimentary knowledge, for their intellects are depraved. The carnal mind is enmity against God, for it is not subject to the law of God, neither indeed can it be (Romans 8:7). Could there be a better refutation of natural law theory than that? The Gentiles, Paul says, *performed* some of the deeds of the law, almost, as it were, by accident. Thus, while Aristotle may never have actually murdered someone, he recommended abortion and infanticide, and attempted to prove the existence of a finite, ignorant, anchoretic god.[35] While the Gentiles may perform the law, or rather, some of the things commanded by the law, Paul does not say—he says the opposite—that they can expound the law.[36] Finally, it should be noted that some of the thinkers with whom natural law theory is most prominently associated—Aristotle, Aquinas, Locke—were precisely those thinkers who also believed inconsistently that man was born *tabula rasa.* I submit that there could not be a better example of

35. Abortion and infanticide, *Politics,* bk. VII, 1335b, 20-26; theistic proofs, *Metaphysics,* Lambda, 1071b-1076a, *Physics,* bk. VIII, 258b-260a.

36. 1 Corinthians 1:18-20; 2:13-16; Colossians 2:8.

suppressing the truth in unrighteousness than John Locke appealing to the law written in the minds of men in his *Treatises on Civil* {21} *Government,* and maintaining that men are born *tabula rasa* in his essays on human understanding and education. Yet this suppression of the truth is overshadowed by the idolatry involved in elevating nature—or rather, Nature—to the position of lawgiver. Natural law theorists, rather than worshipping the Creator and obeying His law, worship the creature and attempt to discover her laws. Natural law theory is, in the final analysis, a form of idolatry. What has nature to do with law? Nothing. Law is God's commanding.

Lawlessness

Charles E. Rice

It was Human Kindness Day, May 10, 1975, in Washington, D.C. About 125,000 persons turned out at the Washington Monument grounds for what was billed as a show of harmony among people. The main feature of the day, however, turned out to be nearly 600 assaults and robberies:

> One man was blinded in one eye by a stabbing. A 55-year old man and his wife working at an arts and crafts booth were beaten in the robbery of their cash box.
>
> A pregnant woman was grabbed by a black youth who pointed a knife at her stomach and demanded her husband's wallet "or I'll kill the baby." He got the wallet.
>
> A young man trying to regain his stolen wallet was beaten in the face and knocked unconscious with a club. Two teen-aged girls were beaten and kicked in the head. A young man with a bicycle was surrounded and hit with bottles while his bike was stolen. Purses and cameras were snatched by the scores.
>
> At least 300 victims required treatment at hospitals or first aid stations.
>
> All this occurred in daylight. Yet some 300 U. S. Park Police and scores of volunteer "marshals" found themselves unable to protect the relatively few whites among the predominantly black crowd, or to catch many offenders. Only 18 arrests were made. The program, featuring a "rock" concert, had to be cut short to end the violence.[37]

The attacks that occurred on Human Kindness Day appear to have been racial. But the crime surge throughout the country cannot be so dismissed. From 1963 to 1973 the population of the United States rose by 11% while violent crimes rose sixteen times faster, or 174%. Of course, most crimes go unreported. Of those that are reported, only 20% of those arrested are convicted of the crime originally charged. About 5% of those arrested are allowed to plead guilty to lesser charges.

37. *U.S. News & World Report,* June 2, 1975, 45.

The remainder of those arrested are referred to juvenile court or are acquitted. About two-thirds of all persons arrested are arrested again on new charges within two years.[38]

When we speak of lawlessness, we generally mean this type—the violation of laws enacted by the community to protect innocent persons from theft and violence. My first inclination is so to confine this discussion and to emphasize the role of judicial permissiveness in contributing to the rise in crime. In 1926, Justice Benjamin Cardozo complained that "the criminal is to go free because the constable was blundered."[39] Too often the question of the guilt or innocence {23} of the accused is obscured by the courts' unreal concentration on artificial procedural rules of their own making. Justice Macklin Fleming of the California Court of Appeal has written a devastating and definitive exposé of the prevailing judicial irresponsibility in this regard .[40]

Police Chief Edward M. Davis of Los Angeles has pointed out that with respect to adults convicted of homicide, robbery and burglary, "10 years ago California committed 36 percent of these people to prison. This is reduced 10 years later to 16 percent. So there has been a judicial revolution in sentencing." The courts and correctional authorities seem to be turning away from the idea that crime merits punishment and widely adopting instead a policy of rehabilitation without imprisonment. As Chief Davis commented:

> And there is the concept advocated by the National Council on Crime and Delinquency to virtually eliminate prisons: Prisons are a bad thing, no penitentiary has made anyone penitent, no penitentiary has ever rehabilitated anyone. Therefore, they say, eliminate penitentiaries and put everybody in so-called community-based rehabilitation.
>
> So there's been this fantastic overloading of the probation-and-parole system, when they should be in physical custody instead of running loose on the streets.

38. See *U.S. News & World Report,* June 10, 1974, 34.

39. *People v. Defore,* 242 N Y 13, 21 (1926).

40. Macklin Fleming, *The Price of Perfect Justice* (New York: Basic Books, 1974); see the interview with Lord Widgery, Lord Chief Justice of England, for a discussion of the more expeditious and fair English system of justice, in *U.S. News & World Report,* January 27, 1975, 45.

> Ten or 15 years ago the people were pursuing happiness in the streets and the criminals were behind bars. Today the American people are behind bars in their homes and offices and the criminals are pursuing happiness in the streets.[41]

The most immediate task in remedying the crime problem is a return to reality in criminal procedure and sentencing, probation, and parole policies. Leniency has its place, and any experienced lawyer could point to individual cases where leniency in sentencing, probation, or parole has worked to restore convicted persons to lives of purpose and usefulness. And it is true that imprisonment rarely rehabilitates anyone. It happens fairly frequently that a person convicted of a felony ought not to be sent to prison. In the past, we were able to rely in this matter on the sound discretion of level-headed judges. But the system has become so absolutized that judges and correctional authorities no longer make the relevant distinctions. Rather, leniency is coming to be regarded as an absolute right, and too many convicted criminals are deemed worthy candidates for leniency when their records show no objective basis for such a decision. When this tendency toward leniency in sentencing, probation, and parole is added to the frequently absurd procedural intricacies that are required to secure a conviction in the first place, it is not surprising that the criminal profession no longer pays so poorly as it once did.

It would be interesting to explore in depth these problems of criminal procedure {24} and policy. But this is the *Journal of Christian Reconstruction.* A discussion in its pages of the breakdown of law ought to go beyond the mechanics of criminal procedure and penology. "Many factors generate crime. That 'inner morality' necessary to resist the temptation to rape, rob, or kill weakens in an environment of broken homes, systemic poverty, ethical relativism, religious decline."[42] Of the factors mentioned by Professor Stanmeyer, three are essentially spiritual. Broken homes, ethical relativism, and religious decline occur because there is something wrong with the spirit. And some likely causes of this spiritual malaise have been generally overlooked.

41. *National Observer,* July 19, 1975.

42. William A. Stanmeyer, "Urban Crime: Its Causes and Control," *Imprimis* (Hillsdale College), November 1972, 5.

One such cause is the secularization of the American State. As a nation and as individuals, we have closed our minds to the presence of God and to His Law. In pursuit of an impossible religious neutrality, the State has adopted a militant secularism as its official creed. These two currents—the secularization of the citizen and the secularization of the State—joined in the 1960s and they are carrying away the foundations of the old order.

There is no doubt that the government of the United States was intended by the Constitution and the First Amendment to encourage Christianity while maintaining impartiality among theistic sects and protecting the free exercise of religion by all, including nonbelievers. According to Justice Joseph Story, a Unitarian who distinguished himself on the Supreme Court from 1811 to 1845:

> Probably at the time of the adoption of the Constitution, and of the first amendment to it ... the general if not the universal sentiment in America was, that Christianity ought to receive encouragement from the state so far as was not incompatible with the private rights of conscience and the freedom of religious worship. An attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation.[43]

Today the pledge of allegiance affirms that this is "one nation, under God." These words, "under God," were inserted into the pledge by Congress in 1954. In 1956, Congress declared the national motto to be, "In God We Trust." These actions were consistent with the position of the First Congress. On September 24, 1789, the same day that it approved the First Amendment, Congress called on President Washington to proclaim a national day of prayer and thanksgiving. The First Congress resolved:

> That a joint committee of both Houses be directed to wait upon the President of the United States to request that he would recommend to the people of the United States a day of public thanksgiving and prayer, to be observed by acknowledging, with grateful hearts, the many signal favors of Almighty God, especially by affording them an

43. Story, *Commentaries on the Constitution of the United States* (1891), secs. 1874 and 1877.

> opportunity peaceably to establish a Constitution of government for their safety and happiness.[44]

President Washington {25} issued the Thanksgiving proclamation and every President, except Thomas Jefferson and Andrew Jackson, has followed his example. Today we are told by the Supreme Court that the First Amendment forbids government even to recognize that God exists. This judicial fabrication falls of its own weight in light of the action of Congress in offering thanks to God on the very day it approved the First Amendment.

The part of the First Amendment that deals with religion provides, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." As Judge Thomas Cooley explained, "By establishment of religion is meant the setting up or recognition of a state church, or at least the conferring upon one church of special favors and advantages which are denied to others."[45] During the Congressional debate on the amendment, James Madison observed that "the people feared one sect might obtain a preeminence, or two combine together, and establish a religion to which they would compel others to conform."[46] The free exercise clause of the First Amendment protected the free exercise of religion of nonbelievers as well as believers. As to the free exercise clause, therefore, religion included nontheistic beliefs as well as theistic. An atheist could not be coerced in his beliefs by government any more than a Baptist could be so coerced. But, with respect to the establishment clause of the First Amendment, the idea was to maintain government neutrality among Christian sects while permitting government to encourage theistic religion in general. As to that clause, therefore, forbidding a law respecting an establishment of religion, "religion" meant theistic religion. When I say "theistic" here, I include deistic beliefs with their variant views of the Providence of God. Under the establishment clause, government had to be neutral among religions. But it did not have to be neutral as between theism and nontheism. The idea, as it persisted in our constitutional theory, was that religion required a belief in God. You couldn't

44. *Annals of Congress* (1789), 949
45. Cooley, *Principles of Constitutional Law,* (1898), 224.
46. *Annals of Congress* (1789), 731.

have religion without God any more than you can have baseball without a ball.

In 1961, the Supreme Court of the United States initiated the process by which, as a self-appointed constitutional convention, it wrought the juridical transformation of the United States into a secular State hostile to God and His Law. Roy Torcaso was denied a commission as a notary public in Maryland because the constitution of that state required that all public employees declare their belief in God. He refused to do so. The Supreme Court, speaking through Justice Black, invalidated this requirement because "the power and authority of the State of Maryland thus is put on the side of one particular sort of believers—those who are willing to say they believe in 'the existence of God.'" The court went on to define nontheistic beliefs as religions for constitutional purposes:

> We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person "to profess his belief or disbelief {26} in any religion." Neither can constitutionally pass laws or impose requirements which aid all religions as against nonbelievers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.[47]

In *Abington School District v. Schempp,* 374 U. S. 203, 220, the 1964 case which outlawed the reading of the Bible and recitation of the Lord's Prayer in public schools, the Supreme Court formally adopted for establishment clause purposes the Torcaso definition of nontheistic beliefs as religions. Government, therefore, is now required to maintain neutrality, not among Christian or theistic sects, but as between theism and nontheism (including atheism and agnosticism). Government can no longer affirm as a fact that God exists. As Justice William Brennan put it in his concurring opinion in the 1964 school prayer case, "The reference to divinity in the revised pledge of allegiance, for example, may merely recognize the historical fact that our Nation was believed to have been founded 'under God.'" (374 U. S. at 303, 304). Only if it is a mere historical commemoration of the fact that the benighted framers of the Constitution believed in God, can the pledge of allegiance survive attack. If it is meant to be believed, it is unconstitutional. The same reasoning would apply to an affirmation by a teacher or other

47. *Torcaso v. Watkins,* 367 U. S. 488, 495 (1961).

government official that the Declaration of Independence is true when it affirms four times the existence of God.

In the nature of things, however, government neutrality on the question of God's existence is impossible. An affirmation that God exists or that He does not is a preference of theism or atheism. The only course permitted by the Supreme Court is a suspension of judgment, an assertion that as a matter of public policy, the existence of God is unknown or unknowable. But this is in itself an establishment of the nontheistic creed of agnosticism. The distinction has enormous practical importance. A generation of public school children has grown to maturity without ever hearing the agents of the State, in the person of the teachers, affirm that there is a Divine standard of right and wrong higher than the State. One by one, there have been purged from our public life the public prayers, nativity creches, and miscellaneous proclamations and observances that made the theistic affirmation of American society a living thing. In *Meek v. Pittenger*, 95 S. Ct. 1753 (1975), the Supreme Court invalidated a Pennsylvania statute which authorized the state to lend instructional materials to parochial schools and to provide psychological and other services to children in those schools. "The court apparently believes," wrote dissenting Justice William Rehnquist, "that the establishment clause of the First Amendment not only mandates religious neutrality on the part of the government but also requires that this court go further and throw its weight on the side of those who believe that our society as a whole should be purely a secular one."

In law, the State can now deal with pornography, divorce, homosexual conduct, contraception, abortion, and euthanasia only in rigidly secular and therefore {27} ineffective terms. One result is the accelerated adoption of analytical positivism as our governing jurisprudence. Analytical positivism, which dominated Nazi thinking, rejects the concept of justice as irrational, denies God and the higher law, and affirms that any law, whether it requires the gassing of Jews or the killing of unborn babies, is valid if enacted according to the prescribed forms.

The secularization of the State is a reflection of a secular consensus among the American people. At the same time, Law is an educator. When the State treats God as if He did not exist, it is not surprising that the people tend to do likewise. And when the people turn from God, it is not surprising that more of them turn to crime.

The Adversary Concept

Frederic N. Andre &
Rousas John Rushdoony

The word *adversary* has an interesting and important background in Scripture. The word in the New Testament Greek is *antidikos.* It means, first, an opponent in a lawsuit, or an enemy who is perpetrating injustice (Matt. 5:25; Luke 12:58; 18:3). Second, it is used specifically of the Devil or Satan in I Peter 5:8. The two meanings are closely related: the adversary in the lawsuit is the man who is unjust, and whom only the superior force of the courts can bring to justice. Satan, as the Adversary, is dedicated to destroying God's distinction between good and evil and making every man his own god and arbiter of right and wrong (Gen. 3:5). For God, there is an ultimate good and evil, and good and evil are determined by His nature and being. What God is and does is good, and there can be no altering of His ultimacy or of His nature and being. Satan calls for a fluid concept of good and evil, one relative to man. Since man is in *process,* changes, and is not ultimate or absolute, good and evil thus must also change as man's will changes. Satan's thesis is the thesis of humanism. This does not mean that humanism does not take good and evil seriously. Indeed, it does, but in a fluid manner. During the 1930s and 1940s, fascism (Mussolini and Hitler) was savagely condemned as evil. Today, economic (and sometimes political) fascism is the rule in virtually every nation and is praised as socialism, democracy, a concern for human welfare, and so on. From the standpoint of humanism, a fluid and pragmatic position alone is tenable, and today's truth is tomorrow's error, and vice versa. For sociologist Emile Durkheim, evolution meant change, and he saw the criminal as often an evolutionary pioneer, charting the next direction of society. His criminal acts could thus forecast the next normality.[48]

48. Emile Durkheim, "On the Normality of Crime," in his *The Rules of Sociological Method,* in Talcott Parsons, Edward Shils, Kaspar D. Nargele, Jesse R. Pitts, eds., *Theories of Society,* vol. II (New York: Free Press of Glencoe, 1961), 827-875.

Biblical faith and modern philosophy thus hold radically different views of the *antithesis.* Biblical faith holds that there is an antithesis or division in the world, and life can only be truly lived by recognizing this fact. The antithesis is in history, not in God: it is an aspect of creation, not of the Creator. The antithesis, however, is not between God and history, because God made all things good. The antithesis is not metaphysical but *moral.* When we make it moral, in line with Scripture, we avoid the serious errors which mark non-Christian thought.

Where the antithesis is seen as *metaphysical,* it means that not God but good and evil are ultimate and constitute absolute forms of being. The result is dualism, {29} such as we see in Zoroastrianism, Manichaeanism, Albigensianism, and other forms of dualistic faith.

Where good and evil (or the antithesis) are seen as relative and pragmatic, then, while dualism is avoided, all judgment becomes relative and ethics disappears into psychology and sociology.

How a man or a culture views the antithesis thus makes all the difference to the structure of law. Anglo-American jurisprudence has been very strongly grounded in a Biblical or moral view of the antithesis. In a metaphysical antithesis, there is no possibility of converting an evil man into a good man, because evil is the metaphysical and permanent character of his being. The moral constitution of a man can be changed, but not his metaphysical constitution. Religiously speaking, a morally evil man can be converted, and the judgments of the law can awaken him to the consequences of his ways and open his heart to religious influences and conversion. A metaphysically evil man can no more change his nature than he can reverse his aging process and become a child in his mother's womb again. There is thus no hope of reform or change in a society which sees evil as a metaphysical rather than a moral fact. Asia, once far in advance of Europe, collapsed into stagnation when it saw the antithesis as either metaphysical or purely relative rather than moral.

In a relativistic view, to which some Asiatic countries came long before modern pragmatism, instead of good and evil being moral realities, they are merely relative and are *maya,* illusion, and hence meaningless, like all things else. When Hindu thought concluded that the ideas of good and evil are *maya,* illusion, it did not lead to a glorious freedom beyond good and evil but to a radical decay and collapse in

society. If good and evil, the essential means of assessing life and experience, are illusion, then all things are also merely appearances and illusion, and the whole of reality is simply a cosmic illusion. Justice is then an illusion also, because justice is inseparable from good and evil.

This has serious legal consequences. If good and evil are illusions, then justice, compassion, principle, and law are illusions, and men who believe in them are fools. The relativists in the Western tradition still cling to and are motivated by a passion for justice which springs out of their Christian past, but their philosophy and action is leading to a radical disintegration of their causes. If good and evil are relative to man, then they are illusions as far as any objective validity is concerned. There is then no right or wrong, but only the will of anarchistic man, or the superior will of the totalitarian state. There is no possibility of moral criticism, because, if you rob us, we have no moral ground in terms of which we can condemn you. *For us,* it may be wrong for anyone to rob *us,* but for you it may be worthwhile and "good." There is no law or moral principle binding upon both of us which has any objective validity.

This makes apparent why there is a legal and a moral crisis today. In the Anglo-American tradition of jurisprudence, the Biblical revelation has been decisive. The purpose of law is to codify and enforce the moral system of Biblical {30} faith. The common law embodied this purpose. As Rosenstock-Huessy pointed out, "Common Law was the product of a union between universal Christian laws and local customs."[49] This heritage was further developed by the adoption, in New England and other American colonies on a wholesale basis, of Biblical law directly from Scripture. The result was that the American tradition of jurisprudence was biblically reinforced at a time when the tradition was waning in Britain.

After the Civil War, statute law rapidly took over in America, and the background of this statute law was the revelation imbibed from European philosophies. The issue was clearly forced by Holmes, who, in the first paragraph of his very influential work, declared,

49. Eugen Rosentock-Huessy, *Out of Revolution* (New York: William Morrow, 1938), 270.

> The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.[50]

By logic, we are to understand a religious system of truth and moral law, a theological-philosophical system having an inner consistency, meaning, and purpose. By experience, we are to understand all local customs, traditions, prejudices, passions, hopes, and practices of a society during its history. Now according to Rosenstock-Huessy, the legal inheritance of the Anglo-American systems of jurisprudence has been Christian law and various local customs, i.e., both logic and experience. Those "experiences" that have been retained in these legal systems generally have conformed to the biblical standard. Logic has thus been determinative. Why then did Holmes deny the reality of law as logic? Was he not aware of the long governing of the Anglo-American systems of law by Biblical standards? Was he not aware of the fact that even the statute laws of his day reflected Biblical premises?

The answer is that Holmes was fully aware of these things, but he still reduced the law to experience, to a body of incoherent social mores and requirements, because *for him no system or logic is possible or can exist.* As a relativist and a legal positivist, he saw no truth, meaning, purpose, or logic in the universe. The Bible, in offering a logic for law and a law of logic, premised on the sovereign and omnipotent God and His will, was for Holmes a myth, one aspect of social experience. *Thus, for Holmes the law was not logic but experience because the universe is without logic, and only experience is real.*

This meant that for him there was no adversary, no good and evil, which law was to reckon with, but only conflicting interests to be adjusted. Justice thus was in effect abandoned as a legal principle and goal in favor of an adjustment of conflicting interests and groups. The goal of the law then ceases to be {31} justice but becomes instead *the peace of compromise and adjustment.* The shift was also from equity to

50. Oliver Wendell Holmes Jr., *The Common Law* (Boston: Little, Brown, [1881] 1946), 1.

an equality of good and evil, since both are equally important and equally meaningless.

The roots of this legal revolution are deep in modern philosophy. With Descartes, the center of philosophy was shifted from God to man, and ultimacy was given to the autonomous mind of man. This new centrality, authority, and ultimacy of man led to some radical problems, especially with regard to epistemology, the theory of knowledge. Having started with man, philosophy could not get beyond man, even to prove the reality of the external, physical world. Philosophy had become dialectical, i.e., was holding two ideas which its premises made mutually contradictory, but refusing to surrender either. The dialectic of modern philosophy is a nature-freedom dialectic. The world of "nature" is out there, existing without man's government or creation, and a challenge to man's assumption that man is ultimate and is his own god. Moreover, contact between the mind of man and the outer world is managed only through sensory perception. Are the reports of the senses valid or illusory? The mind has only secondary data at best. This dilemma was resolved after Immanuel Kant by making a distinction between what we experience and whatever may be really out there. The "real world" for man now became, not the thing in itself out there but man's experience of it. *The "real universe" for man is the universe of his experience.*

Practically, this means that the real world is the world of experience, not of logic. Religiously stated, this means that the real world is what men think it is, not what God has created it to be. Logic is denied even to man. For Sartre, and for his existentialist followers, there is no logic or preestablished nature or pattern to man. Man, he holds, has being but no essence. If there is any essence, logic, or meaning to an individual man's life, it will be of his own making. There is no superimposed or God-created essence, logic, or pattern to man or to anything else. Man is thus to all practical intent his own and only real world and his own universe.

An immediate consequence of this philosophy was Romanticism, the glorification of the anarchistic individual and his feelings and passions. The individual's feelings and passions became the center of the universe, and no moral law could outweigh the value and importance

of human passion. In terms of the romantic ideology, law was an ugly, repressive force in society.

As a result of this continuing and now highly developed Romanticism, a new concept of the adversary has developed in the twentieth century, although its roots are in Rousseau and the French Revolution. For Rousseau, the natural, passionate, and uninhibited man was the true man, and the enemy of man is civilization, Christian civilization in particular. The adversary is thus civilization; it is law and order, and, above all else, it is religion. Marx called religion the opium of the masses and the great adversary of man. Freedom for man requires, for Marxism, the total overthrow of religion, Christianity in particular. {32}

A new adversary concept was thus unleashed on Western civilization; a relativistic faith, for Marx and Rousseau were at bottom relativists, now declared that its grand enemy was the affirmation that God is sovereign, and His moral law absolute over man. For relativism, there is no good and evil, only pragmatic considerations. Its absolute is thus man, not God. All things are relative to man and man's wishes, because man is the absolute or god of modern thought, or humanism. God is thus the great enemy, and law, order, morality, and everything that smacks of God is to be warred against.

Camus, as an existentialist, stated the matter bluntly and honestly: "…only two possible worlds can exist for the human mind: the sacred (or, to speak in Christian terms, the world of grace) and the world of rebellion."[51] The world of grace versus the world of rebellion or revolution: this is the battle line. In the world of rebellion, whatever belongs to God and His order must be destroyed. Camus again stated the situation with clarity and honesty:

> We are living in the era of premeditation and the perfect crime. Our criminals are no longer helpless children who could plead love as their excuse. On the contrary, they are adults and they have a perfect alibi: philosophy, which can be used for any purpose—even for transforming murderers into judges.... Once crime was as solitary as a cry of protest; now it is as universal as science. Yesterday it was put on trial; today it determines the law .[52]

51. Albert Camus: *The Rebel: An Essay on Man in Revolt* (New York: Vintage Books, 1956), 21.

Camus was in deadly earnest, and his analysis, coming from the enemy camp, must be recognized as an honest one. The modern state is increasingly anti-Christian, and its law structure is more and more humanistic and relativistic. Shortly after World War II, Chief Justice Frederick Moore Vinson of the U.S. Supreme Court declared emphatically what the Court had long held in practice: "Nothing is more certain in modern society than the principle that there are no absolutes." No moral law binding on all men is recognized, no universe of principles, only sovereign man and the sovereign state.

State schools (so-called public education) are relativistic to the core, and John Dewey and others very early declared the enemy or adversary to be supernatural Christianity. Of the ideas of the saved and the lost, heaven and hell, good and evil, Dewey said that it represented a "spiritual aristocracy" and an alien creed. "I cannot understand how any realization of the democratic ideal as a vital moral and spiritual ideal in human affairs is possible without a surrender of the conception of the basic division to which supernatural Christianity is committed."[53]

In the 1960s, this faith in relativism was very much on the march, and the student movements of the decade treated the "Establishment" as the enemy; law, order, the state, church, everything that historically has meant society was condemned by the students as a crime against man. Convicts who rioted were {33} made into heroes; homosexuals were regarded as an oppressed people.

In the 1970s, this movement continues. Prostitutes are regarded as the finest of women, and every kind of erstwhile outlaw, including pimps and criminal leaders, is lionized.

Camus was right. What for the world of grace was a crime, today determines the law increasingly. Only the willfully blind fail to see that the adversary concept has been reversed, and *it is now God who is the great criminal and adversary.* At the time of the French Revolution, a brilliant English artist and gnostic stated with intense feeling the creed of the new era. William Blake's manifesto to the orthodox Christians was very clear, however obscure some of his writings are. It was simply this: your God is my devil.

52. *Ibid.,* 3.

53. John Dewey, *A Common Faith* (New Haven, CT: Yale University Press, 1934), 84.

Here we have the heart of the modern philosophy. There can be no living in peace with the modern age, nor any patchwork of reform or compromise within it. The modern adversary concept is the total reversal of all Christian faith and civilization, and it is a war unto death against that faith.

The tragedy is that too many churchmen are not even aware of the fact that a war is on, nor of the nature of the issues. The battlefield of history has no time for fools. The victory belongs only to the Lord, and to those who stand unequivocally with Him.

The Common Law and the Common Good

T. Robert Ingram

"For the Lord your God is God of gods . . . a great God, a mighty, and a terrible, which regardeth not persons . . ."—Deuteronomy 10:17.

Moses is speaking of God here as ruler or governor of the universe, and especially in the affairs of men. Since God rules all things consummately by law, He is seen functioning as our judge, our lawgiver, and our king. In this there is no repugnance to God's role as Father of our Lord Jesus Christ and of all Christians as sons by adoption and without whom not a sparrow shall fall to the ground. The individual person is the direct object of special grace by which we are saved. It is upon persons as such that God dispenses His saving grace. Yet in the economy of salvation this special mercy shown to persons does not alter by a hair the divine justice which regardeth not persons, nor does it impinge on the absolute sovereignty of grace.

Justice is fully satisfied in the blood of Christ shed from the cross. The penalty for the sins of every redeemed person has been fully paid out and justly applied to each. In fact, it is this relentless justice of God, who spared not His own son but delivered Him up for us all, thus regarding not even the person of the beloved, that makes it possible for Him to bestow grace and mercy upon persons whom He chooses. It is because God is no respecter of persons in judgment that he can in turn show tender loving mercy upon persons in redemption. It is in Christ, the righteous or just one, that David sings, "Mercy and truth are met together, righteousness and peace have kissed each other" (Ps. 85:10).

Let us, then, consider that perfect righteousness or justice by which we as Christians are ordered to judge the world. First, we must bear in mind that there can be no justice where there is no law. It is the law that teaches man to know right from wrong. It is because right and wrong are determined by the eternal law of God that right is always right, and wrong is always wrong. How ignorant and foolish are those who self-

righteously proclaim, "You can't legislate morals. Legislation has nothing to do with morality." *Law is morality, and morality is law.* Righteousness is the keeping of the law, and a moral person is he who, heeding the words of Moses, understands that one of his chief duties under God is "to keep the commandments of the Lord, and his statutes." To keep the law, remember, means first of all to enforce it. This man is commanded to do as having dominion over the earth, and in doing it, man, following God, cannot regard persons. "For the Lord your God is God of gods, ... a great God, a mighty, and a terrible, which regardeth not persons ..." (Deut. 10:17).

This puts an inviolable limit to all law and justice. Every law is shaped only to {35} the common good. Any statute or decree that is not so shaped, but instead is designed for the contrary, which is some private good, is not law but unlaw. Classical writers on law and justice in all times and places are at one on this root principle and generally speak in these terms of common good as distinguished from any private good. Modern ears, however, might be better attuned to the matter if we distinguished between common good and the good of individuals. Not that individuals do not share in the common good; the point is, they all share in such a manner that the good is not diminished in any way by however much individuals may receive from it. For example, it might be thought to be for the common good to distribute equally among an entire population enough billions of dollars for every person to receive, say, $10. No one can question the fact that the $10 given to the rich man denies that $10 to anyone else who in fairness needs much more. In material things there is only so much to go around. Therefore, the material goods that each person may receive cannot be to the common good.

The common good is such that it is in no way diminished by the enjoyment of it, no matter how many individuals are involved. The sunlight may be seen as a common good because it enables all who have eyes to see, and the seeing by it in no way detracts from any other. There are many things that belong to the common good, but insofar as the law can be shaped to the common good, it is probably the case that the chief common good is what we call a state of law and order, or, better still, public peace. The greatest minds have defined peace as that state of affairs when the worse is subordinate to the better.

The ordinary mind, however, needs no such thoughtful definition, but is perfectly able to recognize peace when it exists. Thus there has never been any difficulty in enforcing the peace, after all specific statutes have been promulgated, by adding the simple requirement to punish any breach of the peace. Peace may be enjoyed by all individuals without any denying to another so much as a hint or a shadow of that same peace. When peace is upheld in Harris county, every single person is free to go about his business. He may do whatsoever he pleases, he is politically free, as long as he does not break the peace. All crimes as set forth by the Ten Commandments violate the peace. So do such misdemeanors as walking a picket line, being drunk and disorderly, or engaging in a brawl. The law by which men keep the commandments and statutes of God is called the *common law.* That is, it applies to every individual person alike—be he king, or entertainer, or raised in a slum, or of another race. It can never be tailored to individuals or to make exceptions for persons according to their origins, their backgrounds, their usefulness, their imagined oppressions of preceding generations, or anything else. "For the Lord your God is God of gods, ... a great God, a mighty, and a terrible, which regardeth not persons." When this common law, which is shaped to the common good, is enforced, the people enjoy no less than the protection of Him who is God of Gods. "And now, Israel, what doth the Lord thy God require of thee, but to fear the Lord thy God, to walk in all his {36} ways, and to love him, and to serve the Lord thy God with all thy heart and with all thy soul, to keep the commandments of the Lord, and his statutes, which I command thee this day for thy good?" (Deut. 10:12–13).

Enforce the common law for the common good. After reciting the Ten Commandments at Holy Communion, the celebrant offers a prayer that God will help us to keep these laws "that through thy mighty protection, both here and ever, we may be preserved in body and soul." Real protection, the real condition of liberty, is afforded by our keeping the common law, without respect of persons. It may take a reach of faith today to believe that this is true; but it shouldn't. "For faith is the substance of things hoped for, the evidence of things not seen." Liberty and the protection of God are things that have been seen in history, and not simply in far off and ancient history but in our own short history of America, both colonial and under the Constitution.

They are not things hoped for in the sense that they have not been realized, for they have been. It is not open to doubt or argument. The common law is the bulwark of liberty, and the protection against battle, murder, and sudden death—God's own protection. A modern legal scholar writes that "common law ideas embodying the rule of reason were made an integral part of American legal practice. In fact, the application of such ideas was more extensive and persistent in the United States because of the necessity of applying principles of justice and of reason in adapting English law to American conditions and in supplementing defects in legislation, where conditions were rapidly changing."

In another place, the same author observes that American colonial "courts and judges found themselves called upon to make law for the occasion with little else to guide them except the Bible, the precepts of natural justice, and the community sentiment of what ought to be right and just." It is no mere coincidence but a matter of cause and effect that during those many years when Americans were diligent to keep the commandments and statutes of God for their own good, as Moses admonished, our land was the admiration of the whole world for the peace, plenty, and liberty. Nevertheless, although this has been proved out time and again, by David, by Josiah, by the Maccabees, in Europe and in America, it seems that men, even good men, are forever falling away from keeping God's law and that in particular by using the force of the people with regard to persons—for individual benefits.

Were it not so, there would have been no need for Moses and all the Prophets, from the very beginning, to have berated the people time and again for this particular lawlessness—regarding persons in judgment, oppressing the weak and helpless, and using their force for their own and other individuals' good. When this lawlessness prevailed, and the people thereby lost the protection of God, they ran shamefully for the protection of Egypt, or Assyria, of horsemen and chariots, which all added up to large scale banditry. The prophets gave out dire warnings that turning from God's protection to the protection of man would bring them wholesale slaughter, famine, hardship, captivity, and finally total dissolution {37} as a people. They were right then, and their words apply now. Then as now the people, even when they were groaning under the oppression of their human protection chieftains, refused

to turn to God and to the keeping of His common law. The people of these United States are falling into the same folly of Israel and Judah of old. I do not say merely the magistrates are. Nor do I say only judges, or the news media, or the intellectuals and educators. It is the people as a whole. The troubles that have piled upon us as a nation since the First World War are directly attributable to our general abandonment of the common law and the use of all government machinery in a conscious, militant, boastful regarding of persons. In the words of Isaiah, "Why should ye be stricken any more? Ye will revolt more and more: the whole head is sick, and the whole heart faint. From the sole of the foot even unto the head there is no soundness in it; but wounds, and bruises, and putrifying sores: they have not been bound up, neither mollified with ointment" (Isa. 1:4–5). Wherein have we been respecters of persons? you say. When have we accepted bribes? When have we used the lawmaking machinery for private or individual benefit? When you turned away from God's protection by keeping the common law and ran post haste, drooling at the mouth, to seek the protection of men—of bandits in and out of government machinery. When you said that the law exists for the very protection of individual rights, and when you declared that the common good meant not that good open without detraction to all but rather either the strength and wealth of the government, or the sum of private goods. When you agreed that the natural law, or that part of the eternal law of God in which men share, is exactly the opposite and what is in fact the essence of unlaw—drawn to protect individual rights. When you began to take the opening lines of the Declaration of Independence seriously.

The protection racket has been a long time coming to fruit in these years of our Lord. In the early 1600s, 150 years before the United States came into being, a Dutch scholar who broke from the faith of the Church and became what is known as an Arminian, Hugo Grotius, made the first attempt to obtain a principle of right and a basis for society and government outside the church or the Bible. Few, if any, took him seriously. His was ivory-tower speculation allowed by intellectuals as a sort of game. But the seed was planted. Grotius, like everyone who seeks a universal principle outside of God, had only one place to go. You guessed it. Individual rights. The violence and terror that grew out of this individual rights doctrine, especially in France, soon discredited

the whole idea. The Yankee radicals revived the notion and made a loophole for its application by the Fourteenth Amendment. But again, neither in the North nor in the South did anybody except the fomenters take it seriously. It was not until the big Socialist push in the late 1800s and the early 1900s that anybody really tried to apply the principle to law—making unlaw stand in the place of eternal right. That culminated in the Prohibition era when most of the land agreed it was more important to stamp out alcohol than to keep the common law: it was impossible {38} to do both. With Prohibition, America firmly adopted the protection racket, known to us as gangsterism. When the prohibition era ended in the total collapse of the common law, government was already functioning to protect the rights of individuals and to serve the interests of private citizens, or special groups, particular races, or classes, or labor unions, or ages.

Today there is hardly a voice in the land that objects to the protection racket as the function of all government. Not one seeks to enforce once again the common law. Few even know what the common law is, or that there ever was such a thing. Yet it is the principle of all law, the chief heads of which are the Ten Commandments. Even as worthy a group as those organized to oppose the legalization of abortion are doing so on the unlawful principle of the rights of, now, the unborn baby.

The Texas Right to Life Committee has a bill to put before the State Legislature in an attempt to control unlimited abortions. But this bill seeks to control the unlawful killing of unborn children on the grounds that the state exists to protect their right to life. The abortionists say they are protecting the privacy of the mother and her right to kill her unborn infant if she wants to. Whose rights prevail? There is no solution in this unlawful principle of society and government rooted in the rights of persons. There is a simple and immediately effective solution in the common law. In the language of the church centuries ago it was simply declared, "It is unlawful to kill a man, or that which will become a man." Abortions are punished because they are wrong. Individual rights have nothing to do with it. The law declares in statute form what is wrong and to be punished—without respect of individuals.

The contrast is total. The very worst offense against the law is the regarding of individual persons. When men accept a government

whose function is to protect the rights of individuals, they have introduced lawlessness, calling it law. Under a philosophy of lawlessness there can be no protection of God—only the protection of men which we call gangsterism or banditry. "For the Lord your God is God of gods, ... a great God, a mighty, and a terrible, which regardeth not persons, ..."

I cannot conclude this subject without carrying it on to its full revelation in Christ, in which we learn that even in the dispensation of saving grace, Christ is no respecter of persons. No man or woman is chosen because he is who he is or what he is: the choice is Christ's alone, who declares, "I will have mercy on whom I will have mercy" (Rom. 9:15). This is not the place to take up the doctrine of grace except insofar as it applies to the practices of the church. "My brethren, have not the faith of our Lord Jesus Christ with respect of persons. For if there come unto your assembly a man with a gold ring, in goodly apparel, and there comes in also a poor man in vile raiment; and ye have respect to him that weareth the gay clothing, and say unto him, Sit thou here in a good place; and say to the poor, Stand thou there, or sit here under my footstool: are ye not then partial in yourselves, and are become judges of evil thoughts?" (James 2:1–4). {39} There is nothing in any man that makes him worthy of the grace of Christ, nothing he will by himself do or become, no past sufferings or deprivations any more than riches.

> "For the Lord your God is God of gods, ... a great God, a mighty, and a terrible, which regardeth not persons."

Double Jeopardy: A Case Study in the Influence of Christian Legislation

Greg L. Bahnsen

The present era in Western civilization progressively exhibits the undeniable necessity for the Christian faith to exercise a reforming effect throughout the many aspects of human culture. The obvious decay of morality and leadership in our day can be arrested only by the salt of the earth. Until the light of the world is uncovered and set on a hill, the darkness of political and judicial evil will be undaunted, and oppression will not be reproved. At the present time, when the suicidal direction of secular humanism is becoming so evident, the Christian is called to a self-conscious and diligent reconstruction of every area of life, including judicial principles and law, on a biblical foundation. The sovereign reign of Jesus Christ must extend to the ends of the earth, instructing judges to be wise, to serve the Lord with fear and to put their trust in Him.

However, the author was recently impressed with the degree to which many quarters of Christendom are unprepared to disciple the nations in whatsoever Christ has commanded. In the specific area of applying God's word to all of life in order that righteousness might be manifest in whatsoever we do (unto God's glory), that every human activity be surrendered to the Lordship of Christ, that there might be a social realization of the standards of justice, that even the political and judicial realms might render unto God the things that are God's, we as disciples of Christ are often so far from being ready to carry out our task. Now, as always, ignorance and misguided thinking can be such an obstacle to running the race set before us! To many who observe us from outside, we might appear on many points to be the blind leading the blind. The Christian simply cannot, without detriment to the cause of the Kingdom, fail to do his homework. Here we must be scribes of God's word, every jot and tittle; we must be wise to discern the godly

application of the whole word of God to the contemporary situation in which we need direction and reformation.

Throughout history the Christian church has exercised an underlying effect on the course of culture, notably in the sociopolitical and judicial realms. God's law has been, explicitly and implicitly, taken as the directive for human law, thereby laying the crucial foundation for Western civilization and its advance. There is a wealth of learning to be gained by the Christian who will be studious in exploring the roots of modern-day legislation. Contemporary reformation of society should be carried on in full knowledge of God's directives, current problems, and Christian applications in the past. It should also be encouragement to present-day believers to see the remarkable sway which God's word has had in culture over the years as a result of Christian discipling and education. Others have gone before us, cutting a deep and wide swath. {41}

What is discouraging today is to observe many bodies of believers which think and act in terms of a radical dichotomy between the Christian faith and public life outside the walls of worship. Watertight compartments are assumed or imposed. Further, sometimes associated with this reductive attitude toward God's revealed word and sometimes not, one can sadly detect a lack of historical self-consciousness and inexperience in God's law among believers (including oneself: Matt. 7:3–5). These are pervasive problems, and even the otherwise most sound of theological groups can be infected with them. When a problem creeps into the most dependable organizations or denominations, how much more is it to be found in the lesser! Christendom has known such unhappy days. I have had occasion to hear the following line of thought among members of a higher ecclesiastical judicatory with respect to a trial conducted in a lower court of the church: "…although the defendant was legally acquitted by a properly constituted court which acted conscientiously in consideration of the evidence, nevertheless if we are not satisfied with the verdict we may (in the name of 'justice') try the defendant over again at the higher level." In reply to the consideration that such a procedure would transgress the commonly recognized prohibition of double jeopardy, some were willing to dismiss the well known principle as contrary to Christianity and a device of unbelieving or civil jurisprudence. According to them, in the church

it need not be recognized or adhered to. Such an attitude, while perhaps not ill-motivated, is nonetheless a somber indication of retrogression in Christian thought and prompts us to study the subject of double jeopardy anew. In so doing, we aim to learn and have illustrated the crucial reforming influence of the Christian gospel in Western history. The above-mentioned incident is but a remote trigger for our present reflection; the object of our study and concern is exclusively the landscape into which we have been catapulted.

It will become apparent that to despise or neglect the principle (or prohibition) of double jeopardy because it is a mere maxim of civil (alias, secular) jurisprudence is to repudiate the religious foundation crucial to Western civilization and to act in dangerous ignorance of the historical origins of that principle in Christian legislation.

The Concept of Double Jeopardy

What do we mean by "the principle (or prohibition) of double jeopardy"? In legal parlance, it also goes under the name of "former jeopardy." About this term the *Corpus Juris Secundum* says, "'former jeopardy' is simple language to denote a guaranty that one who has had a fair trial according to law and established legal procedure shall not again be placed on trial for same offense."[54] Martin Friedlander writes in his study of the subject, "No other procedural {42} doctrine is more fundamental or all-pervasive. 'At the foundation of criminal law', wrote Rand J. of the Supreme Court of Canada, 'lies the cardinal principle that no man shall be placed in jeopardy twice for the same matter ....'"[55] The doctrine is incorporated constitutionally (e.g., New Jersey: "Once a person is tried on a charge specific in nature and in character, such person may not be tried again on the same charge"), and there is page after page of abbreviated annotations of cases where the court's decision was explicitly predicated on this principle.[56]

In virtue of the very nature of legal adjudication and its presupposed authority, double jeopardy cannot be permitted. Prior judgment in its

54. *Corpus Juris Secundum: A Complete Restatement of the Entire American Law* (in 135 volumes of c. 1,000 pages each), vol. 22, ed. F. J. Ludes and H. J. Gilbert (New York: American Law Book Co., 1961), 615.

55. Martin L. Friedlander, *Double Jeopardy* (Oxford: Clarendon Press, 1969), 3.

own nature is conclusive of a subject matter, leaving nothing for subsequent adjudication, and is thus in itself a bar to second prosecution.[57] The substance of a trial puts the matter to rest irrespective of who dissents from the verdict; otherwise, the authority of the judge was a sham, a legal rationalization for doing whatever you wanted to do in the first place. "Rule against double jeopardy forbids a second trial for the same offense regardless of whether accused was convicted or acquitted at the former trial"; thus "double jeopardy does not depend upon the *result* of trial, but upon the *fact* of trial."[58] If this holds for those who have been convicted, how much more would it apply to those who have been acquitted! "The defense of former jeopardy will be available to accused whenever he has already gained acquittal for the same offense. Under the Fifth Amendment, a verdict of acquittal is final, ending the accused's jeopardy; once a person has been acquitted of an offense he cannot be prosecuted again on the same charge."[59]

The Extent and Rationale of the Principle

When this prohibition against double jeopardy is not adhered to, the door is wide open for unrestrained tyranny on the part of the governing authority. "Doctrine of double jeopardy is nothing more than the declaration of ancient and well-established public policy that no man should be unduly harassed by state's being permitted to try him for the same offense again and again until desired result is achieved."[60] Therefore, the principle does not depend on the court's whim or evaluation: it applies whether or not the court is satisfied with the conviction, and no appeal can be allowed even when the acquittal seems erroneous to some.[61] "No matter how irregular the proceedings have been, one who

56. See *Corpus Juris Secundum,* as well as *American Jurisprudence: A Modern Comprehensive Statement of American Law,* 2nd ed., ed. G. S. Gulick and R. T. Kimbrough (New York: CoOperative Publishing, 1965).

57. *Corpus Juris Secundum,* 619 (New Jersey: State vs. Labato).

58. *Ibid.,* 619, 642.

59. *Ibid.,*689.

60. *Ibid.,* 616.

61. *Ibid.,* 689.

has been tried in a competent court and acquitted on the merits cannot be placed on trial again for the same offense."[62]

Moreover, the {43} prohibition of double jeopardy cannot be evaded by making recourse to a higher or more general jurisdiction. "A conviction in a court of limited jurisdiction will bar subsequent proceedings in a court of general jurisdiction, provided the former proceedings were in good faith."[63] The argument of dual-sovereignty over a person is a subterfuge, substituting artificial reasoning for basic rights, says J. A. C. Grant.[64] This observation is sanctioned historically: "…an acquittal in any court whatsoever, which has a jurisdiction of the cause, is as good a bar of any subsequent prosecution for the same crime, as an acquittal in the highest court," wrote Hawkins in 1726.[65]

Because the protection against double jeopardy is so strong, overbearing states have in the past resorted to various tricks to prevent its application (for example, dismissing the jury in order to present later a stronger case against the accused). Such was put to end by statute in England as early as 1698.[66] However, to prevent criminal abuse of this protection, it has been established that one is not entitled to the plea of double jeopardy unless the prior proceedings were valid and the trial was according to law.[67]

As we have noted above, the key rationale for the double jeopardy principle is that of *restraint on the government* and *protection of individual rights.* Jay Sigler declares in his thorough study of this legal maxim, "The original purpose of the concept of double jeopardy was to diminish 'the danger of governmental tyranny' through repeated prosecutions for the same crime."[68] The *Corpus Juris Secundum* puts it well in saying:

62. *Ibid.,* 687-88.

63. *Ibid.,* 695.

64. See Grant's articles on this subject in the *Columbia Law Review* for 1932 and the *U.C.L.A. Law Review* for 1956 and 1957.

65. Hawkins, *Pleas of the Crown,* 2nd ed., ch. 35, sec. 10.

66. Friedlander, *Double Jeopardy,* 12-13.

67. *Corpus Juris Secundum,* 647-48.

68. Jay A. Sigler, *Double Jeopardy: The Development of a Legal and Social Policy* (New York: Cornell University Press, 1969), 15; cf. *Yale Law Journal* 133 (1947): 57.

> The prohibition against double jeopardy is a doctrine or concept designed to restrain the sovereign power, and to prevent the government from unduly harassing an accused. It is designed to protect an individual from being subject to the hazards of trial and possible conviction more than once for an alleged offense; and the idea underlying the doctrine is that the state, with all its resources and power, should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense, and ordeal, and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.[69]

History witnesses the fact that this principle has been opposed in the name of centralized power and totalitarianism. For instance, when Thomas Coke [pronounced "Cook"] completed his *Second Institutes of the Laws of England,* which set forth the full expanse of English common law (inclusive of the important doctrine of double jeopardy), he was bitterly attacked by Thomas Hobbes, {44} the promoter of political absolutism (cf. *Leviathan*); Hobbes complained, in his "Dialogue between a Philosopher and a Student of the Common Laws of England," that Coke had undermined the authority of the king.[70] Of course, the truth of the matter is that a prohibition against double jeopardy—just as with all constitutional guarantees—serves to restrain the monarch, which is intolerable to dictators.

Therefore, the prohibition of double jeopardy is crucial to civil liberty, individual rights, and political confidence. A domineering state must be restrained so that personal rights, liberties, and safeties are guarded. "It has been said that the right not to be put in jeopardy a second time is as essential as the right to a trial by jury, if not more important."[71]

Special Revelation

God's law everywhere presupposes the principle of double jeopardy as a dictate of just dealing with men. No one can simply assume the

69. *Corpus Juris Secundum,* 620; see also Friedlander's discussion, *Double Jeopardy,* 3-4.

70. Sigler, *Double Jeopardy,* 19.

71. Ibid., v.

right to come into judgment over another; the prerogative to judge another man must be delegated (2 Sam. 15:4; Ex. 2:14; cf. Acts 7:27, 35). Consequently, to bring a man into trial and stand in judgment over him with the threat of punishment to him, one must have divine authorization for this kind of activity. Moreover, to go beyond this judgment and make a man submit to ordeal again in the courts is a *further kind* of judgment which must be sanctioned by God's word. That is, the burden of proof rests on those who would transgress the prohibition of double jeopardy to adduce authorization for their judgmental activity; without it they would be arrogating to themselves authority which does not belong to them. The juridical procedures we follow must conform to the directives of the Divine Lawgiver if justice is to be realized, and thus double jeopardy is illegal unless provided for in God's word.

This general point can be seen in another way. The infliction of punishment against a person presupposes a lawful trial to determine his guilt or innocence; otherwise the "punishment" is nothing more than culpable persecution of some group against a particular individual. It is uniformly recognized that Scripture prohibits a double infliction of punishment (e.g., the substitutionary atonement of Christ rests on this cardinal point with respect to eternal judgment). Therefore, double trial (i.e., double jeopardy) is ruled out; a man once tried and sentenced is not to be subjected to further trial for the same offense. Otherwise the biblical restriction of forty stripes (Deut. 25:3) would be senseless; through retrial for the same crime a man could *repeatedly* be given sets of forty stripes. Thus double trial is forbidden. Now, if this protection is extended even to the guilty, to those convicted of offense, *how much more* should the protection be afforded to those who are acquitted as innocent? To grant this security to the convicted and withhold it from the innocent would indirectly constitute showing {45} respect unto the wicked and a double standard of treatment (cf. Deut. 25:13–16). Therefore, to violate the prohibition of double jeopardy is to run counter to underlying principles of biblical justice.

A new trial against an acquitted person must be founded upon concrete scriptural authorization for such an activity. But no such authorization is to be found. Absolute justice can be done only by the sovereign Lord over all creation; He alone sees perfectly the conditions of men's hearts, the circumstances of their actions, and the moral qual-

ity of their behavior. Man, as God's creature, is not called upon to do justice in the way which God alone can, for man has not the prerogatives of the Creator. Instead, men are required to do *justice under law*—that is, to bring rectitude into human conditions in accordance with the wise directions of God for judicial affairs. To attempt to realize "justice" apart from the law of God, which alone defines justice for us, is delusion at best and deceit at worst. Thus those who would (in the name of justice) permit placing men in double jeopardy for alleged offenses must demonstrate that the law of God permits such a procedure. Without that authorization the locus of authority in legal matters has shifted from God to man, which opens the door to unrestrained tyranny (cf. Neh. 9:34–37; Prov. 28:16, 28; Isa. 10:1–2; Ezek. 28:2; Hos. 5:10).

Scripture illustrates for us that, in terms of the common legal practice of the Old Testament, one who had received an unfavorable verdict had the right to protect himself by appeal to a higher court; however, after a *favorable* verdict had been reached, the accused was not to be touched or harassed any longer (2 Sam. 14:4–11). When no sentence had been delivered in a case which was too difficult for the judges to try, the matter could be referred to a higher court. However, once a verdict had been reached, the judgment was *without appeal.* Indeed, it was grave presumption and a capital crime to deviate from the verdict of the judge (Deut. 17:8–13). This means that when an accused is acquitted, is justified or declared righteous in a properly constituted court of law, it is highly immoral to disregard the judgment rendered and bring him into trial again. Only in the case of known prejudice or bribery might a verdict be challenged and the trial deemed invalid (cf. Deut. 16:18–19; 2 Chron. 19:7).

Two concrete examples of the protection afforded to those who have been legally acquitted can be found in the cases of accusation of unchastity and murder. If a man brought a charge of premarital promiscuity against his new wife and it was legally established that she was innocent, the case was terminated without qualification. The slanderous husband could not appeal the verdict and bring his wife into judicial jeopardy again; "he may not put her away all his days" (Deut. 22:13–19). Another example of protection against double jeopardy is clearly seen in the legislation about cities of refuge in God's law. A man

who had slain another was to flee to a city of refuge for protective custody until he could stand for judgment in the courts (Num. 35:12, 24). If the verdict turned out that he was a willful murderer, his life could not be spared (Deut. 19:11–13). {46} However, after he had declared his cause before the elders of the city and he was acquitted, then he was thereafter completely released from jeopardy for the crime; the accuser could not pursue the matter further, appeal the verdict, or inflict anything upon the accused. When it was legally established that he was guiltless, the man was delivered out of the hand of the avenger of blood, the avenger was not given any further recourse against him, and the acquitted was to be restored to his own land and home in complete safety (Num. 35:25, 28; Jos. 20:4–6). In terms of God's righteous ordinances, the jeopardy of an accused terminates upon a favorable verdict (at any level of the legal system).

In terms of the procedure prescribed by God to be followed in the earthly courts of Israel[72] and which forms the analogical background to the theological doctrine of justification, the authority of a judge was paramount. To disregard his judgment was to dishonor his office as well as to undermine the prerogative of one who judges in earthly matters for the Lord. If his judgment of acquittal were to be as a matter of course laid aside and another trial pursued, then (1) the authority of the previous judge would be hollow, not hallowed, and his trial would be a pointless performance preceding the genuinely authoritative judgment (which is contrary to the whole rationale for graded courts, since lower courts would cease to have a meaningful function), but (2) then the authority of the next-highest judge could likewise be spurned as a sham, and on and on, so that (with the implicit undermining of the authority of the judges who declare verdicts) the entire legal system would be a trivial game and the jeopardy of the accused would never end during his earthly lifetime.

Such is contrary to the whole spirit of civil justification in God's law. When a case was brought before a judge, he was deemed the helper or redeemer of the wronged party; both the accused and accuser stood before him (Deut. 19:17) because *one* of them was a guilty party who

72. Cf. J. Pedersen, *Israel: Its Life and Culture* (London: Oxford University Press, 1954); R. de Vaux, *Ancient Israel,* trans. J. McHugh (New York: McGraw-Hill, 1961).

would have a prescribed punishment meted out against him for the crime which was alleged. If the accused was found guilty, he was punished; if the accuser was found false, then that same punishment became his own (vv. 18–21). Here is *practical* indication of the protection against double jeopardy, for the accuser is *not* deemed free to continue his slandering activity but is rather *punished* in the place of the accused. The acquitted man was released, and the party which brought false accusation was now the guilty one. Hence a judge was the redeemer of the wronged party (either the alleged wrong for which trial was held, or the wrong involved in false accusation). (Notice the instructive parallel to God, the righteous Judge, who is called upon by the accused to right the wrong against him: Ps. 43:1.)

In ancient Israel the judge's duty was not only to hear the case and pronounce a just verdict (declaring the right for one or the other party), but also to see to it that the judgment was recognized and adhered to publicly. The verdict was to be accepted by the parties to the trial as well as by everyone who heard of {47} the judgment, thereby bringing public praise or "justifying" the judge who justified one of the parties (cf. Ps. 51:4; Lk. 7:29, 35). The righteous judge is responsible for seeing to it that his judgment is executed and generally acknowledged; he brings his verdict or judgment to completion. Without this might, the right of the judge would be impotent. This again points up the release from jeopardy once an accused party has been acquitted; to bring him into judgment again for the same alleged offense is a contradiction of the whole legal system and the practice of judicial procedure. The judge would enforce his verdict of innocence, punish the slanderously guilty party, and redeem the wronged party from further oppression. Renewed jeopardy is unthinkable. The real authority of the judge (even in a lower court) entailed the prohibition of double jeopardy; the *fact* of judgment left nothing more to be adjudicated.

General Revelation

The doctrine of double jeopardy is a matter of ancient common law. General revelation has taught it as a dictate of fairness even to pagans. As Friedlander says, "An analysis of the history of double jeopardy shows that the concept is as old as the common law itself."[73] "The doc-

trine is nothing more than the declaration of an ancient and well-established public policy"; "it simply always existed."[74]

> The doctrine that no one shall be twice put in jeopardy for the same offense is ancient, being embedded in the common law and incorporated in most constitutions in this country.... The prohibition against double jeopardy ... is a sacred principle of criminal jurisprudence, and is part of the universal law of reason, justice, and conscience.... [It] is embedded in the very elements of the common law....[75]

Therefore, it is significant that even those who were without God's special, redemptive, written revelation of the law still recognized the moral imperative of the doctrine of double jeopardy. For example, we can look to ancient Greece. "The main concern of a man brought into court was to win a verdict by one means or another, for once tried he could not be prosecuted again on the same charge, the rule *ne bis in eadem re* being accepted in Athens."[76] In 353 and 355 B.C., Demosthenes declared, "The law forbid the same man to be tried twice on the same issue.... The legislator does not permit any question once decided by judgment of the court to be put a second time."[77]

The prohibition against double jeopardy prevailed in Roman law as well, the doctrine of *res judicata* being integral to its system of justice.[78] Under the {48} Roman Republic, appeal was allowed under conviction, but an acquittal completely ended the matter.[79] Both Cicero and Gaius noted the important maxim of civil procedure in their day that the same thing could not again be brought into court.[80] Thus the unregen-

73. Friedlander, *Double Jeopardy,* 5.

74. "Double Jeopardy," *Minnesota Law Review* 24 (1940); cf. Sigler, *Double Jeopardy,* vi, 2 (Oklahoma: Stout vs. State).

75. *Corpus Juris Secundum,* 614, 616.

76. J. W. Jones, *Law and Legal Theory of the Greeks* (1956), 148; cited by Friedlander, *Double Jeopardy,* 15.

77. *Demosthenes,* trans. J. H. Vince (Cambridge, 1956), XX:147 and XXIV:55.

78. Jolowicz, *Roman Foundations of Modern Law* (1957), 87-100; cf. Friedlander, *Double Jeopardy,* 15.

79. J. L. Strachan-Davidson, *Problems of the Roman Criminal Law* (1912), 127ff., 155, 177; cited in Friedlander, *Double Jeopardy,* 16.

80. Greenidge, *The Legal Procedure of Cicero's Time* (Oxford, 1901), 247.

erate have still recognized the injustice involved in retrying a man who has been formerly acquitted.

Paul tells us in Romans 2:14–27 that the Gentiles who have not the law of God do the things of the law by nature, the work of the law being written on their hearts and their consciences bearing witness. Hence those who have the written law and yet do not live up to it as well as the Gentiles dishonor God's name, showing the people who claim that name to be less moral than God's enemies. In such a case the lawful pagan will judge the transgressing Jew!

Paul also says that the church should be able to enact justice in law suits *better* than the unbelieving magistrates, in which case there is no need for Christians to go to pagan judges in order to receive fair treatment and honest judgment (1 Cor. 6:1–6). Consequently, for the church to despise such a basic and common principle of fair jurisprudence as the prohibition of double jeopardy with a (sneering) reference to it as "a mere matter of secular law" would be unfitting to its calling and the name of the righteous Lord which it claims; it would be to ride roughshod over the law which unbelievers yet honor and keep. Dictates of general revelation ought to be the more firmly adhered to by Christians (with the advantage of special revelation and Spiritual enlightenment) than by pagans. The church should be, not simply *as just,* but more just than the civil courts, for otherwise the believer could have no confidence in Paul's exhortation in I Corinthians 6. Therefore, leaders of the church cannot properly act upon the principle that precludes anything which is recognized in civil courts; such would deny general revelation and unwittingly move away from the minimal standards of fair play apprehended by the unbeliever.

The Origin of the Doctrine in Christian History

Throughout history there have been those who have violated the principle of double jeopardy (e.g., Greek prosecutors often sought loopholes to get around it, and certain Roman dictators turned it aside).[81] But the church has not added its name to this infamous company. Rather, the doctrine has progressed in clarity and consistency of expression under those with the benefit of special revelation, reaching

81. Friedlander, *Double Jeopardy,* 16.

its climax in early Christian America. The best elaborations of the doctrine of double jeopardy did not come with the ancients; they were realizing simply an imperfectly received ethical principle of general revelation. The doctrine came into proper expression in the course of Western civilization *through the church* as it expounded the law of God. It has been developed as a piece of explicitly *Christian legislation*. For the church today to turn aside from {49} this cardinal doctrine of jurisprudence would be retrogression with respect to the historical extension of Christ's kingdom and all that He has commanded in the area of civil law and administration. It would be to backslide from its own historical accomplishment.

Legal historians trace the principle of double jeopardy in Western law to the church (e.g., Pollock and Maitland, *A History of English Law*).[82] In his chapter, "The History of Double Jeopardy," Sigler writes, "In *early church law* ... there arose the principle that God does not punish twice for the same transgression,"[83] and Friedlander writes that the adoption of the doctrine in English law stemmed "from *ecclesiastical law*."[84]

The canon law of the church comprised those dictates which, being based upon God's word, the church authoritatively imposed in matters of faith, morals, and discipline. It accumulated from the church's pronouncements, the *corpus* developing gradually from the *canons* handed down by the councils (beginning especially with the twenty miscellaneous canons decreed at Nicea in 325 A.D.). Sigler declares, "The canon law, which began its development at the close of the Roman Empire, opposed placing a man twice in jeopardy."[85] The well known maxims, "Non judicabit Deus bis in idipsum" and "Nemo bis in idisum," were the foundational principles upon which the church based the prohibition of double jeopardy.[86] "The maxim was well known in ecclesiastical

82. Pollock and Maitland, *A History of English Law,* 2nd ed. (Cambridge, 1899), 448-49.

83. Sigler, *Double Jeopardy,* 3.

84. Friedlander, *Double Jeopardy,* 6.

85. Sigler, *Double Jeopardy.*

86. Maitland, *Roman Canon Law in the Church of England* (1898), 138; also Holdsworth, *History of English Law,* 7th ed. (1956), 615.

law. It stems from St. Jerome's commentary in A.D. 391 on the prophet Nahum: 'For God judges not twice for the same offense.'"[87]

Justinian was a Christian emperor, a champion of orthodoxy, and a promoter of Christian missionary advance. He attempted to restore the older glories of the empire on a Christian basis. Thus he set out to revise, purge, order, and expound a civil law for the empire. This came to expression in the *Code of Justinian* (529 A.D.) and the *Corpus Juris Civilis* (533 A.D.). "The concept of double jeopardy ... no doubt stems from its adoption in Justinian's *Corpus Juris Civilis* in later Roman law";[88] "the principle of double jeopardy ... found final expression in the *Digest of Justinian* as the precept that 'the governor should not permit the same person to be again accused of a crime of which he has been acquitted.'"[89]

The maxim was cited in the Council of Mainz in 847 A.D. and again in the Council of Worms in 868 A.D.[90] The principle became explicit in later English law due to the controversy between Henry II and the Archbishop of Canterbury, Thomas a {50} Becket.[91] The influence of Christian leaders in English courts is well known; in Becket's own day bishops and archdeacons often presided in lay courts.[92] The double jeopardy argument was Becket's main thrust against clause III of Henry's 1164 A.D. Constitutions of Clarendon; Becket contended that Henry's proposal "would violate the maxim *Nemo bis in idipsum*.... The maxim was well known in ecclesiastical law."[93] One cannot underestimate the importance of this controversy, for it "was primarily responsible for bringing about the adoption of the concept of double jeopardy in the common law."[94]

87. Friedlander, *Double Jeopardy,* 5*;* see also Poole, *From Domesday Book to Magna Carta 1087-1216,* 2nd ed. (1955), 206.

88. Friedlander, *Double Jeopardy,* 15.

89. Sigler, *Double Jeopardy,* 2; see *Digest of Justinian,* vol. XVII, Civil Law, trans. S. P. Scott (Cincinnati, 1932), bk 48, title 2, no. 7

90. Brooke, *The English Church and the Papacy* (Cambridge, 1931), 205.

91. Friedlander, *Double Jeopardy*, 326.

92. *Ibid.,* 6, 328.

93. *Ibid.,* 5, 326-27; cf. Sigler, *Double Jeopardy,* 3.

94. Friedlander, *Double Jeopardy,* 327–28. In 1176 Henry acceded.

Therefore, the maxim which was deeply rooted in canon law from the fourth century, cited in Church councils of the ninth century, and expounded in the ancient Justinian Code, was Becket's argument against the king. The doctrine of double jeopardy became a distinct and explicit principle of English law from *church leaders* who were urging *Christian canons.* This foundational element of Western liberty from tyrannical monarchs owes its origin to the Christian church! The statutory development of the doctrine follows upon this Christian impetus. The Statute of Westminster (1281) restrained repeated prosecution; a defendant who had been acquitted could, on this basis, bring a suit of malicious prosecution against his appellors who tried to re-prosecute the case. The thirteenth century work *The Mirror of Justices* protects against double jeopardy, specifically calling it an "abuse." In 1346 it was reaffirmed that an acquittal on an indictment was a bar to the suit of the accusing party who seeks an appeal from the verdict. The fifteenth century saw the specific decree that "an acquittal on an indictment was a bar to a prosecution for the same offense by appeal." The Yearbooks of 1443, 1477, and 1494—the period when modern criminal procedure was developing—afford protection from double jeopardy. The maxim is found in the actual transcripts of court decisions from 1588 and 1589. "The last half of the seventeenth century was a period of increasing consciousness of the importance of double jeopardy. Perhaps this was due partly to the writings of Lord Coke and partly as a reaction against the lawlessness in the first half of the century.... And in 1660 the Court of King's Bench held that the prosecutor had no right to seek a new trial after an acquittal." Sir Edward Coke (1552–1634) was the great English jurist of his day, enunciating the doctrines of personal liberty and championing the Parliament against the King. The full expanse of English common law was set forth in his *Institutes.* According to Sigler, Coke is thereby "a fountainhead of double jeopardy law." What Coke displayed was that the defense had only to be employed once in a man's lifetime against a particular accusation, "being a remnant of the fading jurisdiction of the church courts." Finally, Sir William Blackstone's *Commentaries on the Laws of England* (1765) reiterated Coke's work and set forth double jeopardy as a universal maxim. (It is noteworthy that Blackstone's work was the single

{51} most influential work in the elaboration of American jurisprudence at the time of the war for independence with England.)[95]

American Developments

Having traced the doctrine of double jeopardy from the canon law of the Christian church, into the Justinian code, through Church councils, to its explicit expression in Becket's argument based on ecclesiastical law (with the ensuing historical elaboration of the law in explicit English legislation), we come to the most significant phase of its historical development, namely, its overtly Christian legislation in early America. The doctrine of double jeopardy was refined and expanded, and then given its clearest exposition and most consistent application under the Christian leaders of the colonies. It was carried from them into the very constitution of the new country.

Sigler tells us that the "American formulation of double jeopardy began with the Massachusetts colony."[96] This is in itself noteworthy when one recalls the nature of the early Massachusetts settlement. In 1630 John Winthrop and a thousand others came to Massachusetts to escape the persecution of Charles I and William Laud against the Puritans; later twenty thousand others joined them in Massachusetts in an attempt to establish a genuinely godly civil government. "They wanted a government that would take seriously its obligation to enforce God's commandments."[97] This desire is well illustrated in the career of John Cotton, who authored at least two civil codes taken from the Mosaic Law in a predominant fashion. On December 10, 1641, the Bay Colony adopted a biblically based civil code authored by Nathaniel Ward, a Christian pastor from Ipswich who had formerly studied at Cambridge and practiced law for ten years in England; this *Body of Liberties* was given Scriptural annotations by John Cotton.[98] So then, the colony

95. The preceding review of highpoints in English development of double jeopardy legislation (and quotations) has been drawn from Friedlander, *Double Jeopardy*, 13-14, 9, 6, 11, and Sigler, *Double Jeopardy,* 10, 14, 17.

96. Sigler, *Double Jeopardy,* 21.

97. J. M. Blum, et. al., *The National Experience* (New York: Harcourt, Brace, & World, 1963), 23.

found a satisfactory blend of civil legislation and biblical law, and it came by way of the efforts of *Christian* pastors.

It is to this *Body of Liberties* that America traces its adherence to the doctrine of double jeopardy. "Provision was made that men should not be sentenced twice for the same offense by the civil courts in the *Body of Liberties* of 1641, which was composed by Nathaniel Ward under the direction of Governor Bellingham and the General Court."[99] The *Body of Liberties* explicitly stated that no laws were to be prescribed which were contrary to the word of God, and any which could be shown to conflict with God's word would be withdrawn—thereby {52} testifying that its legislation was based on God's revealed law [100] The doctrine of double jeopardy was clearly expounded in the code and applied in terms of biblical presuppositions.[101] In the section on "Rights, Rules, and Liberties Concerning Judicial Proceedings," at heading forty-two we read: "No man shall be twice sentenced by civil justice for one and same crime, offense, or trespass."[102] That the Puritans held to this scriptural position firmly and consistently is evident from their 1660 *Book of General Laws,* a summary of court rulings for that time: "It is ordered, and by this court declared, that no man shall be twice sentenced by civil justice, for one and the same crime, offense, or trespass."[103]

The *Massachusetts Code* of 1648 was a complete statement of laws, privileges, duties, and rights for the colony, being based on the earlier *Body of Liberties.* The *Code* "was the first comprehensive code of laws in the New World,"[104] and it provided the prototype and original content for the legislation of every other state constitution.[105] There we

98. George L. Haskins, *Law and Authority in Early Massachusetts* (New York: Macmillan and Co., 1960), 130, 199.

99. Sigler, *Double Jeopardy,* 21-22.

100. Edmund S. Morgan, *The Puritan Dilemma: A Biography of John Winthrop* (Boston: Little, Brown, 1958), 171.

101. Haskins, *Law and Authority.*

102. *Puritan Political Ideas,* ed. Edmund S. Morgan (Indianapolis: Bobbs-Merrill, 1965), 187; cf. Sigler, *Double Jeopardy,* 22.

103. Original edition (published in Cambridge, 1660), 67.

104. Haskins, "Codification of the Law in Colonial Massachusetts: A Study in Comparative Law," *Indiana Law Journal* (1954); cf. Sigler, *Double Jeopardy,* 22.

read that "every action ... in criminal causes shall be ... entered in the rolls of every court ... that such actions be not afterwards brought again to the vexation of any man."[106] Therefore, Sigler rightly observed, "Thus, Massachusetts law helped serve as a conveyer of the double jeopardy concept to those other colonies ... [and] laid the groundwork for the eventual adoption of double jeopardy as a constitutional protection."[107] There is clear evidence of the application of double jeopardy protection in the early years of the colonies (e.g., *Virginia Colonial Decisions 1728–1741; Law Enforcement in Colonial New York 1694–1731*) where it was heard to be "oppressive, contrary to the spirit of government and the dictates of law and reason."[108] An eloquent opinion of a 1788 Pennsylvania court declared in ringing terms, "By the law it is declared that no man shall be twice put in jeopardy for the same offense; and yet, it is certain that the enquiry, now proposed by the Grand Jury, would necessarily introduce the oppression of a double trial. Nor is it merely upon the maxims of law, but I think, likewise, upon principles of humanity, that this innovation should be opposed." Likewise, a 1783 Connecticut decision upheld the prohibition of the second trial of a citizen once he had been acquitted.[109]

With such a pervasive and consistent adherence to the doctrine of double jeopardy it was naturally adopted as a fundamental right in the United States Constitution from the very outset (see the Fifth Amendment). In June of 1789, {53} the following amendment to the Constitution was introduced in the first session of the House of Representatives: "No person shall be subject ... to more than one punishment or trial for the same offense." James Madison was a Christian of reformed persuasion who had earlier studied under John Witherspoon, the first president of the College of New Jersey (later, Princeton). Madison was a thorough student of Scripture and was recognized as such by the time he was twenty-three years old, when he studied a year longer than most

105. Ewing and Haskins, "The Spread of Massachusetts Law in the Seventeenth Century," *University of Pennsylvania Law Review* (1958); cf. Sigler, *ibid.*

106. *The Laws and Liberties of Massachusetts,* ed. Farrand (Cambridge, 1929), 47.

107. Sigler, *Double Jeopardy,* 21.

108. *Ibid.,* 25.

109. *Ibid.* (Respublica vs. Shaffer; Gilbert vs. Marcy)

other students at the College of New Jersey. Madison staunchly maintained that every area of human endeavor was to be subject to God's revealed direction. Thus he once declared that human law must be evaluated against the standard of God's own law.[110] It was Madison who led the argument in favor of the necessity of including a bill of rights in the Constitution and recommending it to the States. In the 1789 meeting of Congress where the subject of the Bill of Rights was broached, "Madison moved his own propositions by way of a series of resolutions permitting the House to do what they thought proper. His propositions included the substance of the double jeopardy concept ... To Madison must be credited the idea of including double jeopardy in the federal Bill of Rights."[111] Hereby the prohibition against double jeopardy became an outstanding and inviolable principle of American jurisprudence, one of the fundamental protections enjoyed by all Americans and a continuing restraint on the potentially tyrannical power of the Federal and State governments. One can hardly think of America and its landmark stand for individual liberty and limited government in the founding days without recalling the sterling call of the colonists and adopters of the Constitution to forbid the government ever to bring a man to trial twice for one and same alleged crime.

Conclusions

The influence of God's revealed law on Western jurisprudence is undeniable; illustrations of it are abundant. In particular, we have in this study observed the effect of Christian ethics on the specific question of double jeopardy. This cardinal principle of judicial process is fundamental and all-pervasive in American civil law. The fact that a lawful trial has been completed brings litigation to final termination; the acquitted is not to be further harassed. This protection is not contingent upon complete regularity of proceedings, nor does it apply solely at the highest level of adjudication. Any lawful acquittal in a court of competent jurisdiction bars further prosecution at any level (provided bribery cannot be proven).

110. Sidney H. Gay, *James Madison* (Boston: Houghton-Mifflin, 1884), 12, 69.

111. Sigler, *Double Jeopardy,* 29–30.

The prohibition of double jeopardy is embedded in the Old Testament law of God, both in terms of underlying principles and in specific legislation. The doctrine was recognized, as a matter of general revelation, even among the ancient Greeks and Romans. Paul instructed the church of Christ to be even more competent {54} than the pagans when it comes to law suits; judicial fair play must be displayed with full clarity in the church—which means that the church must wake up and think straight with respect to crucial doctrines like double jeopardy, not automatically precluding it merely because it is adhered to by civil officials. Of course, it is to be recognized that ecclesiastical and civil jurisprudence are not in all respects identical; where they diverge reflects the difference in the use and *aim* of the two courts. The church looks upon conversion as highly relevant, and it sees repentance as the end of discipline for a Christian. However, the state has no right to be a respecter of persons or to consider the state of a man's heart. Hence there are differences as to when judicial proceedings are to be engaged, where they end, and the final end in mind. Yet when the courts *are* to be used, there are *principles of justice and fair play* which apply in them *both*. The prohibition of double jeopardy is one of these stipulations of justice in human affairs.

The prohibition of double jeopardy is central to individual rights and protection from unrestrained despotism or oppression on the part of the governing authority. This basic provision assures us that we shall not be subject to continuing ordeal with respect to some accusation until the governing officials gain the outcome which they desire, irrespective of the facts which initially established our innocence.

Historically, the origin of the prohibition against double jeopardy can be traced to the ancient common laws of the church, the Christian emperor Justinian's civil code, church councils, Archbishop Becket's argument which affected the common law, the explicitly scripture-rooted civil legislation of the Massachusetts Bay Colony (under the direction of Christian pastors), and the United States Bill of Rights (fostered by the reformed, biblical, scholar James Madison). It has been Christians who have borne the doctrine and imbedded it in Western civilization as a fundamental dictate of human justice. We have the church to thank for it! May it not be that the church in this day evidences regrettable retrogression by unwittingly dismissing this princi-

ple as a secular legal device. The reconstruction of society according to a godly pattern by disciples of Christ can hardly drive ahead if we are still stumbling over the *ABC's* of sociopolitical and judicial righteousness.

Pornography, Community, and the Function of Law

Gary North

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> The deviant act, then, creates a sense of mutuality among the people of a community by supplying a focus for group feeling. Like a war, a flood, or some other emergency, deviance makes people more alert to the interests which they share in common and draws attention to those values which constitute the "collective conscience" of the community. Unless the rhythm of group life is punctuated by occasional moments of deviant behavior, presumably, social organization would be impossible.—Kai T. Erikson[112]

Given the limits imposed on society by the existence of imperfect human beings, social utopias of total perfection or total permissiveness (sometimes asserted to be one in the same) are an invitation to disaster. On June 21, 1973, the United States Supreme Court took an important step backward, away from the brink of the permissiveness chasm. In a five to four decision, it reversed a trend of decisions concerning the publication of pornography that had been increasingly permissive since the 1966 *Fanny Hill* decision. In that important case, the Court declared that a book would have to be "utterly without redeeming social value" in order to be legally banned. The June 21, 1973, decision returned to the standard of the 1957 *Roth* case: the taste of the average man in a particular community determines literary acceptability. As Chief Justice Burger put it, "It is neither realistic nor constitutionally sound to read the First Amendment as requiring that the people of Maine or Mississippi accept public depiction of conduct found tolerable in Las Vegas or New York City." He might have added "downtown"

112. Kai T. Erikson, *Wayward Puritans: A Study in the Sociology of Deviance* (New York: Wiley, 1966), 4.

as a modifier of New York City. Unlike southern California, for example, the New York City pornographic book stores and theaters are heavily concentrated in the 42nd Street area, rather than spread over every district in the county.

The Court has now admitted explicitly what had been implied by its post-*Roth* decisions: there are no national standards of pornography. But instead of continuing the tradition of permissiveness ("therefore, we may not ban anything"), the Court took a significant turn ("therefore, varying local standards may be used as the foundation of censorship"). The decision was, as usual, paper-thin; it remains to be seen whether or not it will stand the test of time. The casuistry of the Court rivals that of any medieval or early Protestant theologian, and the interpretation and application of the ruling will be of crucial {56} importance for the future. Nevertheless, the fact that such a decision was made is astounding.

It should take little thought to conclude that the issue of censorship by the civil government(s) is central to a free society. Seemingly, the central position of free speech and open publication to a republican form of government is far more important than the suppression of sleazy movies and erotic paperback books. For the State to be granted the right to enforce penalties against the publication of even the most extreme forms of pornographic literature, it is incumbent upon the defenders of censorship to prove that such publications constitute a greater threat to the community than the creation of a mechanism of censorship poses. For this kind of analysis, the following questions are inescapable. What is the social function of both pornography and censorship? What are the legal issues involved? What should be the locus of enforcement? What are the consequences of the unrestricted publication of pornography?

Make no mistake about it: pornography is the issue. As the Solicitor General of the United States stated in the briefs to the *Roth* case (1957), 90% of the materials confiscated by the obscenity statutes is hard-core pornography.[113] The over-subtle distinction between pornography and obscenity made by Henry Miller—"obscenity is a cleansing process,

113. Cited in Henry M. Clor, *Obscenity and Public Morality* (Chicago: University of Chicago Press, 1969), 35.

whereas pornography only adds to the murk"[114]—may have a limited philosophical validity, but such a distinction is lost on the general public and probably untranslatable into statute law. When you speak of obscenity legislation in the United States you are talking about pornography.

One workable definition of pornography is the one suggested by the American Law Institute's Model Penal Code: "A thing is obscene if, considered as a whole, its predominant appeal is to prurient interests; i.e., a shameful or morbid interest in sex, nudity or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matter."[115] Another is George Elliott's: "Pornography is the representation of directly or indirectly erotic acts with an intrusive vividness which offends decency without aesthetic justification."[116] Elliott stresses the importance of aesthetic distance when he argues forcefully that "nothing human is alien to art. The question is only, how close?" What is therefore morbidly and unnecessarily descriptive concerning intimate human acts, or abnormally close-up in filming these acts—films for nearsighted gynecologists, as one critic of the skin flicks has put it—should be classified as pornographic and put under some kind of restrictions.

The Supreme Court's standard, laid down in the *Roth* decision (and constantly subverted until June 21, 1973, by its later decisions[117]), is about the best {57} that pro-censorship legislators can hope for, given the cultural relativism of the present period: pornography is defined in terms of "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interests." Not a perfect definition, assuredly, but a workable one for the courts of a local community. However, if the Supreme Court had continued, as it had since the *Roth* case, to decide in terms of a nonexistent national standard, then no local community would have been capable of protecting itself. In a pluralistic culture, the

114. Interview with Henry Miller by George Wickes, *Paris Review* 28 (1962): 149.

115. Quoted by Clor, *Obscenity*, 33.

116. George P. Elliott, "Against Pornography," *Harper's,* March 1965, 52. The Court used both standards as definitions in its June 21 decision.

117. Clor, *Obscenity*, 63ff.

local region is the focus of moral standards. The result of the Court's insistence on defining "community" in national terms, as Henry Clor points out, was a situation in which the Court had proceeded "as if its sole concern were to extend more and more protection to more and more categories of expression."[118] The legitimate claims of public morality were buried in a sea of testimony from college professors and literary critics who did not believe in the censorship of anything, and who were unwilling to make aesthetic judgments concerning the works in question.[119] (Relativism has finally begun to erode the very foundations of a profession like literary criticism. If all literature is aesthetically equal, who needs a critic?)

Opponents of the censorship of obscene literature generally rely heavily on the censor's problem of defining deviant literature in a way consistent with the requirements of legislation. This is certainly a legitimate criticism if the goal is to rewrite the statute books in terms of greater legal precision. But when the critic concludes that because of changing standards no censorship at all can be legitimate, then he has gone far beyond the point of no return. The problem of constant law (and the moral system giving support to any particular law system) within a world of flux is as basic a philosophical question as man has ever devised. If the argument against censorship is made in terms of the "abstract law vs. historical flux" dualism, then no law whatsoever is valid. The problem holds true in every sphere of civil legislation; it is not isolated to the purely cultural aspects of civilization. The kind of abstract, eternal, rigid definition of pornography that is supposedly the responsibility of all censors to agree upon before a single piece of legislation is enacted is ludicrous as a political demand; this would require a standard of judicial exactness unheard of in the history of man. It is the demand for computer-administered law—a dehumanized, mechanical application of inflexible law. Proponents of the totally bureaucratic state might like such a legal system, but it hardly applies in the philosophy of western liberalism. Room must be left for the human judge in

118. *Ibid.,* 74.

119. Walter Berns, "Pornography vs. Democracy: A Case for Censorship," *The Public Interest* 22 (Winter 1971): 17ff.

the evaluation of facts and the application of law. To require more than this is to destroy the very idea of civil law.

The libertarian cop-out is simply to avoid the inescapable difficulties involved in the framing of applicable, yet imperfect law to the shifting affairs of life; it is a cop-out because it denies the validity of the idea of legal sanctions altogether, a {58} utopian prospect at best, and a highly dangerous one in a period of social unrest. Yet it is not uncommon to see those opposed to all forms of censorship citing the First Amendment as proof of their position, as if the restrictions on Congress were ever intended to apply, *a priori,* to state and local governments, and as if the framers of the Constitution were not exclusively concerned with *political* speech and publication. Congress passed at least twenty separate laws against pornography between 1842 and 1956. A fifty-nation treaty also was signed to outlaw the sale of certain forms of literature. It seems ridiculous to argue that a conservative Protestant electorate and its representatives would have voted for so libertarian a document in 1789, but that is what we are asked to believe. Congress left many religious and censorship issues to local governments, to be decided in terms of local standards and needs; therefore, it is inappropriate to announce the end of local responsibility in censoring salacious, offensive literature.

What is the social function of law? Obviously, it is not to save mankind. The libertarian shibboleth, "laws cannot make men moral; you cannot legislate morality," is a silly half-truth. Are we to conclude that laws are to be totally neutral, abstracted from any system of morality? That dream died in the Terror of the French Revolution. All law is legislated morality; each law will infringe on somebody. Law cannot regenerate men; it can, however, restrain them.[120] Furthermore, law can help restrain the state itself. Law is one of the most important instruments in establishing the limits of conformity on a community, and therefore it is necessary in any system of social order. It should be clear that no piece of legislation can long survive in the face of overwhelming public opinion. To one degree or another, law always rests on public opinion.[121] But in those often wide zones of public confusion

120. R. J. Rushdoony, *Law and Liberty* (Nutley, NJ: Craig Press, 1971), ch. 4.

121. Jose Ortega y Gasset, *The Revolt of the Masses* (New York: Norton, 1932), 126-27.

or indifference, law can be used as a means of upgrading community standards. Is this not what the legal reforms of the last five centuries have been aimed at? Is this not the function of political leadership within a free society? Yet opinion in both right-wing and left-wing camps cannot seem to grasp the implications of this. "You can't legislate morality" is the battle cry both of Southern Senators when civil rights legislation comes up for a vote and of Northern Senators when a Southern colleague gives his annual speech against smut. The fact remains that it is quite possible to legislate *external conformity* to laws that are, by definition, based on distinct value systems. If this were not possible, then civil society would be impossible.

There is another aspect to the role of law in a community. The law-order seeks to define the proper limits of human expression. All societies require concepts of social deviation in order to survive as collective entities. The statement by Kai Erikson, quoted at the beginning of this paper, is intended to convey this fact of social life. Erikson relies on the investigations made by Emile Durkheim {59} at the turn of the century into the nature of deviation.[122] While Durkheim's radical relativism is not congenial to the conservative position, he nevertheless discovered a basically conservative role for social legislation. Robert A. Nisbet, one of the more distinguished sociologists writing today, has summarized Durkheim's position:

> Crime is a major means by which our all-important moral values can be periodically reaffirmed and thus kept strong as elements of social solidarity. Human society cannot exist, Durkheim declared, except on the basis of moral consensus. But there is always the danger that this consensus will become weak and tenuous through the erosion of time. The community will suffer. Hence the importance of those offenses which from time to time remind community members of the importance of the norms that the offenses violated. In the sense of horror or repugnance awakened by the offense itself in the surrounding community lies the possibility of the reaffirming of values that every group or community requires from time to time in the interest of preservation of its moral consensus.[123]

122. Emile Durkheim, *The Rules of Sociological Method* (New York: Free Press, [1895] 1964), ch. 3*; The Division of Labor in Society* (New York: Free Press, [1893] 1964), 102ff.

123. Robert A. Nisbet, *The Second Bond* (New York: Knopf, 1970), 290-91.

The total eradication of crime is a utopian, perfectionist goal that is utterly self-destructive if seriously attempted in a community. But the reverse is equally true: the utter denial of moral standards capable of defining deviant behavior is also destructive of community. In fact, it is not surprising that the perfectionist and dualistic cults of the middle ages were often both perfectionist and lawless at the same time. They practiced the most deviant behavior in the name of purity; since perfection was an *a priori* tenet of faith among the illuminated members of these societies, deviant behavior in the face of "conventional" morality was a statement of faith.[124]

Life in a political community requires moral order. It needs some kind of recognized authority to sustain social cohesion. That, above all, is the message of Ortega y Gasset in *The Revolt of the Masses*. Without common principles, there can be no political order. How can we escape his words?

> The State begins when groups naturally divided find themselves obliged to live in common. The obligation is not of brute force, but implies an impelling purpose, a common task which is set before the dispersed groups. Before all, the State is a plan of action and a programme of collaboration. The men are called upon so that together they may do something.[125]

What has all this to do with pornography? If the family were not the central institution in any community we can point to, it would have very little to do with pornography. But the fact remains that there is hardly an issue more fundamental to a community than the regulation of its family structure and sexual behavior. Sir Patrick Devlin, in his critique of the *Wolfendon Report* (Committee on Homosexual Offense and Prostitution), {60} recognizes the relationship between law and moral order.

> What makes a society of any sort is community of ideas, not only political ideas but also ideas about the way its members should behave and govern their lives; these latter ideas are its morals. Every society has a moral structure as well as a political one: or rather, since that might suggest two independent systems, I should say the structure of

124. Steven Runciman, *The Medieval Manichee* (New York: Viking, 1961) is a solid, scholarly account of several of these sects.

125. Ortega, *Revolt of the Masses*, 162.

> every society is made up both of politics and morals.... For society is not something that is kept together physically; it is held by the invisible bonds of common thought. If the bonds were too far relaxed the members would drift apart. A common morality is part of the bondage.[126]

Because of the close link between erotic excitement and sexual attitudes, pornography has been an important part of that behavior defined by western society as deviant. It only sporadically concerns itself with sexual behavior between married couples, unless a group orgy is the scene of the activity. And because of the familiar escalation effect of constant exposure to pornography, continually more and more deviant behavior must be described by the literature in order to produce erotic arousal in the reader. Thus, defenders of traditional morality are appalled by the implicit statement of faith in all contemporary (and probably past) pornographic literature: sex is best enjoyed outside the family, outside the bonds of common practice, and in the case of De Sade, outside the realm of physical possibility. As one minister has put it, pornography is more interested in acrobatics than sex.

Another disturbing factor about pornography is that its very existence depends upon exploitation. It is no accident that the term "sexploitation" has been voluntarily assumed by the owners of the dingy little theaters in which "sexually liberated" films are shown. The viewer is deliberately manipulated. Couples hired to perform are enticed by money or promises of future stardom by the producers of such films. Women are invariably portrayed as little more than objects of sexual excitement, to be used and then cast away. The medium of film is, of course, far worse an exploiter than any book, since at least there are no live performers on the printed page. Laws against such films would not stop all production (stag movies are as old as film), especially given the threat of home video tape cassettes, but at least they would place a greater risk on producers and, presumably, narrow the market for both viewers and performers.

No doubt that people in their private lives practice some of the forms of deviation that they publicly decry. So be it; in a corrupt world, a little hypocrisy keeps society going. People may also run an occasional stop

126. Sir Patrick Devlin, *The Enforcement of Morals* (Oxford University Press, 1959), 10-12.

light; they do not call for the abolition of traffic controls. Addicts of drugs and alcohol often commit themselves to an institution for their own good; there is no reason to believe that people should not try to legislate a zone of safety from their own personal failings. They may feel the need of the State to protect them from {61} themselves. They especially are concerned with the fate of their children. When you touch on the interests of children, you have reached the truly central point of concern in a culture. They do not want to see their children appearing in or viewing such films.

Those members of western civilization who have an interest in preserving their freedoms and their external wealth—without which nine out of ten would perish today—also have an interest in protecting the family from erosion. The voluminous studies by J. D. Unwin, now unfortunately forgotten by most scholars, followed through on Freud's suggestion in *Civilization and Its Discontents* that social energy might be connected with personal self-restraint sexually. Not wanting to believe his own results, Unwin informs us, he came, step by step, to his forthright conclusion: "The whole of human history does not contain a single instance of a group becoming civilized unless it has been absolutely monogamous, nor is there any example of a group retaining its culture after it has adopted less rigorous customs."[127] Anthropologists no doubt would quibble with the all-encompassing nature of his statement, but the data in comparative anthropology that he produced are impressive enough to act as a warning against allowing the monogamous family to be undercut by anything as dumb as pornography. The risk is simply too great.

Is this a call for total censorship? No; it is a call for the censorship of a subtle form of cultural nihilism. It is not a demand for an end to academic or philosophical controversy about the nature of the good society. It is a demand that the battlefield of ideas be fought in terms of critical inquiry. *Life With Father* cannot match the sensational appeal of *Stud Farm Sinner* as a statement of philosophical premises. Pornography is a weapon against unsophisticated people who are in the process of being emotionally manipulated.

127. J. D. Unwin, "Monogamy as a Condition of Social Energy," *The Hibbert Journal* XXV (1927): 662. Unwin's full study is *Sex and Culture* (Oxford University Press, 1934).

While Henry Miller would defend his obscene talents from the charge that he is a pornographer, he is nevertheless a major figure in the war against conventional morality and civilization. His cultural battle is an ever-present theme in his essays and his fiction. If he had confined his thoughts to the essay, no one in this country would have bothered to censor them. But when fiction becomes a weapon—without footnotes to check out, without structure to refute—the public and the censors sense a threat. *Tropic of Cancer* is a deliberate attempt to convert others, through nonrational argument, to the following world-life view:

> The road to heaven leads through hell, does it not? To earn salvation one has to become inoculated with sin. One has to savour them all, the capital as well as the trivial sins. One has to earn death with all one's appetites, refuse no poison, reject no experience however degrading or sordid.[128]

Tropic of Cancer, {62} in his words, "is not a book. This is libel, slander, defamation of character. This is not a book, in the ordinary sense of the word. No, this is a prolonged insult, a gob of spit in the face of Art, a kick in the pants of God, Man, Destiny, Time, Love, Beauty ... what you will."[129] He does not seek to stimulate people sexually, but to bring them face to face with an utterly nihilistic reality.[130] He chose his language, he says, as precisely as he could to accomplish his nihilistic purposes: "Whatever the language employed, no matter how objectionable—I am here thinking of the most extreme examples—one may be certain that there was no other idiom possible. Effects are bound up with intentions...."[131] His goal, as an apocalyptic artist of obscenity, is messianic:

> Ultimately, then, he [the artist or poet] stands among his own obscene objurgations like the conqueror midst the ruins of a devastated city. He realizes that the real nature of the obscene resides in the lust to convert.... Once this vantage point is reached, how trifling and remote

128. Henry Miller, "The Time of the Assassins" (1946), in *Selected Prose,* vol. II (London: Macgibbon & Kee, 1965), 122.

129. Miller, *Tropic of Cancer* (New York: Grove Press, [19341 1961), 2.

130. Miller, "Obscenity and the Law of Reflection" (1947), in *Selected Prose,* vol. I, 364.

131. *Ibid.,* 359.

> seem the accusations of the moralists! How senseless the debate as to whether the work in question was of high literary merit or not! How absurd the wrangling over the moral or immoral nature of his creation![132]

Indeed, how very absurd. This is warfare, full-scale intellectual warfare that attempts to escape the regular channels of debate and refutation. It is, in all senses, very dirty pool. To deny the right of a local community to defend itself from this kind of literary propaganda is to invite suicide. It symbolizes the triumph of the nihilists through a novel, the absolute rout of the civilized members of the community by the ideology of radical relativism.

There is another factor to consider. If the political authorities or judicial authorities of a nation deny the right of defense to local communities, especially on an issue as crucial to the average citizen as the integrity of the family, they run the risk of a truly devastating reaction. Should some national crisis—economic, military, agricultural, medical—thwart the "revolution of rising expectations," as Harlan Cleveland has called it, large masses of the population may finally speak out against the philosophy of liberal moral relativism in which they never really believed. Convinced that the traditional channels of political influence are in the hands of fools—"pointy-headed intellectuals," as one populist leader has described them—they may turn to violence. The resurgence of a violent form of traditional American populism is not beyond the realm of political possibility, especially if mass inflation comes, coupled with a reaction against the collapse of America's foreign policy. Deny an electorate the right to censor certain extreme forms of obscene literature, and you may run a far greater risk than the old cliché about the inevitable escalation of censorship. You may run the risk of a total repression in the name of old-fashioned values. That is a very, very grave risk. It should not be taken lightly by scholars who, presently {63} safe in their tenured jobs, are devising model constitutions for utopian states; they had better separate utopian theory from political reality in America in the 1970s. They may reap the whirlwind if they refuse to see the signs of political disenchantment by increas-

132. *Ibid.*, 366.

ingly large segments of the electorate. Many are armed and should be considered extremely dangerous.

It is quite possible to have censorship of obscene literature and wide freedom to publish antiestablishment newspapers. Knowing Lincoln's delight in off-color stories and understanding his desire to have less criticism from the Northern press, one can easily imagine that Lincoln might have preferred more obscene literature and less freedom of the press. The ancient Greek tyrants knew that they could not repress both sexual deviance and political criticism; they chose to let pornography flourish.[133] But modern tyrants want all the power: Robespierre, Lenin, Hitler, once they gained power, did what they could to stamp out all forms of deviant behavior, precisely so that they could create regimes that would have been regarded as politically deviant by their far more liberal predecessors. Local censorship over a few dirty book stores and theaters, in the name of a familiar morality rather than some new form of perfectionism, is a cheap form of insurance for the preservation of a seriously liberal society.

The final factor to consider is the judgment of God. Lewdness and sexual rebellion not only contain built-in punishments like cultural stagnation, but they also risk the direct intervention of a holy God. Since God does not appear in the secular versions of natural law, and since He does not visibly restrain the automatic processes of the free market, many (most) analysts of the pornography problem have been lured into a false sense of security. Since God is silent, He must be unconcerned. And when God is no longer silent, men will do their best to clog their ears, or at least blame something else for the noise. Yet the biblical fact remains that God does bring external judgments on rebellious societies (Deut. 8; 28). Therefore, part of the defense function of society's civil government is to reduce the flourishing of sexual practices that invite the judgment of God. God does not require perfection from men in order that their societies might prosper (since Christ has met His standards of perfect righteousness), but men should see to it that some legislation and law enforcement resources are expended in reducing the level of publicly advertised, profit-oriented immorality.

133. I am indebted on this point to Professor Richard McNeal, formerly of the Department of Classics, University of California, Riverside.

Christians may not have the votes to get national legislation on the books, but local pressures may be feasible. In some regions, other issues may be more pressing, but in a Christian commonwealth, anti-pornographic legislation would unquestionably be on the books and enforced.

Liberty, Tyranny, and the Second Amendment

Edward M. Davis

A speech delivered on April 22, 1975, in San Diego, California.

Let me preface my remarks by saying that if you came here to hear Ed Davis speak about gun control, you may be extremely disappointed. My comments will be directed toward two rather basic and endearing concepts—liberty and freedom and the tyrants who would trample them.

Today, we stand at the threshold of celebrating the two hundredth anniversary of this government. If that celebration is to be made complete, it should continue until 1991. For the birth and foundation of this government involved more than the development of a Declaration of Independence. Our government was sired in a revolution which began on April 19, 1775, when a British expedition marched on Concord in an effort to seize colonial arms. So you see that gun control way back then started the American Revolution. The maturation and growth of this nation was nurtured in debate beginning with the Revolutionary War and continuing even today. You have heard the voices of those who desire to limit your rights and instill government control over your life. That concept has been the subject of debate since there was government. One of the very basic liberties that seems to raise serious conflict with some critics is the Second Amendment to the Bill of Rights.

Let's digress for a moment and briefly trace the development of our Bill of Rights. During the Constitutional Convention between 1787–89, our founding fathers sought to modify the articles of Confederation. The convention was composed of two camps of political thinkers. One group, in favor of a strong centralized government, became known as the Federalists. The other group, desirous of state's rights and

a loosely knit central government, became known as the Anti-federalists.

About midway through the convention, a representative from the state of Virginia—a truly outstanding patriot—George Mason, recognized that the Constitution was deficient in providing for the rights of the people. He expressed a desire to preface the Constitution with a Bill of Rights. He said, "It would give great quiet to the people; and, with the aid of state declarations, a Bill might be prepared in a few hours." This was later developed as a motion and it was soundly defeated. As the convention progressed, Mason and others expressed serious concern and reflection over the power this new central government might exert on the states and on the people. In fact, it was through the urging of such men as Mason that the Fifth Article, providing for amendments to the Constitution, was finally adopted. Governor Randolph, of Virginia, George Mason of Virginia, {65} and Elbridge Gerry of Massachusetts refused to sign the Constitution because of its serious deficiencies in freedom. They feared that the Constitution's deficiencies in personal liberty would soon lead this nation to monarchy or tyranny. This great concern for liberty coupled with a desire for a Bill of Rights was nothing new to these men. Each state had its own Constitution, and a majority of the states had their own Bill of Rights.

The first Bill of Rights, after considering the Magna Carta, was probably the English Bill of rights of 1689. It was codified after the English Revolution of 1688, and after James II fled his kingdom. Among the many provisions of this Bill was the right of the people to keep and bear arms that's back in the British Bill of Rights. Now, with the development of Colonial Charters and Laws in this country, many of these liberties became a part of our law. These liberties were further defined and included in many revolutionary declarations and constitutions. The seventeenth Amendment to the Massachusetts Declaration of Rights, for example, includes a right to keep and bear arms. So, when George Mason asked the Constitutional Convention to consider a Bill of Rights, his request was made as a result of long-standing practice for the insurance of freedom. He was the author of Virginia's Declaration of Rights, and he had a profound love for these basic liberties.

However, as I said, his motion was defeated unanimously. The Federalists, like Hamilton, could not see a need for a Bill of Rights. When

the work of the convention had concluded and the representatives left for their home states for the purpose of seeking ratification of this document, the fate of the Constitution was in serious jeopardy. Many of the delegates, like Hamilton, Washington, Jefferson, and Madison, voiced concern for the ability of the Constitution to extricate itself from the deep divisions of the Convention.

The first state to ratify the Constitution was Delaware. The vote was unanimous. However, in the second state, Pennsylvania, Robert Whitehill successfully argued for a Bill of Rights. The next states ratifying the Constitution were New Jersey and Georgia. Their ratification did not include a Bill of Rights. Massachusetts was next, and because of the efforts of Samuel Adams and other Anti-federalists, a Bill of Rights was developed by John Hancock, a president of that state's convention. Maryland and New Hampshire also included a Bill of Rights in their ratification of the Constitution. The most crucial state in the ratification contest was Virginia. It was, at that time in our history, the largest and most important state. The debates in Virginia's State Convention are well recorded. The ratification debates lasted a month. The most profound and most glorious oratory delivered for individual rights was delivered by Patrick Henry and supported by such men as George Mason. Mason expressed a fear that the new government's standing army, like the British Regulars, might invade the state and keep the people under martial law. Henry thought that this new government might exercise its "power oppressively" and cautioned about enslaving the people. He asked if the other members were able to recall that France, Spain, {66} Germany, Turkey, and other countries were enslaved by their own people. He agreed with Mason's concern about providing the absolute power of the sword as well as the purse in the hands of this new government. The convention finally adopted twenty provisions for a Bill of Rights. These provisions were later used by Madison in the Congress.

In the first Congress, the issue of a Bill of Rights was a very crucial concern. There was a talk of a Second Constitutional Convention to modify the existing draft of the proposed Constitution; 210 different amendments to the Constitution were proposed by eight states. This was finally refined to twenty-two amendments, and fourteen were included in Madison's recommendations to Congress. However, the

great debate on these liberties continued. The fourteen amendments submitted by Madison were cut down to twelve. Each of those twelve amendments was debated and defined. Finally, ten amendments were adopted.

The purpose of our Bill of Rights was perhaps best summed up in the House: "These are essential and unalienable rights of the people designed to protect them from maladministration."

Let's look at the second provision of the Bill of Rights: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." When Madison presented that article it read, "The right of the people to keep and bear arms shall not be infringed; [*semicolon*] a well regulated militia being the best security of a free country; [*semicolon*] but no person religiously scrupulous of bearing arms shall be compelled to render military service in person." After some debate on the "religiously scrupulous" portion of this provision in both committee and in the full house, the article came out in final form as we have it today. There was little discussion of this provision in the Senate.

Let's tear this article apart and try to define it. The first part says, "A well regulated militia...."—Does that mean an army? Does this mean a national guard? When you read the debates of these meetings the answer is definitely no! The framers of this provision believed that standing armies were a threat to peace and liberty. Madison, Mason, and Henry spoke at great lengths about the problems of a standing army ruling the people or supporting a tyrant. So, what was the militia? Well, according to the framers of the Constitution, and this is supported by dictionaries of that era, it was individual free men, like you and me, who would leave their usual occupations to fight for the town or state or government. The officers of the old militia units were often prominent businessmen or statesmen. The soldiers were just workers, like you and me, lovers of liberty. And when Patrick Henry, speaking at the Virginia Convention, said, "All people," he was a women's libber way back then. He didn't say able-bodied men.

We are not talking about any army. We are talking about free men willing to fight. The second half of this amendment states, "... being necessary to the security of a free state...." These amendments were designed to protect the people against the tyranny of central govern-

ment. They were concerned about {67} their ability to protect themselves, their families, and their friends from invasion both without and within. Is the danger any less today? I think not. Let us not forget the plight of the British during the second World War. They were about to be invaded by the German Army. If the British citizens had been totally unarmed during an invasion, they would have been forced peacefully to submit to Nazi Germany. If this country ever again went to war, could our Army and Navy protect us at home while it is divided upon two continents? Could it protect more than 4,000 miles of coastline? I think not! It would become the responsibility of individual citizens. Remember, our Navy was almost destroyed at Pearl Harbor, and thousands of our regular army troops were lost in a holding action against the Japanese. Remember, the same people who advocate gun control are the same people who advocate cutting the budget for the Department of Defense. It could happen again. On June 20, 1940, a United Press story stated, "The British people, undaunted by Germany's air attacks, grimly asked the government to put arms in their hands so that they might meet their invaders in hand-to-hand combat." That was a reality in England a short time ago. That could be a reality for us at any time in the future. The British were saved by American sportsmen sending weapons over and a benevolent President. We represent about five percent of the world's population and have about fifty percent of the world's wealth. President Ford and Secretary of State Henry Kissinger recently commented on the possibility of our using force against some smaller nations. Obviously, ninety-five percent of the rest of the world can make the same threat against the United States.

Let's discuss the threat from within. During the early days of settling our Western states, there was a threat from the powerful Indian Nations. In the 1800s, the Army was most inept at protecting the frontiersmen from Indian raids. By the time the army heard about an attack and a troop of cavalry traveled a distance of 100 miles, the ashes of the ranch house were cold. The settler-victims were in an advanced state of decomposition. That was less than a century ago and things really haven't changed. Instead of fighting Indians, we are fighting modern hoodlums. The hoodlums and criminals are terrorizing our communities. Look at the crime statistics. Crime increased nationally by seventeen percent in 1974. This is the largest annual increase in the recorded

history of this country. The largest increase was not in the central city, it was in the suburbs—the small towns and rural areas. It went up seventeen percent on the average; about six percent in the major cities, about nineteen percent in the suburbs, and up twenty-five percent in the towns under twenty-five thousand. I can tell you that today's law enforcement cannot protect you. When you call, do the police immediately appear? I don't think that there is any town that, when you call, the policeman appears like a genie. In order to insure your protection, we would have to hire ten times as many policemen—as they do in many foreign countries. The costs for such an increase would be prohibitive. So, if the law enforcement agencies can't insure your protection and the protection of your family from hoodlums, it becomes your responsibility. {68} When and if we arrive at a point in time where all the criminals are properly processed through the criminal justice system—"properly" meaning that the criminal no longer presents a threat to the community—and I am able to insure your protection, then you may want to give up your gun. However, I don't see that secure existence ever presenting itself. The crime rate so far this year is even going up at a higher rate than in 1974.

I've talked about the threat from without and the threat from within, represented by the criminal element, but I failed to mention the terrorists. Groups like the SLA[134] and the Weather Underground could pose a threat to you. If the police and National Guard are busy battling these terrorists, who is going to protect your home and your family? Again, it comes down to the ability of the individual to provide for his own self-protection.

The final part of this Amendment states, " ... The right of the people to keep and bear arms shall not be infringed." According to *Webster's New Collegiate Dictionary,* the word infringe means to "defeat, frustrate; violate, or transgress." The final part of the Amendment, therefore, seems to indicate that, "The right of the people to keep and bear arms shall not be" violated or frustrated or defeated. Patrick Henry, speaking before the Virginia Convention, stated, "If you intend to reserve your unalienable rights you must have the most expressed stipulation; for, if implication be allowed, you are ousted of those rights. If

134. Symbionese Liberation Army, the group which kidnapped Patty Hearst in 1974.

the people do not think it necessary to reserve them, they will be supposed given up." Well, we expressly reserve them—we think. That statement tends to sum up the intent of our forefathers in developing this Bill of Rights. So, when they said that this right should not be infringed, they meant that Government could not take this right from the people. Mason and Henry and the other Anti-federalists had just rid themselves of one King George and they wanted to retain the ability to rid themselves of a future tyrant.

Mason, Henry, Jefferson, and other true patriots had some specific protections in mind when they developed our Bill of Rights. The need for liberties has not become less in our brief 200-year history. The fact that this Amendment was placed second on our Bill of Rights has special significance. Members of the House of Representatives at our First Congress were asked, after debating the amendments, to arrange them in proper order. The Bill of Rights starts with Freedom of Speech, Religion, Press, and Assemblage and concludes with an admonition prohibiting the Government from taking any powers not expressly granted by the Constitution. It's interesting to note that the Right to Keep and Bear Arms was placed second after the Right of Free Speech and Religion.

Judicially, the full intent of this Constitutional right has not been tested. In reviewing an old legal text book, I found this definition of the Second Amendment: "This Amendment means no more than that the right of bearing arms for a lawful purpose shall not be infringed by Congress. It is one of the amendments that has no other effect than to restrict the powers of the National Government, {69} leaving the people to look for their protection against any violation by their fellow citizens of the rights it recognizes to the State power of internal police."

The Supreme Court, in *United States v. Miller,* in 1939, sustained a statute requiring the registration of sawed-off shotguns. The court said, "In the absence of any evidence tending to show that possession or use of a shotgun having a barrel of less than 18 inches in length at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia; we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common

defense." So, the court has defined the right to keep only military-type equipment. What these decisions seem to say is that the type of weapon you bear can be regulated by the federal government. Since there is some discussion in these cases about the military relatedness of the weapon, it appears that both sidearms and rifles are included. It would be difficult for the court to argue against the military relatedness of sidearms. History indicates that ever since the first handgun was manufactured, they have served as a part of military hardware, starting with the wheellock pistols of the sixteenth century and continuing with the .45 caliber automatic and the .38 caliber revolver which have distinguished themselves in two world wars. Further, I think the court could take "judicial notice" of the .22 caliber's effectiveness to provide for "common defense."

Justice William O. Douglas, writing in the *New York Law Review,* stated, "A Bill of Rights ... is a reminder to officials that all power is a heady thing, and that there are limits beyond which it is not safe to go. A few provisions of our Bill of Rights, notably the Third Amendment, and its prohibition against quartering of soldiers in private homes, have no immediate connection to any modern problem. Most of the other guarantees of government are, however, as important today as they were when first adopted. Many of them are even more important." Considering the continued attack by some against our liberties, including the right to keep and bear arms, it seems clear that our Bill of Rights and its provisions are even more important today.

Let's discuss the thinking and reasoning behind those who desire to compromise our liberties. They cite the misuse of guns as a reason for their abolition. They point out that a certain percentage of all robberies, murders, and assaults are accomplished with firearms. What they seem to overlook is the fact that we are talking about a very small percentage of people. Would it be fair to sanction ninety-nine-plus percent of the people in an effort to control one-tenth of one percent of the population? If such a sanction were imposed on the populace, would it work? Would it be effective? Would it be a viable alternative? Most emphatically NO. Tim Sullivan gave New York one of the strictest gun laws in this country and it has done little to help New York. Criminals still use guns in New York. {70} As a matter of fact, New York and several other states with strict gun control laws have distinguished them-

selves with their high crime rate. Some officials from these states are now asking the government to ride roughshod over the Second Amendment. They want others to share in the unsuccessful efforts of their gun control measures. You see, when a criminal makes up his mind to violate one law, like robbery, the violation of another law is a very small thing. A professional criminal—one who makes a living by violating the law—doesn't give a hoot about society's rules. He has his own rules. So, gun laws, like those in New York, restrict the law-abiding citizen and not the criminal.

Alan S. Krug, an economist formerly with Pennsylvania State University, completed a comparison study of jurisdictions with strong gun laws compared to those with lenient laws. He found that firearms are involved in only three percent of all crimes. He found that while the number of guns purchased and owned by citizens has increased significantly during the past decade, the number of deaths resulting from firearms, per hundred thousand population, has remained fairly constant. So, the availability of firearms to the general public is not the cause of abuse. The United States Congress in 1967 involved itself in a study dealing with the hypothesis that strict firearm licensing laws resulted in a lower crime rate. The study found no correlation between firearm regulations and crime. The antagonists of our liberties appear to be utilizing a false and emotional argument as a reason for infringing upon our rights. When that is done by government, it smacks of tyranny. King George III is alive and well in the United States today.

Listen to this king or would-be king. The United States Senate Judiciary Committee of the 93rd Congress, headed by Senator Sam Ervin of Watergate fame, drafted a "Layman's Guide to Individual Rights under the United States Constitution." Under the Second Amendment, the following quote is provided: "The Right to Bear Arms: The Second Amendment provides for the freedom of the citizen to protect himself against both disorder in the community and attack from foreign enemies. This right to bear arms has become much less important in recent decades as well-trained military and police forces have been developed to protect the citizen." I'm just departing from the quotes now, but I wonder where in the heck they got the information. I don't know anything about it. "No longer does he need to place reliance on having his own weapons available." And so I say, No thank you, King

Sam. This Senate Committee believes that your right is not as important as it once was. I disagree. I believe that this right is just as important today as it was when it was developed. It is an inalienable right of the people promulgated for posterity by our forefathers. It will not be infringed.

Listen to this would-be king. The new Attorney General of the United States, Edward Levi, in a meeting just a few weeks ago, came out with a proposition that would impose federal gun control on certain cities, at certain times, under certain conditions. To me, it's incredible that this brilliant legal scholar has not heard of the Second and Fifth and Fourteenth Amendments to the United {71} States Constitution. No thanks to you, King Ed.

The answer to gun abuse lies not in abolishing the right of the majority, but in protecting that majority against a few. This end should be achieved by the criminal justice system working with existing law. The proper administration of penalties against those who abuse this right will act as a proper deterrent. I have statistics on the workings of this Criminal Justice System which indicate that the criminal is more often rewarded with probation than censured by punishment. Those who would propose an endorsement for the abolition of our right to keep and bear arms must seriously consider this ... are you listening A.C.L.U.?[135] They must seriously question their future position on the relinquishment or renunciation of other Constitutional guarantees. For to surrender and abandon one liberty might well lead to the surrender of others. When man forsakes his liberties, he becomes a slave.

And now there's the house of lords who would impose something. Listen to what this house of lords has to say. The United States Conference of Mayors just a few days ago endorsed a proposition that would take our bullets away. Now this is the theft of our Second Amendment rights by trick and device—a special form of theft covered in the penal code, and we say, No thank you, Lord Mayors. We will not have that here.

In conclusion, let me say that Mason and Henry and Jefferson probably had these protections in mind when they drafted our Bill of Rights. Certainly, the value of these liberties is no less today than it was

135. American Civil Liberties Union.

at the time of our founding. The abandonment of these guarantees will ultimately lead to the destruction of this great nation. I am but a servant of the people and a lover of liberty and I cannot let that happen. And there is in existence in the beginning of this bicentennial, a well-coordinated, nationwide effort to strip us of our personal Constitutional rights, to keep and bear arms. Unless we match the efforts of those would-be tyrants, we will lose these rights. We must alert our fellow countrymen and have them stand with us. Perhaps our badge or lapel pin during the bicentennial period could be a serpent forming a circle with a No. 2 inside. This would be similar to the Minutemen flag of the Colony of Virginia where Patrick Henry did his great work for us. That flag said, "Liberty or death—Don't tread on me." And let this bicentennial of ours mark the beginning of a new declaration against tyrants. Let this bicentennial mark an awareness of our now inalienable rights. Let this mark a return to a deep reverence for the law, its principles, and our rights, liberties, and obligations.

The Coming Crisis in Criminal Investigation

Edward Powell

Criminal investigation is as old as the first criminal act, and its basic investigative pattern has not changed since God interrogated Cain (Gen. 4:8–10). The gathering of *verbal* and *physical* evidence to determine whether or not a crime has been committed, and if so by whom, is conducted along the *same systemic pattern* in the modern period as in ancient times. Modern interrogative techniques and the scientific analysis of physical evidence have *only* altered the *methods* of gathering evidence and its interpretation. The goal of all law enforcement throughout history has been the *prevention and suppression of criminal activity* and the *arrest of offenders.* The basic pattern for achieving this goal involves the preliminary investigation, the gathering of physical evidence, and the follow-up investigation.

A *preliminary investigation* is the immediate response to possible criminal activity and is launched when information is received that a particular behavior is, or *may become,* criminal in nature. It is the initial gathering of evidence to determine whether or not a criminal offense has been committed, or whether an activity may warrant further investigation. This normally consists of investigating the scene of the suspected incident, the interviewing of the victims, witnesses, suspects, etc., and the transmitting of information to the originating agency for further processing (e.g., want, warrant, and record checks, etc.), and/or relaying data to other members of the agency (e.g., those on patrol, crime-lab specialists, or follow-up investigators). On occasion, it develops into the active pursuit of suspects (e.g., fleeing robbery or burglary suspects, etc.), squelching of public disturbances, or searching for victims.

The *gathering of physical evidence* is for the purpose of providing additional and corroborating evidence that could not be obtained through either the preliminary or follow-up investigations. The pri-

mary function of the modern criminalistics laboratory is to provide the expertise required in the examination and analysis of physical evidence, at both the crime scene and the laboratory, by the use of the physical sciences. Such examinations are performed at the request, and often under the direction, of the preliminary and follow-up investigators. All items that are, or may prove to be, of evidential value are either examined and/or developed at the scene (e.g., the development and lifting or photographing of latent fingerprints), or transported to the proper agency for possible analysis (e.g., blood, fibers, hair, stains, etc.). The results of these inspections are then forwarded to the follow-up investigators.

The *follow-up investigation* continues at the point that the preliminary investigation was discontinued. It is a review, consolidation, and analysis of the reports {73} taken during the preliminary inquiry, and the gathering of physical evidence. It often requires the further interview and interrogation of the victims, witnesses, and suspects, and an additional search of the crime scene, or the collection and processing of newly discovered physical evidence. This investigation involves the use of numerous Record Bureau files (e.g., *modus operandi*, gun, and pawn slip files, etc.), search of secondhand stores, pawnshops, etc., investigation of known criminals and their associates who have been seen or who have been know to have "worked the area" on previous occasions, the compiling and relaying of information (e.g., the description of stolen property, vehicles believed to have been used in the crime, suspects, etc.) to other members of the department or to other law enforcement agencies, the active search and apprehension of suspects, and the presentation of evidence in court.

The application of this basic investigative pattern can be seen both in the investigation of a typical modern robbery case where the suspect is apprehended at the crime scene, and the arrest of St. Paul in the City of Jerusalem (Acts 21:28; 22:24). In the robbery case, the preliminary investigation is often launched when information is received by the local law enforcement agency, via a silent alarm, witness, victim, etc., that a robbery is in progress. The agency will then send patrol officers to investigate the report. If a robbery is in progress, an attempt will be made to apprehend the suspect. If this is successful, the suspect will be transported to the department for booking and confinement. If the

officers believe that the case against the suspect can be furthered by a search for physical evidence at the scene or the photographing of same, a crime lab specialist will be sent to the scene to conduct this type of search. At the station, the robbery suspect will be interrogated by the follow-up investigators who will attempt to glean as much information as possible from him.

In the case of St. Paul (Acts 21:30ff), "all the city [Jerusalem] was moved [against him] and the people ran together: and they took Paul and drew him out of the temple. And, forthwith the doors were shut. And as they went about to kill him, tidings [information] came unto the chief captain of the band [local law enforcement agency] , that all Jerusalem was in an uproar; Who immediately took soldiers and centurions, and ran down unto them. And when they saw the chief captain and the soldiers, they left beating Paul. Then the chief captain came near and took him, and commanded him to be bound with two chains: and demanded who he was, and what he had done. And some cried one thing, some another, among the multitude: and when he could not know the certainty for the tumult, he commanded him to be carried to the castle."

The response to the disturbance in the city and the subsequent arrest of Paul and his incarceration in the castle constitutes the *preliminary investigation.* Later (Acts 22:24–25), an attempt was made by the chief captain, in a *follow-up investigation,* to interrogate Paul by the method of scourging, to determine "wherefore they [the people of the city] cried so against him." Paul aborted this investigation by asking "the centurion that stood by, Is it lawful for you to {74} scourge a man that is a Roman, and uncondemned?" At this point, because "the chief captain ... was afraid, after he knew that he [Paul] was a Roman, and because he had bound him" (Acts 22:29), the follow-up investigation shifted to bringing Paul before the council of Jerusalem to determine the nature and cause of the tumult. Ultimately, Paul appealed to Caesar's judgment seat, and the case was transferred to another jurisdiction.

As can easily be seen, both cases have similar investigative patterns, albeit in Paul's case the search for *physical evidence* is missing. This deficiency should not be construed to mean that physical evidence was not of any importance in the ancient world. In the case of Joseph's

"death" (Gen. 37), his coat that had been dipped in goat's blood was the principle evidential proof of his demise. Also, in the case of Achan (Joshua 6–7), the possession of stolen gold and silver constituted the corroborating evidence that condemned him to death. However, it is exactly in this area of physical evidence and interrogation that some of the greatest changes have occurred in law enforcement. The very real *difference* between ancient and modern police activity, as practised in the United States (especially by the Federal Bureau of Investigation and the larger police departments such as the Los Angeles Police Department) and the United Kingdom (particularly by New Scotland Yard), is in the area of *obtaining information from suspects, witnesses, and victims,* and the *scientific gathering and analysis of physical material.*

In the ancient world (and in most countries today), *two systems of interrogation* dominated criminal investigation. Those were *pretrial imprisonment* and *torture.* (Actually, both are one and the same, as imprisonment is only a method of torture.) Both were often practised at the same time, and the purpose of both was simply to gather information that was desired by the investigators. (Recall the reason the chief captain scourged St. Paul in Acts 22:24.) These systems of acquiring information were rather simple, but the methods and techniques used were often quite complex, and at times required the expertise of skilled "craftsmen" trained in anatomy and "medical" science. If time was not a problem, and the case was not of immediate interest, *pretrial imprisonment* was the system used to "soften" a suspect and loosen his tongue. These pretrial accommodations varied according to the pleasure of the interrogator and the nature of the offense. Size, cleanliness, types of food (if any), sanitary facilities, etc., were arranged to suit the "dictates" of the "guest." A few days, weeks, months, or sometimes years on "ice" would literally soften more than a suspect's tongue. Mental disorders were probably more prevalent than lice in these dens of hell. *Torture,* however, was the method used to get quick results. It could be called the "instant interrogative technique." The methods used varied considerably, depending on the "nut" that the investigators were attempting to "crack," and the need for immediate information. Scourging was the method used against St. Paul, and apparently was quite popular, probably due to its cost-effectiveness, i.e., the low cost of equipment and training of personnel in its {75} use, versus its effective-

ness in accomplishing its desired ends. Breaking the joints of the fingers and toes with a small "thumb press" was also popular, and undoubtedly for the same reason. Direct torture varied according to custom and the "delicate" taste of those in authority. Neither system was (nor is) conducive for establishing the truth of a matter, due to the fact that confession to anything, and subsequent punishment, was often less horrendous than the interrogation. In all likelihood, in the long run, imprisonment was more damaging to the individual than mere torture, because without hopes of eventual release, the burden of living would become a nightmare. At least under torture, it could be hoped that the bureaucrat conducting the "interview" would ultimately make a mistake, and end the interrogation once and for all.

Ancient Israel, when under the rule of God, and those nations that have been heavily influenced by biblically derived English common law (i.e., the United States, the United Kingdom, Canada, etc.), ceased the use of prolonged pretrial imprisonment and torture as valid means of interrogation. All nations today apply the use of posttrial imprisonment as a means of "correction and rehabilitation" of law violators, in direct violence to God's law-word, which requires only restitution or execution. The vast majority of countries still apply, at a minimum, the use of excessive pretrial incarceration and torture (usually in the name of "mental health examinations"), to soften suspects in order to obtain desired information. Those countries in the West that are without the heritage of English law, and that consider themselves more civilized than their "brethren," still use prolonged *pretrial confinement* as a method of keeping the suspect on ice and softening for further interrogation. France and Switzerland, neither of which have writs of *habeaus corpus*, are noted for their use of long periods of confinement before the commencement of trial. However, modern methods of interrogation, as practised in the United States and the United Kingdom, are quite different. With the abolition of the use of force and confinement as valid methods of gathering information, the emphasis has been geared to the informal, friendly, *interview* arrangement. The interrogators rely heavily on the use of other evidence, physical and informative, to present before a suspect at the time of the "interview." The investigators seldom "lean" on a suspect, as depicted in films, but instead use the technique of getting the suspect to *explain one aspect* of his activity or

reasons for possession of certain items, and then present other evidence to the suspect to *contradict* his previous statements. It is a system of *psychological ballet,* where the evidence available to the investigators is used against the suspect to confuse him and destroy his confidence. The intention is to *pit the suspect against himself* so that all the information at his disposal will be revealed during the interview. At times, a lie detector will be used, with the permission of the suspect, to verify his statements. By the use of this method of friendly cross-examination, the reasonable assurance is that truth can be obtained without violence either to the suspect or God's law-word. {76}

The other area of great change in law enforcement has been in the application of the *physical sciences* to the gathering, preserving, and analyzing of physical evidence. This field of inquiry involves, but is not limited to, the science of photography, dactylosophy (fingerprints), biology, chemistry, anatomy, and comparative analysis. These are collectively known as the forensic sciences; forensic being a deviation of the Latin *forensis,* which is from *forum,* meaning public place. Thus, the forensic sciences are the application of *any* of the physical sciences to the field of jurisprudence. This application of modern scientific techniques and processes to physical material has brought one of the greatest advancements to the field of criminal investigation in its entire history. Evidence that formerly could only be interpreted from its *prima facie* (first appearance) content can now be analyzed and segregated into numerous components, thus providing the most detailed information on a particular item that may be of evidential value. Physical objects (e.g., fingerprints) that were overlooked in the past have become major sources of information for follow-up investigators, and have become the cornerstone upon which numerous investigations have been made. The application of the forensic sciences to criminal investigation has provided evidence that simply was not available from any other source.

An understanding of the value of this type of evidence can be demonstrated through the rendering of an example from the field of dactylosophy. Before the advent of this science, which is less than one hundred years old, and its ability to establish positive identification, the value of fingerprints was limited only to their content. For example, if a suspect has a peculiar type of dye, stain, etc., on his fingers, and this

same dye or stain was located on an item in the form of fingerprints, the *prima facie* inference could be made that this person had handled that particular object. But the ability to establish absolute proof that the suspect had indeed handled the item by means of finger print comparison and identification between the suspect's fingerprints and the prints on the object, was impossible. Outside of these rare occasions when such a transfer of material would take place, the use of fingerprints as evidence was nonexistent. Today, the location, developing, and comparison of latent (not visible) fingerprints at crime scenes is of primary consideration. *Latent prints* are actually the most common type of *physical* evidence gathered in criminal investigation and far outweigh, by a vast margin, any other single type of physical evidence used in the prosecution of criminal offenders. Fingerprints are the *only* known means of *positive* identification of individuals, and are taken as a matter of course, as part of the arrest and booking of individuals, by every major police agency in the world. A latent print as small as one-quarter inch square in area (the approximate size of Lincoln's head on a one cent piece) can be compared and positively identified with the master (rolled) set of fingerprints of a person. Latents can be developed on wood, paper, glass, metal, or any other material whose grain structure is finer than the ridges of the fingers, and which will not dissipate the printed ridge structure. Fingerprints are the most important and frequently {77} used weapon by the police specialist in his war against major crime.

Another example of the important use of the forensic sciences can be demonstrated by the analysis of a substance that resembles whole blood (numerous dyes, stains, etc. have remarkable resemblance to blood). A confirmatory test would be made of the suspected substance to determine if it were blood or not. If the test proved positive, a biological perciptin test would be performed to identify the species from which the blood came (e.g., human, canine, bovine, etc.). If this test confirmed the blood as human, it could then be grouped into a number of classifications. The four major groups of human blood are A, B, AB, and O. Each of these can be subclassified into M, N, and MN subgroups which can be further divided by the Rh positive and Rh negative factors, giving a total of twenty-four possible combinations of blood types. The value of such blood analysis in criminal investigation

can be clearly seen by its application to the case of the "death" of Jacob's favorite son, Joseph (Gen. 37). Joseph's brothers sold him into slavery and took his coat of many colors, which they had dipped in goat's blood, to their father. Jacob's immediate assumption was that "an evil beast hath devoured him: Joseph is without doubt rent in pieces" (Gen. 37:33). The foregone conclusion, based upon the evidence then available, was that Joseph was dead. But an examination of the coat by a modern forensic chemist would have disclosed that the blood on the garment was not of human origin. With the addition of this small bit of evidence, the assumption of Joseph's demise would have been laid aside, and the case reopened for further investigation. If the brothers had used human blood rather than goat's blood, a blood group test could have been performed to determine if this blood on the garment had the same group as Joseph's. It should be noted that blood analysis is a good *negative* test but a poor positive one, because if the blood types or groups are different, it automatically eliminates the two blood specimens coming from the same source, but if the types or groups are the same, it does not prove that the two specimens came from the same source, but only proves that they are of the same classification.

The modern criminalistics laboratory is not confined to the analysis and identification of only blood specimens and fingerprints, but also is concerned with the identifying of narcotics, blood alcohol ratios, paint samples, semen stains, vegetable and mineral material (e.g., plant seeds, leaves, plaster dust, etc. located at a crime scene with a similar substance on a suspect's person), tool marks with the tools that made them (e.g. hammers, chisels, drill bits, pry bars, screwdrivers, etc.), broken pieces of glass, wood, etc. with the parent object, spent cartridges and bullets with the originating firearms, photographing and diagramming crime scenes, making composite pictures of the facial likeness of wanted suspects from the description of witnesses, etc. The list of items examined is only limited by the imagination of the investigating officers, and the limited space, scientific equipment, and processes at the disposal of the forensic chemist. The object of such examinations is: 1) to identify a substance to {78} determine if it is in fact what the investigating officers suspect it to be (e.g., heroin, alcohol, etc.), such identification being an essential element of the *corpus delicti* (facts necessary for the establishment of a crime); and/or, 2) the identi-

fication of a substance taken from a crime scene (e.g., fire clay from a safe, tool marks, etc.) with the same substance, or made by an object, found on the person or under the control of a suspect, to establish his presence at the scene of the offense. Thus, it can be seen that physical evidence, as analyzed and interpreted by an expert, actually acts as a witness in place of the "eyewitness" that is normally associated with court testimony. In fact, such "testimony by physical evidence" is often more positive in terms of identification than eyewitness accounts, fingerprints being an excellent example.

Unfortunately, the old adage that "nothing fails like success" can be applied to the forensic sciences. The very success of the crime lab in solving, virtually through the sole use of physical evidence, various spectacular and difficult cases, has presented a tremendous problem. The courts, investigating officers who have not had a close working relationship with this field, and the general public all hold distorted views as to the abilities of the crime laboratory. All seem to hold to the same misconception that physical evidence is as abundant at a crime scene as there are peanuts at a circus, and both can be swept up as easily. *This is far from the truth.* Physical evidence is *extremely limited* except on rare occasions, and this limitation of the presence of such evidence puts an automatic limit on the abilities of the criminalist. He cannot produce something out of nothing. It is axiomatic that valuable information and evidence can only result from an adequate source, and where the source of information is missing, the information desired will also be missing. And in the vast majority of criminal cases, the material found at a scene, to be of value, must be identified with a particular person or item under his control. It takes two to tango for physical evidence to establish its value, one partner being *evidence* from a crime scene and the other partner being the *suspect.* If only one partner is available, which is often the case, the dance into court is impossible.

Perhaps examples from personal experience will clarify this point. My percent average for developing latent prints at burglary investigations was approximately 60%. I investigated approximately one-third of the investigations handled by the crime lab, and the lab investigated approximately 50% of the burglary cases that occurred in the city, the remainder being considered by the preliminary investigators (patrol officers) as not warranting the services of an Identification Technician

due to the circumstances of the case. This means that if my average, which was the highest in the lab at that time, was carried through to include all the burglary investigations handled by the lab, only 30% of the burglaries that occurred in the city yielded identifiable latent prints. I also had the highest percentage of latent prints that were identified with the prints of *suspects,* which averaged approximately 12% of the latents lifted. This means that only 3.6% of the burglaries that occurred in the city were cleared directly by {79} latent prints. And remember, latent prints are the *most common* type of physical evidence.

This same situation also applies to the gathering and identifying of tool marks, footprints, tire tracks, etc., but to a greater degree. For example, in the nine years that I conducted burglary investigations for the preservation and analysis of physical evidence, I cannot recall seeing more than a dozen footprints that could have been identified with the shoe that made them. I *never* saw a tire track that could have been matched to a particular tire. And so it goes. But the gathering of available evidence does not automatically solve the crime, because the evidence must be *identified* with the tools, shoes, vehicles, etc. of a suspect. This "supplying" of suspects and their "possessions" to the finger print expert and/or criminalist is the job of the preliminary and follow-up investigators. If the fingerprints of suspected persons are not on file, and these individuals and their tools, shoes, vehicles, etc. cannot be located, then the physical evidence is contingent upon having information on possible suspects. Thus, it can be seen that the *primary function of the crime lab is to corroborate the suspicions and conclusions of the preliminary and follow-up investigators.*

The misconceptions held by the courts and the general public in regard to the nature of physical evidence stem basically from the distorted conclusion that if such evidence is available in one case, it must be available in all. Such thinking denies the complex and intricate interrelationships of the physical sciences and investigative techniques. Physical evidence is available and is important, but not without limits. It has proven its value over and over again by providing information and conclusions that could not be gleaned from any other source, but it is not *the* panacea for fighting crime. It is an aid, a necessary and valuable one, but that is all. Simple statistics cannot prove the importance of one latent print in the arrest and conviction of one suspect which

may subsequently clear twenty-five other cases or lead to the arrest and conviction of others. Although statistically speaking, the presence of physical evidence at crime scenes is small, it is of major importance. Just as aspirin is not expected to cure cancer but is an adequate medication for its intended purpose, so must the public and the courts learn to view the purpose of the forensic sciences.

The value of physical evidence is also coming under attack from another source besides the courts and the general public, but in this instance the individuals and groups that are doing the damage are fully aware of the importance of such evidence in modern criminal investigation. This damage is coming from the individual professional criminal and organized crime. Because of "advanced instruction and training" received at, and under the auspices of, the state and federal *prison systems,* these two elements are quite conscious of the limitations of law enforcement in criminal investigation, and the great stress that is laid upon the use of the forensic sciences. And because they are cognizant of the limits of police authority and the extent to which they must cooperate if apprehended, criminals have come to realize that *their worst enemy is physical* {80} *evidence and/or merchandise in their possession* that may be traced to a criminal offense.

Two actual cases may help to illustrate this point. The first case involved a professional burglar who was a top-notch torchman. He broke into a shop that contained numerous tools and an acetylene torch, which he then used to "burn" the safe. Only those tools available *in the shop* were used and only those items that *could not be traced* were taken. No physical evidence was left behind that was of any value, except a small latent finger print located on the outside face of the safe door. One of the fingers of the gloves that he wore had a small hole in it which allowed the transfer of his finger print to the safe door—a small, but very big mistake which sent him to the joint for a short vacation and a refresher course in his vocation. The second case had all the earmarks of a job by organized crime. A major store specializing in small, valuable objects and settings was burglarized over a two-day period when the store was closed. Every alarm in the business was circumvented and over a quarter of a million dollars in valuables were taken. All the tools used on the job were new and had been purchased specifically for this burglary. All the tools, wires, tape, clothing *except* shoes

and what the burglars were wearing, but including even their gloves, were *left on the loading dock* as they left the premises. The items taken were broken up into untraceable material within two to four hours after leaving the store and then disposed of. The shoes and clothes in which they left the store were, in all probability, discarded immediately after this operation. No arrests and convictions were made.

Both of these cases were worked by the use of *informants*. In the former case, an informant rendered the name of a specific individual who had pulled the burglary of the safe to the follow-up investigators. The fingerprints of this suspect were then compared with the latent lifted at the crime scene, and positive identification was established between this latent and one of the fingerprints of the suspect. The follow-up officers then arrested the individual and confronted him with the evidence, whereupon he confessed.[136] The latter case, for all intents and purposes, was worked and closed *solely* by the use of informants. Information on the number of individuals involved, some of their names, the name of the one who probably planned the job, how the stolen items were disposed of, etc., was all gathered by the follow-up investigators of several jurisdictions by the use of their informants. No arrests and convictions were made because there was no adequate evidence available to link the suspects to the offense. Since the stolen merchandise was broken up into unidentifiable pieces and disposed of, and there was no physical or other evidence of note, the case was shelved and left "unsolved." {81}

This use of informants for the gathering of information on criminal activity is extremely important, for without the ability of law enforcement agencies to develop, and have access to, informants and the information at their disposal, the police would be unable adequately to enforce the law or provide protection against criminal and revolutionary activity. *It is informants who supply the bulk of the information* to the police departments, which is then used, in conjunction with physi-

136. An interesting situation developed in this case when the suspect was originally confronted with the evidence. He was a true professional and told the officers that it could not be *his* fingerprint because he had "worn gloves" on the job. The detectives asked that the identification be verified, which was done. The follow-up officers then conducted an examination of the suspect's gloves. When the hole was found, it was pointed out to the burglar, who chuckled and then "copped out" to pulling the job.

cal evidence, eyewitness descriptions and accounts, and the observations of other peace officers, to develop and work a case to its conclusion. Because they are often closely connected with the actual commission of crime or associated with criminal and revolutionary elements, by choice or through necessity, informants have access to information that cannot be obtained from any other source.

An excellent example of the vital and unique information that can be supplied by an informant can be illustrated by the need that the Jews had for the information that was at the disposal of Judas Iscariot. Apparently, Jesus was quite nondescript, having no outstanding features or wearing apparel that set Him apart from others (this can be deduced from His ability to disappear into crowds and not be recognized, as evidenced in John 7:10–14 and 8:59). The Jews, in order to locate and identify Jesus, needed an informant who was exceptionally well-acquainted with Him. Proper identification was a must, and for the right monetary reward Judas was willing to provide the information desired by the local constables (Luke 22:3–5). Not only was Judas willing to point Him out, but to make certain that the Jews did not arrest the wrong individual, he gave the affirmation of positive identification by attempting to render a kiss to our Lord (Luke 22:47–48). Without the services of such an informant, the Jews would have been temporarily stymied in their location and arrest of the Christ.

Informants differ from witnesses in that they generally do not wish to have their identities exposed, other than to a specific law enforcement agency or officers with whom they have had dealings on previous occasions. They also differ in the content of the information that they supply, generally providing a great deal of hearsay and unsubstantiated "evidence" that would be rendered inadmissible as testimony in a court of law. The service they provide is essentially one of finger-pointing, gossip, and rumor-gathering on suspects and their locations, and what is happening or may happen "on the street." And if they cannot provide the information that is desired, they can often indicate who may have it, or who may know how to get it. An illustration of this point can be demonstrated by a case wherein a patrol officer stopped a local punk for a traffic violation and proceeded to examine both driver and vehicle for possible violations of law. When the driver was confronted with the prospect of arrest, he informed the officer that he would tell where a

"body was buried" if the patrolman would forget about the traffic offense. An interrogation of the driver by the detectives revealed that he only had hearsay (third party) information, but the names received by the follow-up officers from the informant eventually led to {82} the solving of a complex and bizarre manslaughter case.

Informants come from all segments of society, and their reasons for yielding information to the authorities vary from those who are truly concerned with the welfare of their relatives, friends, community, etc., and who are therefore fearful of exposure, to those who are truly reprobate and who would sell their Lord "for thirty pieces of silver" (Matt. 26:15). They vary from the neighborhood "watchman" and parents, friends, employers, etc., who report on the behavior of those with whom they are associated, to the "professional" informer who trades information on professional criminal and revolutionary activity for favors and/or monetary rewards. Often information is rendered because of pride in a neighborhood or hatred for a particular neighbor, or because of fear and trepidation that a loved one may be becoming involved in something that could destroy him (e.g., the use of hard drugs). Frequently, professional criminals or hare-brained revolutionaries will "fink" on their compatriots because of jealousy or the desire to eliminate the competition, or because they have been "busted" and want to "deal" in order to avoid spending time in the "joint" which would put the "cool" to their present activities. Men *do* truck and barter.

The one common ground that virtually all informants have in common is their *desire to remain anonymous* to the individuals and/or groups on whom they are supplying information to the authorities. This common ground is based upon simple fear, fear of exposure which could lead to them "running the gauntlet," and infliction of pain that varies from ridicule and ostracism from family members and friends for "turning little Johnny over to the pigs," to having one's body riddled with assorted bullet holes, causing it to resemble a ten-cent sieve, for informing "on the family" (organized crime) or "being a traitor to the revolution." This fear is very real, and as the information grows in importance, so does the necessity for keeping the identity of the informant confidential. Without the ability of law enforcement agencies to keep the identity of informers secret, these agencies would

soon lose their informants, and with them their *most important source of information* for combating major crime. In the case of organized crime and the revolutionary organizations, the loss of informants would virtually eliminate the ability of the authorities to keep tabs on these groups.

The trends of the courts and legislative bodies, at both the state and federal levels, has been toward the *full disclosure* of the identity of informants. This is occurring through the development of case law by judicial review by the various courts of appeal, as a method of "protecting the rights of the defendant," and by legislative acts (e.g., the Freedom of Information Act) which enables an individual or group to file a suit against an agency to require that they divulge the identity of those who have informed on them. This trend is not catastrophic *yet,* at least as far as drying up sources of information is concerned, but it is certainly going to cause a few sleepless nights for those who *now* have their identities known and recorded as being an informant on a criminal or subversive group. If {83} the use of such legislation becomes widespread, present informants will undoubtedly "disappear," probably for a variety of reasons, and new informants will be developed and protected by a system similar to the one used by most police departments in the State of California for many years. It is a simple system which protects both the informant from possible exposure and retaliation, and protects the police officer from having to perjure himself in order to protect the health of his informant. The system requires that personal association, either in person or by telephone, be established between one or several officers and the informant in order that both parties know those with whom they are dealing. But the officers must prohibit the informant from ever divulging any information on himself that could be used to identify him. Nicknames are often given to the informer, and the details of his personal and business life are avoided except where it may have an important bearing on a case or on the information supplied. Reports are made, by the officers, giving only the informant's "given name," and no other information is offered because none is known. Since testimony in court cannot go beyond the limits of the officer's knowledge, it is a reasonable assumption that under such an informant system, the identity of those who reveal information to the authorities will remain unknown. However, it is doubtful that

either the courts or the various legislatures are going to allow themselves to be outwitted by the "men in blue." The prevailing trend is for full disclosure of the identity of all persons and information held, or possibly known, by all organizations, both private and governmental, and it is extremely naive to assume that this trend will cease simply because it will lead to catastrophe. It is a truism that irrational men who rule society will make irrational judgments on how society should be governed, and that such judgments will destroy that society. (Rationally speaking, that is.)

Since the Fall, basic criminal investigative patterns, even with the addition of new techniques, high-speed communications, and the scientific gathering and analyzing of physical evidence, have remained unchanged. The same pattern exists today as in yesteryear. But in all history, with the exception of the theocracy of Israel and the establishment of biblically derived English common law, this investigative pattern has been used as a brutal, barbaric, and totally anti-God system to promote the desires of the corrupt despots who ruled the state. It was the Reformation, with its concept of sphere law—that all men and their organizations are limited and controlled by God's law-word—which reinstituted the limitations of the state in its use of police power, and which thereby protected the individual and society against demented men who deemed themselves gods. With the present rise of the religion of secular humanism, and the destruction of the restraints placed upon men by God's law-word, the return of barbarism to those areas of life most closely associated with the exercise of power should be expected.

Individuals and societies *will* live out the implications of the basic presupposition that rules them, and law enforcement is *the* agency of society that enforces {84} that presupposition. Law enforcement is not neutral, and it will ultimately enforce the rules and regulations that are deemed essential for the preservation of the dominant religion which governs society. It is not neutral, because it is composed of men and women who have been reared and educated by the institutions of society. If they did not endorse the philosophy that dominates the enforcement arm of society, they would refrain from becoming a member of it. This is why the "old guard" peace officers are retiring as soon as possible—twenty year and twenty minute men—and the "new breed" is taking their place. The older officers were trained in a society which

stressed individual responsibility and the restraint on the exercise of governmental power, while the "new breed" is a product of totally secular institutions. They endorse the exercise of unlimited power for the "social good." They want power, power to transform society after their own image. And they may get it temporarily. When the disruptive effects of humanism inevitably become apparent to all, and society reels in a state of chaos, law enforcement agencies will be freed from their restraints, acting then as an *absolute ruling arm of the prevailing authority.* Make no mistake about it, law enforcement is a sleeping angel of the god of secular humanism.

Law enforcement is neither inherently good nor evil, but is a *reflection of the prevailing character of society.* If society becomes barbaric, so will the agency that enforces society's concept of truth. The reestablishment of law enforcement to its proper law-sphere entails the restructuring of society, which must begin with the absolute premise that the God of the Holy Scriptures and His law-word are Sovereign, and that man is a creature under His authority. It must be acknowledged, by faith, that "those things which are revealed belong to us, and to our children for ever, that we may do all the words of this law" (Deut. 29:29). We are confronted with a condition similar to the Israelites, as they prepared to cross the Jordan into the Promised Land. "Behold I set before you this day a blessing and a curse: a blessing, if ye obey the commandments of the Lord your God which I command you this day; and a curse, if ye will not obey the commandments of the Lord your God, but turn aside out of the way which I command you this day, to go after other gods which ye have not known" (Deut. 11:26–28). The future belongs to those who, by faith, are willing to reconstruct all of society, especially the area of law and its enforcement, in terms of His infallible Word, that they may receive the blessings that He has provided.

Innocent Victims of the Criminal Justice System

Mitchell C. Lynch

WASHINGTON—After searching vainly for years for ways to conquer crime, some law enforcement authorities finally are beginning to focus attention on improving society's treatment of crime's victims.

The problem is a tough one, whose solution will require a massive overhaul of procedures followed by police, prosecutors, courts and lawyers. Experts contend, however, that unless a way is found to end the shabby treatment of victims of crime there will be a further serious erosion of public support for the nation's judicial and law-enforcement systems.

As crime increases, of course, more and more people become its victims. This upsurge is leading to an increasingly widespread realization that official treatment of crime's victims is "incredible and scandalous," in the words of James L. Lacy, an associate director of the Police Foundation, a private law-enforcement research organization. Mr. Lacy believes this has done as much to shake public confidence in the legal system as have all the statistics showing that crime is rising at an alarming rate.

The problem goes beyond the victims of violent crimes such as mugging and rape. What Mr. Lacy and others worry about is the backward treatment of the person who has been held up, or whose home has been broken into, or whose purse has been snatched, or whose car has been stolen.

For seven years Mr. Lacy has been studying the plight of victims of nonviolent crime. His conclusion: "The victim's experience with the

police, the courts and lawyers *after* the crime is as traumatic and mind-numbing as the actual crime itself."

When a person reports, for example, that his home has been broken into, he often finds the police are "downright surly or at least unsympathetic," says Mr. Lacy. "The police often give the victim the feeling he did something to contribute to the crime, like not putting enough locks on the door."

After the offender has been caught by the police, the victim's ordeal can really turn Kafkaesque. He may have to go to court a dozen times stretched over a year as defense lawyers repeatedly get the case postponed—perhaps in hopes the victim will become frustrated enough to drop the charges. "Wages are lost, testimony grows stale; after awhile the victim wants to forget the whole thing," Mr. Lacy says.

Who wouldn't? asks Michael Ash, first deputy district attorney in Milwaukee, {86} who also has been trying to effect changes in the way victims are treated. "The experience is dreary, time-wasting, depressing, exhausting, confusing, frustrating, numbing and seemingly endless," Mr. Ash says. "The victims sit all day in dirty, dingy waiting rooms or corridors. They often find themselves sitting in the same room with the offenders' families. That can be scary."

Adds Mr. Lacy: "Thefts and assaults occurring inside the Brooklyn Criminal Court Building have become so serious that a number of the public lavatories have been closed to the public during court day." After about eight hours of this, says Mr. Lacy, "the victim is told by some court official whom he probably doesn't even know that he can go home; the case has been postponed. Sometime later, the victim gets another subpoena, to appear in court."

Furthermore, the process victims must go through to get their stolen property back from police can be nightmarish. Because the property is used as evidence, most persons have to wait until the criminal charges against the offender are disposed of—and that can take more than a year. A frequent result is that frustrated victims drop their charges. According to one of Mr. Lacy's studies, a Manhattan man withdrew his complaint with the explanation that "the defendant had stolen his TV set for only two days; the court had taken it away from him for five months."

Most police departments require proof of ownership, like the serial number of a television set, before they give the stolen property to anyone. Few people can provide this. As a result, it's common for a victim unable to verify he owns stolen goods to have to sue the police in order to get his property back, according to studies by the Police Foundation and the National District Attorneys Association.

"In New York City recently, the police department's property office was holding as evidence such items as 50 cases of paper diapers, 50 cases of Pepsi Cola, 100 bolts of yarn goods, 18 console television sets, and a bin full of four-foot sewer pipes," Mr. Lacy says.

In his recent crime message to Congress, President Ford made the issue of compensation for victims sound simple. To him, the crime victim who needs government help is the person who has been mugged, shot, beaten or otherwise injured enough by a criminal to be in financial trouble for awhile. Mr. Ford wants Congress to pass legislation to help such victims pay hospital bills and to compensate them for lost wages. The President hopes that if the federal government acts, the 39 states that don't have victim-compensation programs will establish them.

In expressing concern about the victims of violent crime, President Ford is talking about a lot of Americans. Last year, according to the Federal Bureau of Investigation, about a half-million persons were victims of crimes like assault, rape and murder. But the President exaggerates when he portrays his program to compensate victims of such violent crimes as a signal that "the government will not neglect the law-abiding citizens whose cooperation and efforts are crucial {87} to the effectiveness of law enforcement."

For, while the half-million victims of violent crime constitute a huge group, there were 8.5 million victims last year of criminal acts in which no one was injured. Such crimes include burglary, most robberies and car theft. Victims of these crimes "are the forgotten persons in the criminal justice system," says Patrick Murphy, head of the Police Foundation.

Some police officials concede that for years they've been guilty of poor handling of crime victims—and that the legal system suffers as a result. Sacramento Police Capt. Tom Stark, mentions, for example, the occasional phenomenon of a crowd of bystanders witnessing a rape yet

doing nothing to stop the crime, not even calling the police. "I'll bet most of those people were crime victims once themselves," he says, "and they don't want to go through the trauma again" of participating in a drawn-out legal proceeding.

Here and there around the country, officials are moving to improve the situation. The Sacramento Police Department is using a $99,200 Police Foundation grant to test a program of training policemen to be "more responsive" when interviewing victims, and to set up a system for keeping victims informed about the status of their cases (surveys show that a major complaint of victims is that they never learn the court decision in their cases).

The Sacramento department has set up a victim's advocate office that, among other things, informs low income persons of aid that is available to temporarily replace stolen goods. The department also routinely photographs recovered stolen goods and then immediately returns them to the victims. The photos are accepted as evidence in Sacramento municipal courts.

Meanwhile, the National District Attorneys Association, conceding its members have been behind the times, has formed a commission on victim witness assistance "to try to clear up some of the horrible things that have been going on," says Richard P. Lynch, the commission's head. "District attorneys and other prosecutors simply must become more responsive to the victim," Mr. Lynch says. "They must stop thinking of the victim as a tool for winning a case, but as a human being."

A major part of the problem, though, involves some questionable practices of defense lawyers and the willingness of courts to allow those practices. Postponement of cases is the bane of victims because it forces them to return to court several times.

In many cases, defense lawyers try to frustrate the victim in hopes he will drop charges. Other times, though, a lawyer presses for delays so his client won't be sent to prison before he has paid his fee. In Chicago, for instance, lawyers sometimes request such delays for what they call "professional reasons." An American Bar Association official, acknowledging such practices, comments that "they're part of the game." The ABA would move to stop them "only if we had some kind of public uproar about it," the official adds.

The Police Foundation and the District Attorneys Association are pressing for {88} courts to streamline their rules for postponing cases, allowing legitimate delays but being tougher on questionable requests for postponements.

Will this drive succeed? "Courts take changes slowly," says Mr. Lacy, "very slowly."

Forgiveness Requires Restitution

Paul A. Doepke

Suppose one of the neighborhood boys has just hit his baseball through your living room window. A little later, accompanied by his father, the boy (reluctantly) comes over to apologize. "You know," his father says, "We've tried to teach Tommy to be careful with his bat and ball. But you know what boys are like.... Well, I can't help but think that now he's finally learned. Anyway son, tell the gentleman you're sorry; then it'll be all over and we can go home...."

And that is exactly what happens. Now what would you think?

Or let's imagine that someone in your math class borrows your geometry book. She loses it. Later, she works up enough courage to come and say, I'm terribly sorry. I just don't know what happened to your book. Well, will you forgive me anyway?

What would you say? What *should* you say?

A modern idea of forgiveness has it that a Christian is like someone lying on his stomach in the middle of the sidewalk while a pagan wearing spiked shoes is viciously stomping on him—all the while the Christian compassionately croaking out, "That's all right. I forgive you."

As Vic Lockman, the gospel cartoonist, says, such a shallow view of forgiveness might well lead to a shallow grave....

Now it's an undeniable fact that Jesus said,

> Do not resist an evil person. If someone strikes you on the right cheek, turn to him the other also. And if someone wants to sue you and take your tunic, let him have your cloak as well. If someone forces you to go one mile, go with him two miles. Give to the one who asks you; and do not turn away from the one who wants to borrow from you. (Matthew 5:39–42 NIV)

But take a second look. Jesus is not teaching pacifism. He is coming on strong against *people who use the law to gain personal revenge.* To seek retaliation under the sanctimonious banner of "justice" or one's "rights" for a (trifling) personal attack is Pharisaism or legalism. In the

final analysis, it is more important to conquer a retaliatory spirit than to maintain every single piece of your wardrobe. What this means is that it is better to give up something of your very own (when not legally obliged) rather than piously to crusade for "justice" in Christ's name—*if* down underneath it all, your real motive is revenge. In other {90} words, it is wrong to wage a major battle and give needless offense over a purely personal insult. For a Christian it is a matter of sacrificing mere personal pride in view of the wider purpose of advancing Christ's kingdom.

And it is also expected of a Christian under circumstances of military occupation or the like compulsory service, not only to do what is required (and do it cheerfully), but do it *in excess of the demand;* that is, go the second mile. Compare Matthew 5:41 and 27:32. The Greek word for compel or force is the same in both instances and is from classical military usage.

This lesson from the Sermon on the Mount every Christian must learn. It is a lesson in attitude; a lesson on the *spirit* of the law. However, to extend this principle as a basis for settling civil property disputes or for the practice of statecraft and international diplomacy, or to make it a rule of blanket forgiveness is grotesque, if not downright vicious, exegesis of the Scriptures. Such exegesis ultimately destroys the heart of the gospel. Yes, it undercuts and invalidates the redemptive work of Jesus Christ.

Jesus was not advocating some altogether new altruistic concept "above and beyond the Old Testament." He was exposing the inexcusable folly of holding to the letter of the law while ignoring its spirit—as the Pharisees were in the habit of doing. They thought they were keeping God's Law by doing exactly what it stipulated (plus their own complex and unwieldy system of hedges) while ignoring the vast bulk of what the law *really meant.* However, *both* the letter and the spirit of the law are necessary to fulfill it. Trouble is, a lot of Christians these days are busy creating a new spirit while taking away the letter of the law.

You have to admit, most Christians these days seem piously embarrassed ever to justify withholding forgiveness for *any* reason. We seem to have the notion that it is simply "unchristian" to conceive that amends should *ever* be made first.

Or there is another angle. With a sort of hard-nosed practicality we imagine that we are forced to scrap such lofty "super-Christian" ideals as the Sermon on the Mount in order to survive in this hard, cruel world. We say to ourselves, "Jesus said 'Turn the cheek.' But I know better! That may have been right for Jesus and the super-Christians, but not for me...."

With misconceptions such as these, it's no wonder that Christianity, according to a lot of people, means softheadedness.

Now, I am not saying that Christianity is hardheadedness either. It is neither. But there is something awfully wrong about the popular Evangelical notion of forgiveness—at least as it has developed in recent years; something is wrong and something is missing.

Biblical Christianity is neither softheaded nor hardheaded. It is *clearheaded*. By that I mean that true biblical Christian forgiveness is based on *all* that God has revealed on the subject, so that it is neither sheer emotionalism on the one hand, nor hardness of heart on the other. Nor is forgiveness some form of altruism (on that basis, forgiveness is nothing more than baptized secularism). Now please don't think I'm suggesting that Christianity is egoism, either. Christianity is {91} theocentricism, in stark contrast with the above-mentioned varieties of humanism.

What is missing in modern concepts of forgiveness is *restitution*. Biblical forgiveness absolutely requires it.

Let us update the application. Imagine your car has been stolen. The thief has been apprehended—but not before he wrecked the car. Now as he is locked in the back of the police car, he sneers at the state trooper, "Go ahead, lock me up! So what?"

Modern jurisprudence has no answer for that except to advocate that the *victim* be saddled with more taxes in order to "rehabilitate" the thief. Modern insurance can deal with it, and does—at the expense of your insurance premium. (Check with your insurance company and the FBI uniform crime reports on the incidence and cost of auto-theft, hit-and-run drivers, and the uninsured motorist, and how it affects your premium.)

The Bible, however, does have a real answer—*the* answer. This answer is *restitution*. And restitution is an absolutely indispensable condition of forgiveness, clearly so in the passage before us now (Lev-

iticus 6:2–7). But the principle is spelled out in detail in Exodus 22:1–15. Take time to read that passage carefully. It is, by the way, the source of some of the most basic statutes found in any sane society. It is the biblical law of Restitution. And it has never been abolished—by our Lord or His Apostles.

Only in *recent times* have law and gospel been divorced from each other so as to suggest that if anything from the Old Testament is to carry over into the New Testament, it must be *reinstated* in the New! This is the same kind of logic which confuses inexperienced drivers on interstate highways, say driving from New York to Baltimore: if at any particular interchange there is no sign expressly indicating "Baltimore straight ahead," the confused driver may think it is necessary to turn off the highway to obtain new directions. Experience and common sense would indicate, however, that in the absence of new directions we simply continue on the same direction. It is the same with Scripture.

But what is worse, this Old Testament-is-obsolete idea is based on a thoroughly false (really, an evolutionary) method of biblical interpretation, and renders the whole counsel of God useless. Axiomatic to any sober exegesis of the Scriptures is the principle of accumulative continuity. In other words, *all Scripture is regulative and remains in force unless expressly superseded by later biblical revelation,* or (to borrow an expression from the Westminster Confession) *unless it is implicitly set aside by "good and necessary consequence" derived from later revelation.*

Biblical law, for instance, is not superseded by some higher, more ennobling concept such as "love," which is said to be introduced in the New Testament. To the contrary, St. Paul affirms, for example, in Romans 13:10, that love in this civil sense is the carrying out (fulfilling) of *the law*—expressly and summarily stated in the preceding verses to be the Second Table of the Ten {92} Commandments. There is no warrant whatever to add on to God's Word what we think ought to constitute "love," whether it is love as commitment, love as a feeling, love as like, or even as intense like. Scripture is its own interpreter.

In bold contrast to humanistic alternatives, biblical law, that is, restitution, is concrete, workable and clear-cut—too clear-cut, in fact, for a lot of contemporary penal experts who are almost totally absorbed with "understanding" the criminal instead of making restitution to the victim.

And, sad to say, the other side of the coin dealing with criminal affairs is engraved with the prison-reform concept (borrowed from the Bastille) in which criminals are punished in a manner totally unrelated to their crimes.

Now don't think for a minute that our humanistic society doesn't believe in restitution. It surely does (just as everyone really believes in predestination—the rub, of course, being *who* does the predestinating: God or man ...). Consistent with its anthropocentric (man-centered) orientation, *humanism simply requires that society do restitution to the criminal,* the underlying concept being that society, not the criminal, is really to blame; not the man, but his *environment* is responsible. Consequently, under humanistic criminal codes the victims of theft are socked twice: *first,* when they are plundered, and *second,* when they are taxed to rehabilitate the thief.

Precisely because humanism is man-centered, it is not concerned with God's glory. That is, it will not pattern criminal statutes according to God's law—in particular, God's requirements of restitution and retribution. This explains in part why there is no such antagonism in the liberal news editorials these days as that against the resurging movement to restore capital punishment. These editorials label the death penalty as retributive (true) and therefore, by implication, crude, savage, and "Neanderthal" (false). Fact is, however, the death sentence is not savage barbarism or nature red-in-tooth-and-claw, but is the command of God, who requires justice in terms of restitution and retribution. And the society which abandons these concepts will disintegrate in violence and chaos.

Restitution, nevertheless, has been gradually scrapped in our society in favor of what is called "rehabilitation." Sadly enough, however, criminal rehabilitation in its humanistic framework is largely a myth—especially so in connection with the prison-reform system. Prisons are dens of iniquity, frightfully overcrowded with criminals, many of whom should be executed, and the rest of whom should be doing restitution. It should be no mystery why prisons are centers of unspeakable immoral atrocities. And brightly painted cells, comfortable furniture, music, and equal rights will not improve the situation (in practice they actually *intensify* the situation). Abortion clinics have all these things too, which do not in the least alleviate their illegitimacy.

This may come as a surprise, but biblical law makes no provision for prisons—only jails in which those suspected of crimes are held until trial (see Leviticus 24:12 and Numbers 15:34). The prisons described in later Scripture are evidence of pagan institutions and their influence. {93}

Well, what about someone who refuses to do restitution? or who decides to flee the country? According to Deuteronomy 17:12, a convicted person who refuses to do restitution is subject to the death penalty—the same penalty that awaits the habitual offender.

Cruel and unusual punishment? Hardly, in view of that fact that *first,* God requires it, *second,* without it nowhere can (nor do) prisons even approximate the minimal principle of justice (*lex talionis:* an eye for an eye ...) which our Lord heartily endorsed as part of the law He came not to destroy but to fulfill, and *third,* without it, the victims of crime are the ones who suffer from cruel and unusual punishment: neglect of rightful restitution and the enforced subsidizing of criminals' welfare.

The upshot of all this is wide-sweeping in its implication: if biblical law is right, then the contemporary U.S. penal system rests on a mistake. Yet this really shouldn't be any surprise; we've witnessed the impact of a humanistic order for over a century now, with its increasing lawlessness and contempt of God's justice—replete with a steadily growing army of unrehabilitated habitual offenders.

Restitution remains the only practical answer to crime. It puts the criminal out of business. Crime *cannot* pay. And equally important, restitution protects the innocent.

The problem in both civil and theological domains today, both statecraft and salvation, is that sin and lawlessness cannot be dealt with effectively by humanistic (anthropocentric) means. This is especially true in the preaching of the Gospel. But it is also true in civil affairs: *violations of God's law must be handled in terms of God's law.*

Well, the point of all this digression is that it ties in with forgiveness: *forgiveness is not a blank check.* Neither man to man nor God to man. In fact, the message of Leviticus 6:2–7 is that *forgiveness requires restitution*: RESTITUTION TO MAN—RESTITUTION TO GOD

Forgiveness has a rich variety of meaning in the Old Testament. One term, translated "forgive" in our English Bibles, really means to *hide,* or *cover.* In Deuteronomy 21:8 for instance, Moses pleads with God that

He would be merciful to Israel whom He had redeemed, and that He not lay the charge of innocent blood upon His people. And using this word meaning to hide or cover, Moses says, "the blood shall be *forgiven* them."

Another Old Testament term for forgiveness means to *blot out* or *erase,* just as we erase a pencil mistake on paper. David cries out to the Lord in Psalm 51:1, "According to the multitude of thy tender mercies *blot out* (erase) my transgressions." {94}

By the way, do you know why pencils really have erasers? Why? Because we're sinners! Now this isn't saying that mistakes are necessarily sins. And certainly, sins are not mere mistakes. But we make mistakes because of sin and the curse which Adam's sin has brought upon the entire creation.

In the text before us (Leviticus 6:7), the Hebrew word translated "forgiven" is a term used exclusively for *God granting pardon to offenders.* It is most appropriate. For even though the emphasis on restitution in the preceding verses is manward, the animal sacrifice for the sin represents restitution that is Godward, and consequently God pardons the sinner.

In the New Testament three main terms are used to indicate forgiveness. When St. Paul in Ephesians 1:7 says that we have redemption through the blood of Christ and "the *forgiveness* of sins," he uses the term meaning to *send away.* And that same word is used in the famous Hebrew passage, "without the shedding of blood there is no *remission of sins*" (Hebrews 9:22).

A different shade of meaning is intended by another New Testament word translated *forgive: send away free*—as a prisoner is sent or released from jail. Jesus used this term in Luke 6:37, "*Forgive* and you shall be *forgiven*."

So how does God handle a believer's sins? In granting pardon He *covers* sins; He *erases* them; He *sends* them away, and He *releases the offender.* That is *complete* forgiveness! Truly God has separated our sins from us as far as the east is from the west.

But that forgiveness of sins, however, did not come without a price—an infinitely high price to meet the demands of God's justice. *Restitution* had to be made. You see, forgiveness requires restitution. And this takes us right back to Leviticus 6:2–7.

First, *forgiveness requires restitution, man to man*. Verse 5 tells us that restitution is God's law concerning lost and stolen articles: loss or damage plus inconvenience; the principle plus 20% (ordinarily) must be rendered to the real owner. Exodus 22 goes into much greater detail here; for instance, if the stolen item is heavily damaged or destroyed in the process of theft, its restitution is much greater. And if the stolen item is crucial to the livelihood of the victim, the restitution required is even more yet. An ox, for instance, ("heavy" agricultural equipment), if stolen and slaughtered by the thief, must be repaid with *five* oxen. In other words, the person who is willing to steal a farmer's diesel tractor must come to grips with the possibility that he might not only have to repay the farmer with two diesel tractors, if caught, but *five!* And the automobile thief must reckon with the possibility of his wrecking the stolen car which, if a salesman's car, will have to be restored with *four or five new cars.* {95}

Now this is getting right down to where the rubber meets the road. You see how painful it can be to be careless with the property of others, and how extremely unprofitable it is to be a thief—that is, in a society structured in terms of biblical law.

And let's be clear about all of this: restitution is not an optional matter; it is God's command. The literal reading of verse 5 is that the offender shall do restitution, "and give it to him to whom it belongs *in the day of his being found guilty.*"

Now this could mean that a convicted thief today would be forced immediately to borrow the needed restitution money at a high rate of interest so that, practically speaking, he would become a bond-slave to the bank, or directly to the victim, until the debt is paid in full. In other words, the sentencing of a thief under biblical law does not make the beginning of a series of legal maneuvers and technical appeals engineered to reduce the sentence to say, one tenth the original—as is so often the case today. According to Scripture, if the suspect is convicted, he does (full) restitution, period, good behavior or not.

Zacchaeus, for instance, did restitution. In Luke 19 as he joyfully received the Savior into his house, he said,

> Look, Lord! Here and now I give half of my possessions to the poor, and if I have cheated anybody out of anything, I will *pay back four times the amount.* (Luke 19:8, NIV)

And Jesus, seeing in Zacchaeus genuine evidence of repentance, said this:

> Today salvation has come to this house because this man, too, is a son of Abraham. For the Son of Man came to seek and save what was lost. (Luke 19:9)

John the Baptist, by no stretch of the imagination, accepted mere verbal confession by the Pharisees. He knew right well that the Pharisees *faked* repentance. Because of their love of unsullied prestige they would not condescend to do restitution—if they thought they could get by without doing it. And so, as they flock to the muddy banks of the Jordan River to observe that strange-looking prophet, John the Baptist greets them with this:

> You brood of vipers! Who warned you to flee from the coming wrath? Produce fruit in keeping with repentance.... (Matthew 3:7–8, NIV)

And then, of course, there is our Lord's statement in Luke 17 that if your brother trespass against you, go to him and confront him, "and *if he repent,* forgive him."

And as Jesus also said, "By their fruits, ye shall know them." {96}

Well now, have we done restitution? I'm thinking right now about matters among God's people which do not even involve property or money. Question is, have we asked God's forgiveness and been satisfied with that request as though of itself it excuses us from going to the person(s) we have offended? Or has the fact that they *haven't* come to us become our excuse not to go to them? *Must* the offended person always go to the offender in order to institute the healing restitution of confession, restitution, and forgiveness? How about the need for peacemakers (who shall be called God's children)?—the need to live in peace with all men, and holiness, "without which, no man shall see the Lord?" (Hebrews 12:14)

Restitution is *evidence* of repentance, real repentance, repentance not to be repented of. There is no such thing as unconditional forgiveness or what is known as "blanket forgiveness." Scripture knows no forgiveness without repentance and restitution.

When Jesus prayed on the Cross, "Father, forgive them for they know not what they do," He was indeed referring to the mocking crowd of Jews, Pharisees and Gentiles, commoners and soldiers, many of whom were shouting miserable mockeries to Him up on that gibbet.

But *Jesus's prayer was a request; he was not himself granting forgiveness.* And similarly with Stephen the Deacon, the New Testament Church's first martyr, who, as he was being stoned to death, cried out, "Lord, do not hold this sin against them." (Acts 7:59, NIV)

Stephen was not initiating a revolutionary kind of request for blanket forgiveness. Both Jesus's and Stephen's prayers were *requests.* But even as requests, they were not petitions for blanket forgiveness.

Yet both prayers were answered nevertheless. One answer came almost immediately after Jesus's prayer—the centurion at the foot of the Cross. At Pentecost, two months later, 3,000 Jews were converted through Simon Peter's preaching. And then came others, *5,000* of them, who believed in the final Prophet risen from the dead as Peter and John preached the gospel. Yet to come to Christ were Saul of Tarsus (one for whom Stephen had prayed, who had stood at the martyr's feet giving full approval to his execution by stoning) and Captain Cornelius of the Italian Regiment, and the Philippian jailor—just a few examples of those whose lives prove that both our Lord's and Stephen's prayers were answered.

And this brings us to the highlight of the fact that forgiveness requires restitution. Secondly, it means *restitution to God.*

Restitution to man is only a faint shadow of that restitution to God, required by the justice of God Himself. Yes, forgiveness requires restitution because of God's justice.

Now justice is a concept which modern man detests. Witness Walter Kauffmann's recent diatribe, *Without Guilt and Justice:* a brilliant exposition, {97} but in the light of the Word of God, essentially false and akin to antichrist.

Justice is one of God's sovereign attributes. And His justice cannot be compromised. Because God's holiness is so perfect, He cannot bear the sight of evil. He dwells in a light that no man can approach; He will by no means clear the guilty; the soul that sinneth, it shall die, for God is no respecter of persons. This means that God will not and cannot, in ANY CASE, permit someone to enter His presence with the least taint of sin. Our God is a God of flaming purity and infinite holiness, a God of absolute perfections. As the writer of the Epistle to the Hebrews says, "Our God is a consuming fire."

But God's justice *can be met.* And has been! Met by the giving of an absolutely unique life and the shedding of absolutely unique blood.

When God instructed Moses and Aaron in the animal sacrifices, He emphasized the importance of blood. As the Hebrew text of Leviticus 17:11 literally says,

> For the *life* of the flesh is in the blood; and I have given it to you upon the alter to make atonement for your souls; for it is blood that makes atonement because of the *life.*

And that is why Hebrews 9:22 says, "without the shedding of blood there is no forgiveness" (NIV).

The Bible's critics tell us that the idea of a sacrificial lamb or "scapegoat" is barbaric and offends our moral sensitivities; that only an arbitrary, capricious, and savage God would make such a bloodthirsty requirement. But that criticism itself is quite arbitrary. And besides, it entirely misses the mark. Blood sacrifice was not caprice or barbarism. It was mercy. What is lacking in such criticisms of biblical religion is a sense of sin, its radical offense and awful affrontery to the Holy God of heaven. But sin, we must remember, is a concept that is utterly foreign to the humanist. The humanist is blind to the fact that by all rights God would have been justified had He consigned the entire world to hell. Our question dare not be, Why doesn't God save everyone? but in wondering amazement, Why does God save *anyone*?

So awful is sin that only life itself can be given to regain the lives of sinners. But thanks be to God! He planned, accomplished, and applied redemption to lost sinners *because of the shedding of blood.*

Early in the history of man, blood-shedding was the way to forgiveness of sins. But it is not until the time of Moses and Aaron that we find explicit instructions recorded in the Bible. The Book of Leviticus explains it in great detail. For example, in the sin offering an absolutely perfect animal is required. We can imagine a snow-white lamb, being led to the priest. The priest moves his outstretched hands from the confessing Israelite sinner to the lamb, placing his hands directly over the head of the innocent animal, symbolizing the transfer of {98} sin from the sinner to the innocent sin-bearer. Then the razor-sharp knife is quickly plunged into the lamb's jugular; bright red blood spurts out on its pure white wool; the helpless animal struggles very briefly and then dies.

What a vivid example of total innocence, pristine purity, and utterly undeserved death! It was the awful death of one in the place of another. But the point of it all was that the animal's shed blood represented *saving blood.*

For 1,400 years this kind of sacrifice was practiced, more or less purely, but in every single instance it was a picture of a greater lamb and a greater sacrifice—infinitely greater.

Finally came the One to whom it all pointed: Jesus Christ the Lamb of God and the Great High Priest. He was both priest and sacrifice. And His was the God-man's blood. The Roman short sword which pierced His side brought forth the life-giving blood that washes away our sins. His was the only life that could satisfy Divine justice, which requires that the soul that sinneth shall die.

When Jesus cried on the Cross, "It is finished!" he was announcing that restitution to God for sins was accomplished. Finished. Done. The wages of sin for his people were now paid in full, lacking not one iota to redeem every last repenting sinner.

What is that saying to us? If we rest entirely on Jesus Christ as our substitute-sacrifice for sin, we can say with the Apostle Peter that we have been redeemed, "with the *precious blood of* Christ, as of a lamb without blemish and without spot" (I Peter 1:19).

Restitution to God therefore means satisfaction to God—the satisfaction made by Jesus Christ to the Father by His sufferings and death on the Cross as the Lamb of God.

And that blessed transaction fully satisfied Divine justice. Absolutely *nothing* else remains to be rendered to God *as satisfaction:* no demonstration of extraordinary piety, no works of supererogation, or anything else. Why? Simply because Jesus Christ

> …entered the Most Holy Place *once for all* by his own blood, having obtained eternal redemption.… when this priest had offered *for all time one sacrifice* for sins, he sat down at the right hand of God. (Hebrews 9:12; 10:12, NIV)

Now—what follows restitution? Of course. *Forgiveness!* Aren't these words the greatest?

> And the priest shall make an atonement for him before the Lord: and *he shall be forgiven....* (Lev. 6:7, NASB)

Direct. Simple. And redeeming.

But there's something else that's very important in verse 7. Trouble is, it's not apparent in most versions of the Bible. But I think the Hebrew text is literally saying this: {99}

> And the priest shall make atonement for him before the Lord, *and he shall be forgiven at once* from all he did in his trespass.

That is to say, *at that very moment,* the sinner is absolved. In anticipation of the coming Savior's yet future work, the Old Testament believer's sins were at that moment covered, hid, blotted out, erased; he was loosed from them; sent away free from their dominion—*forgiven at once!*

Confession of sin, of course, is implied throughout the trespass offering, though it is spelled out more explicitly in the sin offering (Leviticus 5). The emphasis of the trespass offering, however, is restitution and satisfaction.

All this comes to its highest level of expression in God's forgiveness of sins for Jesus's sake. For,

> If we confess our sins, he is faithful (He has promised) and just (satisfaction has been made) to forgive us our sins and cleanse us from all unrighteousness. (1 John 1:9)

But only on its Old Testament background can we really and fully appreciate the biblical teaching of forgiveness—because the New Testament *assumes* the content of the Old.

Why are many Christians these days so fuzzy about forgiveness? Why are we so easily led to borrow bits of humanism from here and there to make forgiveness seem more "relevant" to the modern mind? It's because we're not grounded in the *whole picture* of biblical forgiveness. Only if we start in Leviticus can we appreciate the *full* richness of forgiveness in Jesus Christ the Lamb of God as we read about Him in the Gospels.

In his Old Testament background, Peter's preaching becomes much more meaningful, too.

> Repent ye therefore, and be converted, that your sins may be blotted out.... (Acts 3:19)

And only as this Old Testament background is coupled with Christ's finished work on the Cross can we fully and accurately assess St. Paul's instructions,

> Be kind and compassionate to one another, *forgiving each other,* just as *in Christ* God forgave you. (Ephesians 4:32, NIV)

The big word there is the little one: as. Just as the Father forgives our sins on the basis of Jesus Christ having made restitution for them on the Cross, so ought we to forgive one another in that order: restitution, then forgiveness. Now that is only one lesson we must learn from Ephesians 4:32, but a very important lesson.

Another lesson has to do with the willingness to forgive, but we'll consider that need later.

Only because Jesus Christ has made full restitution (satisfaction) for sins, God the Father stands ready to erase our sins when we turn to Him in repentance and to Jesus Christ in faith. {100}

May I ask you a question? Have you come to grips with God's forgiveness that requires restitution? Have you come to realize the fact that you cannot in any way make satisfactory restitution to God by your own efforts?

Isaiah the Prophet says that "our righteousness are as filthy rags" (Isa. 64:6). King David the poet repeated God's words in Psalm 53 when he said that there is none that does good (absolute *saving* good, that is); no, not even one person! And the Apostle Paul spells it out when he says,

> Therefore no one will be declared righteous in His sight by observing the law.... (Romans 3:20, NIV)

St. Paul was probably the greatest Christian who ever lived, yet he plainly admitted that the Gospel is *God's* power, for it is *He*

> …who has saved us and called us to a holy life—*not because of anything we have done, but because of His own purpose and grace.* (II Timothy 1:9, NIV)

You simply cannot pull yourself up by your bootstraps. Restitution to God can be had if, and only if, you rely entirely upon Jesus Christ and His work as your restitution—Jesus Christ as your righteousness, just as your sin-bearer. As St. Paul says,

> For just as through the disobedience of the man (Adam) the many were made sinners, so also through the obedience of the one man (Christ) the many will be made righteous. (Romans 5:19, NIV)

And here's the highlight of it all:

> God made him (Christ) who had no sin to be sin for us, so that in him we might become the righteousness of God. (2 Cor. 5:20, NIV)

Wonderful, isn't it, that *salvation* is of *the Lord!* Whole-souled trust in Jesus Christ makes His work of restitution to God ours. And true faith in Christ invariably results in a corresponding attitude of restitution and peacemaking with our neighbor, individual and civil. After all, this is simply evidence that *we have been forgiven.*

And all this is real because Jesus Christ is not only the Lamb of God and our Great High Priest, but because He Himself is also the Great Rehabilitator—the Good Shepherd who "*restoreth* my soul."

Law and Atonement in the Execution of Saul's Seven Sons

Greg L. Bahnsen

In 2 Samuel 21:1–14 we find an unusual story which has been troublesome to a large company of commentators both conservative and modernistic. A quick first reading of the account of David's execution of Saul's seven sons has suggested biblical tolerance for unrighteous tribal vengeance against the innocent, human sacrifice, rain magic, etc. Such misjudgments in themselves call us to a more insightful reading of the text and thereby the exercise of a specific apologetical task, expounding its proper meaning.

However, there exists a more constructive or positive reason for looking into this passage in this day. When understood correctly, God's word in 2 Samuel 21 has an unmistakable and forceful message which is relevant to modern theology as well as the current condition of national politics. Hence we propose to explore the text here in order to indicate important truths about the nature of atonement and law.

The Holy Spirit speaking in 2 Samuel 21:1–14 teaches us that Jehovah, Israel's righteous judge, mercifully accepts the atonement offering of life for life according to His ever-valid law such that the curse for violations of a covenant is lifted. Sin (notably in civic leaders) is not overlooked by God but must inevitably be atoned if His favor is to be gained; such grace is necessarily in accordance with His law.

In the first verse of the pericope[137] we read that there was a famine in the land for three consecutive years; its character was that of drought (v. 10). Probably a poor first year was expected to be matched by a second prosperous year, but when that did not eventuate it became evident in the third year that famine conditions had overtaken the land. Thus David went to the Lord, either visiting the tent of meeting (cf. Ex. 33:7) or consulting the Urim and Thummin (cf. 1 Sam. 28:6). Although David had been tardy in seeking Jehovah's face, the {102} Lord readily

answered the king's inquiry. In contrast to Jeremiah 15:1–2, where the prayers of even Moses and Samuel could not remove a judgmental famine, David's approach unto God in this case finally brought about the lifting of His curse.

According to God's law, famine would be one of the punishments sent by God upon *national* wickedness and disobedience (cf. Lev. 26:21, 26; e.g., Ruth 1:1; 1 Kings 17:1 ff.; 2 Kings 4:38; 8:1; Lamentations 4:4ff.; Ezekiel 14:21): "But it shall come to pass, if thou wilt not hearken unto the voice of Jehovah thy God, to observe to do all His commandments and His statutes.... Jehovah will make the rain of thy land powder and dust" (Deuteronomy 28:15, 24). When David came to the Lord he was told that the particular sin which had incurred the drought and famine was to be explained as *blood resting upon Saul and his house.*[138]

What did this mean? The law of God specified that when an innocent man was murdered, his blood rested upon the murderer (Deuteronomy 19:10; e.g., Judges 9:24; 2 Samuel 1:16). The law further declared that unexpiated murder "defiled the land" and brought national punishment (Num. 35:33–34; Deut. 21:7–9), for Jehovah abhors the bloodthirsty (Ps. 5:6). Hence David was being told that the

137. This passage is generally viewed as part of an eclectic appendix which gives various perspectives on David's life and character in an unchronological order (cf. J. P. Lange, F. Gardiner, R. A. Carlson, H. W. Hertzberg, Keil and Delitsch, as well as the International Critical Commentary, Cambridge and Interpreter's Bibles). If such is the case, 2 Samuel 21:1-14 would narrate events which occurred some time after those related in chapter 9, for chapter 21 assumes David's previous acquaintance with Mephibosheth (cf. 21:7). Furthermore, chapter 21 would appear to precede the rebellion of Absalom wherein Shimei cursed David with words that possibly refer to the incidents of chapter 21 (cf. 16:7). However, it should be held that Shimei's curse is better explained in its local context (i.e., the murders of Ishboseth and Abner) and as not truly applying to David (cf. 16:12). There is no good reason for us to refrain from seeing 21:1-14 as following chapter 20 in proper chronological order (i.e., after Sheba's rebellion and preceding David's census), as Matthew Henry maintained. Compare I Chronicles 21:12 with 2 Samuel 24:12-13, where the mention of seven years would be explained as three years of past famine, the present year, and then three more years of expected plague ensuing upon David's census.

138. Note the interpretive translation of the Septuagint: "Upon Saul and upon his house is the guilt of bloodshed."

nation was suffering for the defilement of murder, a crime committed by Saul and his house. The murderous deed of Saul's house was specifically identified as a massacre of the Gibeonites (2 Sam. 21:1–2).

If this incident pertains to Saul's putting away of witches (1 Sam. 28) or slaying the priests of Nob (1 Sam. 22), there is no textual evidence for us to think so. Most likely there is nothing else known of this incident except what we are told here. The parenthetical remark at the end of verse 2 in our passage (namely, the Gibeonites were Canaanites, not Israelites) likely functions to remind us that Joshua had much earlier made a covenant with the deceptive Gibeonites, agreeing to spare them and protect them (cf. Joshua 9). Psalm 15:4 promises blessing for those who swear to their own disadvantage and yet change not. Thus Israel was bound by its oath to Gibeon. However, by contrast to the man described by the Psalmist, Saul demonstrated (hypocritical) "zeal" and attempted to exterminate the covenanted Gibeonites from the land of Israel altogether (v. 5). Why Saul did this we do not know. John Bright's suggestion that the Gibeonites were collaborating with the Philistines against Israel[139] would mean that they, rather than Saul, were the party guilty of breaking the covenant. Yet the text blames Saul. It is most important to note that verse 1 places the guilt for this crime on Saul's house as well as upon the former king himself.

David recognized that atonement had to be made if Jehovah's inheritance (i.e., the land and its people: cf. 1 Sam. 26:19; 2 Sam. 20:19) was to be blessed again. Jehovah makes inquisition for blood and forgets not the cry of the meek (Ps. 9:12), and thus David was directed by the Lord to seek out the Gibeonites. {103} What is remarkable is that the arrangements to be made by David after consultation with the Lord are not simply judicial retribution for particular criminals, but what he is to do is also "atonement" for *the land*. The word used in verse 3 is identical with the key word for expiation or atonement throughout Exodus, Leviticus, and Numbers; its association with theological propitiation through the priestly ceremonies is undeniable. Hence we are alerted to the fact that we have a very unique lesson being taught, just as in Numbers 25. In that place we read that Jehovah's anger was kindled against Israel for joining itself to Baal-peor, and Moses was told to execute all

139. John Bright, *A History of Israel* (Philadelphia: Westminster Press, 1959), 169.

those who had sinned. When an Israelite appeared (namely, Zimri, a prince among the Simeonites) with a Midianite princess before the congregation which was weeping at the door of the tabernacle, Aaron's grandson, Phinehas, thrust them through with a spear, thereby halting the plague God had sent. In Numbers 25:13 we read that Phinehas, in so doing, "made atonement for the children of Israel." Likewise, what David does in 2 Samuel 21 is designated an *atonement* when he has criminals who have brought God's judgment on the land executed. This was not a customary way of speaking or continuing practice in Israel.

If the execution and atonement are going to be acceptable to God, they must be in accordance with His law. Consequently, when David asked the Gibeonites what must be done in order to atone for the breach of the covenant with them, they replied that pecuniary payment could not compensate for blood-guilt. Numbers 35:31 declares, "ye shall take no ransom for the life of a murderer that is guilty of death, but he shall surely be put to death." The demand of judicial retribution is life for life (Ex. 21:12; cf. Gen. 9:5–6). Moreover, the Gibeonites recognized that they were powerless in themselves to carry out the sanction of God's law, since they were not judges or rulers in Israel. With these things noted (v. 4), and receiving David's indication of willingness to do what must be done, the Gibeonites then requested that a portion of Saul's household be executed.

Many commentators err just at this point. It is important to understand that this requested atonement is not a concession to pagan ideas of collective guilt.[140] Nor is it an infringement against the law of Deuteronomy 24:16, which prescribed that children were not to be executed for the crime of their parents.[141] No necessity for rationalizing the text exists. The first verse of the passage had already revealed that Saul's *house* was guilty in the plot against the Gibeonites. What we have is a case parallel to that of Achan in Joshua 7. There the nation was afflicted for an individual's sin, and ultimately the family of the individ-

140. As suggested by, e.g., J. Barton Payne, *The Theology of the Older Testament* (Grand Rapids, MI: Zondervan Publishing House, 1962), 229-30.

141. As suggested by, e.g., Matthew Henry in his commentary (many publications), as well as many other commentators.

ual was executed along with him (for they could hardly have failed to detect Achan's burying money and keeping war spoil in his tent). They were guilty, at least, of complicity with him. Saul's house was guilty of the murderous crime against the {104} Gibeonites, and thus punishment was due to the participants in Saul's evil deed. We can observe that in the earlier incident over the priests of Nob, Saul's family was *not* incriminated, for in this case they had no part in the crime (only the alien Edomite could be found to carry out Saul's scheme). By contrast, in 2 Samuel 21, Saul's family *is* held accountable, and the obvious reason (just as v. 1 had said) is that they were guilty as well.

A world of difference is made in the interpretation of this pericope depending upon how David's permission for the seven sons of Saul to be executed is viewed. The presumption must be that in seeking God's face David was directed by the Lord to do what he did in order that the famine be removed. In such a context, where divine judgment is already being experienced, David was not likely to violate God's righteous demands. Furthermore, we are given no sign of God's disapproval of David's action; to the contrary, the terminating result of David's act of propitiation was the sending of rain by God and thus the lifting of punishment (v. 10). The text mentions no conflict between God's law and pagan customs, and if the execution of Saul's seven sons is a public crime, it is strange that no priest or prophet rises to protest it. We conclude, then, that David was not guilty of any wrong in approving of the Gibeonites's suggested course of action.

The manner of execution mentioned is that of crucifixion or hanging (v. 6).[142] The custom was to execute the criminal, and then impale him for public exposure (cf. Num. 25:4–5). Such a procedure was an aggravated form of capital punishment due to the open display of the criminal's outcome. Verses 6 and 9 say that this crucifixion was to be "unto" or "before" Jehovah; that is, it was a public exhibition of punishment inflicted as the demand of divine justice for the expiation of the sin and propitiation of divine wrath (cf. "before Jehovah" in 1 Sam. 15:33). It was not a matter of human revenge. The execution took place in Gibeah, Saul's hometown and capital (cf. 1 Sam. 10:25; 11:4; 15:33).

142. See S. R. Driver's discussion of the Hebrew construction in *Notes on the Hebrew Text and the Topography of the Books of Samuel* (Oxford, 1913).

Not only would the offenders be *crucified,* which in itself is a peculiar mark of God's disfavor (Deut. 21:23; Gal. 3:13), but they would also be left *exposed for the birds and beasts to feed upon,* thereby experiencing the ultimate humiliation and disgrace that could befall the dead (cf. 1 Sam. 17:44; 1 Kings 14:11; 16:4; 21:24; Ps. 79:2–3; Isa. 18:6; 56:9; Jer. 7:33; 12:9; 15:3; 16:4; 19:37; 34:20; Ezek. 32:4–5; 33:27; 29:5; 39:4, 17–20). Indeed, one of the curses for disobedience to the law was that violators would suffer such great ignominy, rather than being granted the customary respect prescribed in Deuteronomy 21:23 (namely, the hanged corpse was to be taken down by nightfall). Such an awful execution was a severe reminder of the depth of divine wrath upon covenant breakers; as expiation for guilt lying upon the whole land or nation, the bodies were left until the efficaciousness of the act was seen and divine forgiveness displayed (with the coming of rain). {105}

Thus, seven of Saul's sons were to be crucified. To the Jewish mind the number seven had sacred overtones, indicating wholeness or completeness (cf. the sabbatical calendar; Prov. 9:1; Jud. 16:13, 19; Gen. 21:28ff.; etc.). A perfect and efficacious atonement was to be made through this execution. While avenging the breach of an oath, however, David did not break another oath; Jonathan's son, Mephibosheth, was spared according to David's word to Jonathan (v. 7; cf. 1 Sam. 18:3; 20:8, 16). Specifically, the victims were Saul's two sons by the concubine Rizpah (cf. v. 11; 3:7) and his five grandsons born to his daughter Merab.[143] These seven (there probably were no others) were crucified together at the first of the barley harvest (v. 9), which would have been Passover season (cf. Lev. 23:9–14); the text draws particular attention to this timing. This crucifixion would make perfect atonement for a violated covenant at the time of Passover and thereby effect the passing of God's judgment from the land.

Rizpah, living on a bed (or in a tent) of sackcloth, stayed on the rock where the corpses hung and prevented the utter shame of vulture devourment from coming upon them. She stayed until the early

143. The textual reading of "Michal" in verse 8 is evidently a very early scribal error. Merab was the wife of Adrile (I Sam. 18:19), and Michal died childless (II Sam. 6:23). The Targums attempted to handle this problem by translating "yaldah" of the Hebrew text as "raised" instead of "bare, begat"—a move which is unwarranted lexically and contextually (notice that "yaldah" is used of Rizpah also).

Autumn rains gave the sign from heaven of God's propitiation and the removal of the famine (v. 10). At this indication the corpses could be taken down. David, compassionately moved by Rizpah's gesture of concern (v. 11), personally saw to it that the bones of Saul and Jonathan were retrieved from the men of Jabesh-gilead who had stolen them (v. 12; cf. 1 Sam. 31), and that the bones of the seven sons were buried with them in the family sepulchre of Kish in Zela (v. 14). In the end, the crucified sons were buried with royalty and nobility. Ultimate shame was averted.

This passage in 2 Samuel 21:1–14 is loaded with significance for contemporary theology and ethics. Apologetically, we can comment that negative reaction to the incident recounted here stems from a too ready attitude of criticism, willing to impute evolutionary development and interaction of Israel's religion with primitivism and paganism; a more extensive understanding of God's revealed law as background to what takes place in 2 Samuel 21 is a helpful corrective to misreading the passage.

There are many dominant trends in theology today which are challenged by the teaching of our passage. The primary significance of the pericope lies in its demonstration that the atonement for sin which will find acceptance with God must be according to the righteous demands of His law. God must be just as He becomes the justifier of His people (cf. Rom. 3:26). Atonement is not found in an *existential understanding* of the incarnation (itself given a mystical interpretation) as post-neo-orthodox theologians have postulated in some cases. Nor is atonement to be seen simply as the *ethical impetus* or moral encouragement given by a particular act of suffering, as twentieth-century cultists have resorted {106} to in the long run. Nor can atonement be set in contrast or opposition to the just demands of God's law, as so many *dispensational approaches* to Scripture teach. Atonement is precisely the demand of God's law, carried out in conformity with the law, in order to remove God's wrath for transgression of that law.

Christ was born under the law (Gal. 4:4) and offered Himself as a legal sacrifice in order to discharge the curse of the law (Gal. 3:13; Heb. 2:17–3:1; 4:14–5:10). The work of Christ as God's suffering servant was declared to be that of obedience (Isa. 52:13–53:12; John 6:38; Heb. 10:4–10). Since He learned obedience by His suffering (Heb. 5 :8–9),

Christ qualified as our substitutionary sacrifice for sin. Indeed, He justified us by His obedience (Rom. 5:19). The law had to be observed and obedience was required before atonement could be made. Law and grace work in harmony with, not opposition to, each other.

Only by shed blood can there be forgiveness of sin (Heb. 9:22; cf. Matt. 26:28; 1 John 1:7). Consequently, only as obedient unto death could Christ redeem us from the curse of the law, nailing our indictment to His cross (Gal. 3:13; Col. 2:14). If the law did not have permanent and abiding validity, this whole transaction would have been unnecessary. The requirement that Christ go to the cross in order to atone for our sin is dramatic verification of the absoluteness of God's law. Thus 2 Samuel 21:1–14 illustrates the truth that Scripture presents no antinomian grace. God's wrath is occasioned by violation of His law, and this cannot be simply overlooked or dismissed. A propitiatory sacrifice was necessary according to the law. God is a God of wrath and justice, and hence a God of righteous law. Modern-day theologies which attempt to discuss the atonement and circumvent the absolute law of God or the divine wrath resulting from disobedience to it are speculative dreams whose end is destruction; Christ in His atonement had fully to satisfy all the demands of divine justice.

It is only natural that with a disparagement of God's law in modern theologies (radical, cultic, or dispensational) there is a corresponding de-emphasis upon the Old Testament or a distortion of it to preconceived purposes. Liberals do not recognize the organic unity of Scripture stemming from the one living and true God who sovereignly governs every event of history and reveals the saving understanding of His acts in written revelation. Hence the Old Testament becomes a variety of strange events recorded or created in a peculiar Hebrew imagination. Dispensationalists do not account the specific unity of Old and New Testaments in God's grand plan of salvation. Because the Christian supposedly does not live under Old Testament law, there is little reason to read or understand the Old Testament at all; it becomes a historical witness to failure for various divine methods of dealing with man (and a literal indication of what must come to pass for physical or national Israel toward the end of the age).

However, reformed Christians are called to a much more positive and sound reading of the Old Testament, for throughout it is related to

the work of Jesus Christ. The gospel can be (and in the earliest church was) preached from the Old {107} Testament itself. Whatsoever things were written previously were written for our learning, upon whom the ends of the ages have come (Rom. 15:4; cf. 1 Cor. 10:11). Indeed, all the prophets from Samuel and those that followed, as many as have spoken, foretold the days of Christ and the new covenant (Acts 3:24). The resurrected Christ told his followers on the road to Emmaus that the entire Old Testament, from Moses through the psalms and prophets, testified concerning Him, namely that the Messiah must first suffer and then enter into His resurrection glory (Luke 24:25–27, 44–47; cf. Acts 17:2–3; 26:22–23). Thus we are encouraged to take a new look at the passage in 2 Samuel 21 to see what it revealed about Christ and His saving economy.

There are a number of analogies of circumstance in this pericope which are too appropriate to be ignored completely. The seven sons were crucified at *Passover season* in order to make atonement for a broken covenant (and thus violation of God's covenantal law). Jesus Christ, our substitute, also bore the curse of crucifixion at Passover in order to atone for offenses against the covenantal law. The death of seven sons suggested a complete or perfect atonement, but only the perfected lamb of God could fully and genuinely satisfy divine justice on our behalf. The bodies of the crucified sons were not taken down until the curse of God was lifted; that is, they were not removed until the efficacious nature of the atonement was signified from heaven. Likewise, before His removal from the cross Christ declared, "It is finished"; the Father signified the efficacious nature of that atoning death by means of the torn veil in the temple, showing that Christ had opened a way of access to God. Finally, the bodies of Saul's seven sons were finally buried with nobility and delivered from ultimate shame. In a much more spectacular manner, Jesus was not only buried among the wealthy, but His life was also delivered from ultimate shame by being delivered in resurrection from the continuing curse of the corruption of the grave. Rightly could Christ tell His disciples that they should have understood from the Old Testament itself that it behooved the Messiah to suffer and then enter into His glory. We today should not be "slow at heart" to believe all that the former Testament, including 2 Samuel 21, expounds to us concerning Christ; from this text we should

be made aware of those abiding principles of justice, mercy, and substitutionary efficacy which characterize God's own provision of atonement in His son Jesus Christ. What we have here is a projection of the gospel seen with the eye of faith.

In addition to teaching these valuable lessons about the atonement (notably its lawful, propitiatory, and efficacious nature in the work of the coming Messiah), 2 Samuel 21 has further significance for current theology. We see in this passage that the *delay of God's punishment* does not mean that it has been remitted or cancelled; Saul may already have been dead, but nevertheless *the land suffered for the iniquities its leader had committed.* The postponement of punishment, then, is no ground for hope that punishment has been averted. People living today cannot hope that God's final judgment will not break in {108} upon them or the world. A strict uniformitarian principle impels unbelieving humanism as well as the radical or existential theology of many alleged theologians (who demythologize the scriptural teaching about Christ's second coming), leading them to say implicitly, "all things continue as they were from the creation, so where is the promise of his coming?" (cf. 2 Peter 3:3–10). One must interpret the events of history in light of the word of God and thereby understand that, if deserved punishment has not come upon Him, it is a sign of God's forbearance and gracious opportunity for repentance. His threats are taken lightly when we begin to presume that (from outward appearances) all is well. God's wrath cannot be escaped except through His atoning provision.

Moreover, in our day we see on all sides the effects of Kant's dialectical philosophy on theology. Kant had taught that man lives in two worlds, that reality is dichotomized between a *phenomenal realm of nature* (where the causal principle holds without fail so that strict determinism applies) and a *noumenal realm of personality* (where the human ego is free and beyond the causal nexus). In the wake of such thinking modern theology has been quick to abandon the evidence of God's presence, control, and revelation in the world of observed history and natural science, preferring to find God in a mystical realm above history and ordinary experience. The realms of morality and physics must be kept separate. Corresponding to this, modern theologians have popularized a distinction between the I-it and the I-thou dimensions of experience or (which is the same thing for modern thought)

reality. However, 2 Samuel 21 clearly demonstrates for the Christian that *moral and physical evil are connected;* the I-it realm is under the control of the I-thou, and the physical world cannot be easily divorced from the spiritual world. Nature is God's servant, and thus *moral evil can be requited with historical punishments* (e.g., drought, famine). The Lord is sovereign over all the works of His hands, and one must never presume to "box Him in" to a realm above calendar history and physics (or to an inner, private, experience of the heart).

Having learned valuable lessons about the nature of God and His relationship to the created world and its history, the nature of His law and the atonement offered by the Messiah, we can also turn to the subject of *social ethics* and understand our Christian responsibility in the current demise of political integrity in this as well as other countries of the world. In David's day, the general public suffered for the sin of Saul's house years after the offense. From this we can derive two important principles. *First,* God's law is not subject to a statute of limitations. The Psalmist says, "He saith in his heart, God hath forgotten; He hideth His face and will never see.... Wherefore doth the wicked contemn God and say in his heart, Thou wilt not require it?" (10:11, 13). God's law has ever-abiding validity, and time does not dispel its punishments, for time cannot wear out the guilt of sin. The permanence of God's law is declared by Christ in Matthew 5:17–19, reminding us that time does not alter the righteousness of God's demands; hence even the advent of the Messiah does not alter our {109} obligation to every jot and tittle of God's word. God's law stands as a perfect criteria of righteousness, not only for the individual but also for the nation.

Thus we are led to observe that 2 Samuel 21 teaches that the people of a nation are genuinely required to take evil away from before the magistrate. *The general public is responsible for the moral integrity of its leaders;* the king's throne must be, as the Proverbs say, established on righteousness (25:5). Sin is a disgrace to any people (Prov. 14:24), and rulers must govern in the fear of God (2 Sam. 23:3; Ps. 2:10–12). Therefore, the people of a nation cannot endorse just anything the civil magistrate might do (as some do today under a mistaken reading of Romans 13). Rulers must be rebuked for sin so that they govern in righteousness. Christians must especially be alert to separate themselves from the lawlessness of national leaders (cf. Rev. 14:8–12)—

which means, promoting the *law of God* over against the law of the "beast" (wherever Satan is manifested). When citizens of God's kingdom do not disapprove of or bewail violations of God's holy law on the part of magistrates, then they will suffer as accessories to the crime, even as 2 Samuel 21 vividly illustrates.

So then, there are a multitude of lessons about law and atonement that can be seen in 2 Samuel 21. The passage about David's execution of the seven sons of Saul started out as a challenge to orthodox scholarship due to apparent infelicities in the story. However, in the final analysis, the passage is a challenge to modern theologies which downplay the role of God's law in connection with atonement, which promote an antinomian grace, which dismiss the wrath of God calling for propitiation, which endorse mystical or moral influence views of the atonement, which depreciate the organic unity of Old and New Testaments, which fail to see Christ proclaimed throughout the Scriptures, which place a statute of limitations on God's law, which overlook the Christian's social responsibility, which work on uniformitarian assumptions about the historical realm and assign religion to an inner or personal dimension. The full range of unorthodox schools of thought is undermined by the passage, whether they be radical, neo-orthodox, Arminian, Pelagian, antinomian, or quietistic. May this pericope from God's inspired and profitable word (cf. 2 Tim. 3:16–17) constantly remind us that God's wrath against our personal and national sins can only be lifted and His punishments avoided when we turn in obedient faith to Christ, the perfect and efficacious atonement for sin. We must see the depth of our responsibility as well as the extent of God's grace as we read how the Lord is both just and the justifier, one who provides atonement in agreement with His law. The execution of Saul's seven sons is but one illustration of this abiding truth.

Introduction to John Cotton's *Abstract of the Laws of New England*

Greg L. Bahnsen

It is well known that the rise of Puritanism in Britain led to the founding of America's New England some three and a half centuries ago.[144] "Under the leadership of William Laud ... friends of the king deprived Puritan ministers of their pulpits and moved the church of England even closer to Rome in its ceremonies, vestments, and doctrines.... In despair and hope [the Puritans] too turned their thoughts to America, where they might escape God's wrath, worship in purity, and gather strength for future victory."[145] In 1630 a thousand people sailed with John Winthrop to Massachusetts; soon they were joined by twenty thousand others.

The attitude of the Puritans in founding this new land was governed by the model set by Calvin in Geneva. They were convinced of the dire need for godly politics and determined to let God's infallible word guide their endeavors. The renewed emphasis we see today on the application of Christianity to every area of life and human activity is the heritage of Reformed theology; much can be learned from the New England Puritans in this regard. Their goal was to see the kingdom of Jesus Christ come to expression in society as well as the private, inner heart of man. Due to their zeal for a righteous political structure, they "preferred a wilderness governed by Puritans to a civilized land governed by Charles I.... Here, in truth, was a self-governing commonwealth, a Puritan Republic.... The New England Puritans agreed on a

144. Cf. William Haller, *The Rise of Puritanism* (New York: Harper Torchbooks, 1938, reprinted 1957), 5.

145. J. M. Blum, et. al., *The National Experience* (New York: Harcourt, Brace & World, 1963), 21–22.

great deal... They wanted a government that would take seriously its obligation to enforce God's commandments."[146]

The Puritans were first and foremost men of the word of God written. They acknowledged the authority of Scripture for all things, and this naturally led to their affirmation of the full validity of God's law. A dispensational antagonism between law and grace was abhorrent to them. Hence Samuel Bolton wrote in the Epistle Dedicatory for his 1645 masterpiece, *The True Bounds of Christian Freedom,* that his purpose was "to hold up the Law, as not to entrench upon the liberties of Grace, and so to establish Grace, as not to make void the Law, nor to discharge believers of any duty they owe to God or man." The law was integral to every area of theology. Sin is the transgression of God's law, for the law itself reveals the holiness of God. Christ's death was the satisfaction of the law; justification is the *verdict* of the law, and sanctification is the believer's *obedience* to the law. {111}

Since God's law reflects His immutable character, it is impossible that the law should be abrogated; to speak of the law's abrogation, said the Puritans, is to dishonor God Himself. Thus, in *Regula Vitae: The Rule of the Law under the Gospel* (1631), Thomas Taylor said, "A man may breake the Princes Law, and not violate his Person; but not Gods: for God and his image in the Law, are so straitly united, as one cannot wrong the one, and not the other." The moral law was viewed as "consonant to that eternall justice and goodness in [God] himself" so that God could turn it back only if He would "deny his own justice and goodnesse" (Anthony Burgess, *Vindiciae Legis,* 1646). Ralph Venning expressed the view succinctly, declaring, "To find fault with the Law, were to find fault with God" (*Sin, the Plague of Plagues,* 1669).

Therefore, in Puritan theology the law of God, like its Author, is eternal (cf., e.g., William Ames, *The Marrow of Sacred Divinity,* 1641, or Edward Elton, *Gods Holy Minde Touching Matters Morall,* 1625). Every jot and tittle of it was taken as having permanent validity. John Crandon stated in 1654, "Christ hath expunged no part of it" (*Mr. Baxters Aphorisms exorcized and Anthorized*). Christ's confirmation of the law of Moses was likened to a gold-smith newly minting a valuable coin (Vavasor Powell, *Christ and Moses Excellency,* 1650) or a painter who

146. *Ibid.,* 22–23.

works over and recovers the glory of an older picture (Anthony Burgess, *Vindiciae Legis*). "Every beleever ... is answerable to the obedience of the whole Law" said Thomas Taylor (*Regula Vitae*). Unlike modern theologians, the Puritans did not seek clever schemes for shaving the law of God down to the preconceived notions of man or society. The validity of the law meant the validity of *all* the law.

Without doubt, this had tremendous implications for their approach to civil government. One of the key functions of the law is that of *restraining sin* (cf. the works by Burgess and Powell mentioned above). The law does this by means of its sanctions. Thomas Manton noted that "a law implies a sanction," and Burgess commented that such sanction is imposed "that the Law may be the better obeyed." Consequently, the *penal commandments* of the law of God need to be enforced by godly magistrates, for to fail in this matter is to violate God's righteous demand. The positive attitude of the Puritans toward every stroke of God's law led them to oppose antinomianism in *both* theology and politics. Indeed, as Henry Burton recognized in 1631, theological antinomianism leads to political antinomianism (*Law and Gospel Reconciled*). Therefore, a proper political order had to conform to the dictates of God's law. As Ernest F. Kevan says in his brilliant study, *The Grace of Law: A Study in Puritan Theology,* "This acknowledgment of the authority of the Law of God affected the attitude of the Puritans to the civil law."[147]

Because the Puritans were students of God's word and held to its unity and abiding authority, their thinking and living aimed to be governed by the principle {112} that only God can diminish the requirements of His law (Deut. 4:2). Not one jot or tittle of it was abrogated by the Messiah (Matt. 5:17–19), and hence no man dare tamper with its full requirements. The law is to be used as a *social restraint on crime* (1 Tim. 1:8) as well as *guidance in holy living for individuals.* The state, no less than any other area of life, was taken to be subject to God's authority via His written revelation. The magistrate cannot escape his obliga-

147. (Grand Rapids, MI: Baker Book House, 1965), 21. This was Kevan's doctoral dissertation at the University of London and is well worth the reader's full examination. The preceding quotations from the Puritan writers have been derived from Kevan's study.

tion to be "a minister of God" appointed as an *avenger* of God's *wrath* against *evildoers*—that is, against transgressors of God's law (Rom. 13:1–7;cf. vv.8–10). The civil leader is called to be a blessing to his public, which can mean nothing other than following God's prescribed moral pattern. The magistrate is required to establish justice in the gate (Amos 5:15), and justice is preeminently defined by the law of Moses given to Israel (Deut. 4:8). Thus, when the statesman forgets the law of God, he inevitably perverts justice (Prov. 31:5) and thereby betrays his vocation. The Puritans took seriously the magistrate's responsibility not to swerve to the right or left of God's revealed law (Deut. 17:18–20). This law was not a standard of righteousness merely in Israel; it is universal in its application and demand, for God does not have a double standard (cf. Deut. 25:13–16). The justice of God's law has been established as a light to the peoples (Isa. 51:4; Matt. 5:14, 17); it should guide their steps just as it was intended to guide the steps of Israel in ethics. God's law binds all nations and their leaders, for sin is a disgrace to *any* people (Prov. 14:34). This truth led David to promote God's law before kings (Ps. 119:46) and to declare that all rulers must fear the Lord in their government and become thereby a blessing to the people (2 Sam. 23:3–4). The kings and judges of *all the earth,* then, are called upon to serve the Lord with fear (Ps. 2:10–12). Having learned these truths well, the Puritans had to conclude that it is an abomination for kings to violate the law of God, for in so doing justice is perverted and the people are brought under oppression (Prov. 16:12; 28:28). Therefore, the New England Puritans sought a government which would enforce God's commandments, knowing that the sure word of the sovereign Lord required, endorsed, and undergirded this project.

Among the Puritans who came to America, John Cotton (1584–1652) stands out as one of the very most prominent and influential pacesetters and theologians of the Massachusetts Bay Colony. A convert under the ministry of Richard Sibbes, Cotton created enough of a reputation and stir in England that he was summoned before the High Court to answer to William Laud in 1632. However, the well-organized *Puritan underground* concealed him and enabled him to take flight to New England, where his presence was eagerly anticipated. In Boston, Cotton was a leader in Christian doctrine and ecclesiastical polity. His political influence is here to be noted. In his work, *A Discourse about*

Civil Government in a New Plantation whose Design is Religion (published in Cambridge, 1663), Cotton (perhaps in association with John Davenport) wrote that a theocracy is the proper and best form of government to endorse, and he defined a theocracy {113} as where the Lord God is our Governor and *where the laws by which men rule are the laws of God* (pp. 14–15, original edition). A theocracy does *not* mean the erasing of the distinction between church and state:

> The best form was theocracy, which for Cotton meant separate but parallel civil and ecclesiastical organizations framed on the evidence of scriptures. Church and state, he believed, were of the same genus, "order," with the same author, "God," and the same end, "God's glory." On the level of species, however, the two diverged. Here the end of the church was salvation of souls while that of the state was the preservation of society in justice.[148]

The law of God is binding on the civil magistrate, then, and the government of the state ought to be molded in conformity to God's revealed direction. "The laws the godly would rule by were the laws of God, and in all hard cases, the clergy could be consulted without danger of a confusion of church and state."[149] Cotton's attitude was that "the more any law smells of man the more unprofitable." Cotton and his Puritan contemporaries applied the revealed law of God to the state's constitution and stipulations. If any provision of the civil code was not explicitly warranted by God's word, then it was looked upon with great suspicion and accepted only with great caution. It should be remarked here that, just as Cotton's theocratic ideal did not confuse church and state, neither did it blur the difference in Scripture between cultic or *restorative* laws which anticipated the redemptive economy of Christ and *moral* laws with eternal rectitude or holiness as their essence. "Moses's laws, Cotton affirmed, were ceremonial as well as moral, and the former were to be considered dead while the latter were still binding in a civil state."[150]

In May of 1636, Cotton was given his greatest opportunity to exert his theological influence on the framing of the commonwealth when

148. Larzer Ziff, *The Career of John Cotton: Puritanism and the American Experience* (Princeton, NJ: Princeton University Press, 1962), 97-98.

149. *Ibid.*

150. *Ibid.*

he was appointed to the constitutional committee charged with drafting laws agreeable to God's word for the new plantation. Cotton's contribution to the effort was his work, *Moses His Judicials;* the chapters on crime and inheritance were drawn directly from the scriptures.[151] The other chapters followed the existing civil code, with Cotton providing the biblical support for its various articles. Cotton's excellent work in this regard had effect beyond Boston, being influential in the settlements at New Haven and Southampton, Long Island. Later, on December 10, 1641, the Massachusetts Bay Colony adopted a biblically based civil code authored by Nathaniel Ward (another Christian pastor) and given scriptural annotations by John Cotton.[152] It was called the *Body of Liberties,* {114} and it explicitly provided that no law was to be prescribed contrary to the word of God.[153] The 1648 *Massachusetts Code* was based upon the *Body of Liberties,* and in turn it became the *prototype* for the legislation of *every other state constitution* in the early days of America.

A further manuscript written by John Cotton, but difficult for most readers to obtain, is his *An Abstract of the Laws of New England, As They are Now Established,* which was originally published in London in 1641. William Aspinwall republished it in 1655, unequivocally attributing it to John Cotton in the printer's foreword to the reader. A copy of the manuscript by this title was found in Cotton's study after his death; it was handwritten and agrees by and large with the Aspinwall publication. In the early archives of the Massachusetts Historical Society, the work was bound along with *Mr Cotton's Discourse on Civil Government in a New Plantation whose Design is Religion.* Thus, there is every reason to assign its authorship to Cotton, even though the original publication was anonymous. It is quite likely that Cotton was assisted in this work by Sir Henry Vane, the Massachusetts governor in 1636 whom Milton highly commended for properly seeing the bounds of civil and

151. Cf. lsabel M. Calder's study in *Publications of the Colonial Society of Massachusetts* XXVIII (Boston, 1935): 86-94.

152. George L. Haskins, *Law and Authority in Early Massachusetts* (New York: Macmillan Co., 1960), 130, 199.

153. Cf. *Puritan Political Ideas,* ed. Edmund S. Morgan (Indianapolis: Bobbs-Merrill, 1965).

religious power. Vane was a great friend of Cotton's and shared the same political and religious principles with him.

The character of this important historical piece is evident from its lengthy subtitle: "wherein, as in a mirror, may be seen the wisdom and perfection of Christ's kingdom, accommodable to any state or form of government in the world, that is not antichristian and tyrannical." Cotton was convinced that believers ought to promote the pattern of justice embodied in God's revealed law as the guideline for any civil community. Indeed, God's law is the only alternative to despotism as he saw it. A godly state will bring its laws into conformity with God's, thereby serving His just ends in society.

A copy of this document is reprinted below, serving as an illustration of a civil code which attempted to be founded upon the word of God. It is taken from the *Collections of the Massachusetts Historical Society for the Year 1798*, volume 5 (Boston: Samuel Hall, 1798, reprinted 1835), pages 173–187. It deserves the serious attention of all those concerned with the Christian reconstruction of society along godly and God-pleasing lines. Today we are seeing a renewed interest in the Christian's obligation to be the light of the world and salt of the earth—in seeing the influence of Christian faith permeate every aspect of life and effect a widespread cultural renovation. As usual, history has instructive lessons for us here. The seventeenth-century Puritans laid a groundwork and forged a path to which today's Christian should pay attention.

This is not to say that everything which we find written in Cotton's work should meet with our approval. Indeed, a disclaimer is necessary. There are matters which today's Bible student may wish to dispute in Cotton's analysis (e.g., in chapter 7, article 24, Cotton appears to make all perjury punishable by death, whereas the law of God more strictly says that the false witness is {115} to receive *whatever* punishment would have been due to the accused—and that was not always death). There is surely room to challenge some of his conclusions or applications (e.g., price and wage controls in chapter 5). Thus the reader should not understand that the reprinting of Cotton's work constitutes a blanket endorsement of each of his various positions. Nevertheless, the document is of significant weight in the history of Christian thought, and it should not be lost from sight. Its noble attempt to bring

God's law to bear on the civil magistrate in a real historical situation should serve as an encouragement, a rebuke, and an ideal for us today.

Given this document's publication in London in 1641, it also provides valuable background to Reformed thought at the time of the Westminster Assembly, which convened just two years later. Reflecting popular Reformed sentiment with respect to civil government at that time, this work can be of hermeneutical benefit when it comes to present day understanding of the Westminster Confession's declarations about God's law and the civil magistrate.

A further observation should be made for the reader prior to reproducing Cotton's *Abstract* here. Although it is quite evident at many specific points that the author was grounding his legislation in the law of God, since he gave concrete scriptural citations along with his articles, the reader must not overlook the fact that in many other places, Cotton simply quoted the Mosaic law and, expecting his reader's acquaintance with God's word, did not attach a scriptural citation. For instance, chapter 6 in the *Abstract* ("Of Trespasses") has no biblical citations listed, and yet it comes right out of Exodus 22. The effort to build on God's revealed law is evidenced, then, throughout the work.

Finally, we can introduce John Cotton's *Abstract of the Laws of New England* by quoting from Aspinwall's "Address to the Reader" in the 1655 reprinting of it:

> [This model] far surpasseth all the municipal laws and statutes of any of the Gentile nations and corporations under the cope of Heaven. Wherefore I thought it not unmeet to publish it to the view of all, for the common good.... Judge equally and impartially, whether there be any laws in any state in the world, so just and equal as these be. Which, were they duly attended unto, would undoubtedly preserve inviolable the liberty of the subject against all tyrannical and usurping powers.... This Abstract may serve for this use principally (which I conceive was the main scope of that good man, who was the author of it) to shew the complete sufficiency of the word of God alone, to direct his people in judgment of all causes, both civil and criminal.... But the truth is, both they and we, and other the Gentile nations, are loth to be persuaded to … lay aside our old earthly forms of governments, to submit to the government of Christ. Nor shall we Gentiles be willing, I fear, to take up his yoke which is easy, and burthen light, until he hath broken us under the hard and heavy yokes of men, and thereby weaned us from all our old forms and customs.... So that there will be a necessity,

that the little stone, cut out of the mountain without hands, should crush and break these obstacles, ere the way can be {116} prepared for erecting his kingdom, wherein dwells righteousness.—And verily great will be the benefit of this kingdom of Christ, when it shall be submitted unto by the nations ... [Ps. 95:10; Isa. 66:12] . All burdens and tyrannical exactions will be removed; *God will make their officers peace, and their exactors righteousness,* Isa. 60:17.

An Abstract of the Laws of New England

As They Are Now Established. Printed in London in 1641

John Cotton

Collections of the Massachusetts Historical Society (1798); reprinted 1835.

The Contents

CHAPTER I.
Of Magistrates.

1. ALL magistrates are to be chosen. *Deut. 1:13, 17, 15.*

First, By the free burgesses.

Secondly, Out of the free burgesses.

Thirdly, Out of the ablest men and most approved amongst them. *Ex. 18, 21.*

Fourthly, Out of the rank of noblemen or gentlemen among them, the best *that God shall send into the country,* if they be qualified with gifts fit for government, either eminent above others, or not inferior to others. *Eccl. 10:17. Jer. 30:21.*

2. The governor hath power, with the assistants, to govern the whole country, according to the laws established, hereafter mentioned: he hath power of himself, and in his absence the deputy-governor, to moderate all public actions of the Commonwealth, as

First, To send out warrants for calling of the general court. *Josh. 24:1.* Secondly, To order and ransack all actions in the court where he sitteth: as, to gather suffrages and voices, and to pronounce sentences according the greater part of them.

3. The power of the governor, with the rest of the counsellors, is

First, To consult and provide for the maintenance of the state and people. *Num. 11:14 to 16.* {118}

Secondly, To direct in all matters, wherein appeal is made to them from inferior courts. *Deut. 17:8, 9.*

Thirdly, To preserve religion. *Ex. 32:25*, 27.

Fourthly, To oversee the forts and munition of the country, and to take order for the protection of the country from foreign invasion, or intestine sedition, as need shall require, with consent of the people to enterprise wars. *Prov. 24:5.*

And because these great affairs of the state cannot be attended, nor administered, if they be after changed; therefore the counsellors are to be chosen for life, *unless they give just cause of removal,* which if they do, then they are to be removed by *the general court. [I] Kings 2:6.*

4. The power of the governor, sitting with the counsellors and assistants, is to hear and determine all causes whether civil or criminal, which are brought before him through the whole Commonwealth: *yet reserving liberty of appeal from him to the general court. Ex. 18:22. Deut. 1:16, 18.*

5. Every town is to have judges within themselves, whose power shall be once in the month, or in three months at the farthest, to hear and determine both civil causes and pleas of less value, and crimes also, which are not capital: yet reserving liberty of appeal to the court of governor and assistants. *[Deut. 1:16, 18].*

6. For the better expedition and execution of justice, and of all affairs incident unto every court; every court shall have certain officers, as a secretary to enrol all the acts of the court; and besides ministers of justice, to attach and fetch, and set persons before the magistrates; and also to execute the sentence of the court upon offenders: and for the same end it shall be lawful for the governor or any one or two of the counsellors, or assistants, or judges, to give warrants to an officer, to fetch any delinquent before them, and to examine the cause, and if he be found culpable of that crime, to take order by surety or safe custody for his appearance at the court. *Deut. 16, 18. [Deut. 1:16, 18]. Jer. 36:10, 12. 1 Sam. 20:24, 25. Acts 5:26, 27.*

And further for the same end, and to prevent the offenders lying long in prison, it shall be lawful for the governor, with one of the council, or any two of the assistants or judges, to see execution done upon any offenders *for any crime that is not capital,* according to the laws established: *yet reserving a liberty of appeal from them to the court, and from an inferior court to a higher court.*

CHAPTER II.
Of the free Burgesses and free Inhabitants.

1. FIRST, all the free burgesses, excepting such as were admitted men be-fore the establishment of churches in the country, shall be received and admitted out of the members of some or others of the churches in the country, such churches as are gathered or hereafter shall be gathered with the consent of other {119} churches already established in the country, and such members as are admitted by their own church unto the Lord's table.

2. These free burgesses shall have power to choose in their own towns, *fit and able men out of themselves,* to be the ordinary judges of inferior causes, in their own town; and, against the approach of the general court, to choose two or three, as their deputies and committees, to join with the governor and assistants of the whole country, to make up and constitute the general court.

3. This general court shall have power,

First, By the warrant of the governor, or deputy-governor, to assemble once every quarter, or half a year, or oftener, as the affairs of the country shall require, and to sit together till their affairs be dispatched.

Secondly, To call the governor, and all the rest of the public magistrates and officers into place, *and to call them also to account for the breach of any laws established, or other misdemeanor, and to censure them as the quality of the fact may require.*

Thirdly, To make and repeal laws.

Fourthly, To dispose of all lands in the country, and to assign them to several towns or persons, as shall be thought requisite.

Fifthly, To impose of monies a levy, for the public service of the Commonwealth, as shall be thought requisite *for the provision and protection of the whole.*

Sixthly, To hear and determine all causes, wherein appeal shall be made unto them, or which they shall see cause to assume into their own cognizance or judicature.

Seventhly, To assist the governors and counsellors, in the maintenance of the purity and unity of religion; and accordingly to set forth and uphold all such good causes as shall be thought fit, for that end, by the advice and with consent of the churches, and to repress the contrary.

Eighthly, In this general court nothing shall be concluded but with the common consent of the greater part of the governors, or assistants, together with the greater part of the deputies of the towns; unless it be in election of officers, *where the liberty of the people is to be preferred,* or in judging matters of offence against the law, wherein both parties are to stand to the direction of the law.

4. All the householders of every town shall be accounted as the free inhabitants of the country, and accordingly shall enjoy freedom of commerce, and inheritance of such lands as the general court or the several towns wherein they dwell, shall allot unto them, after they have taken an oath, or given other security to be true and faithful to the state, and subject to the good and wholesome laws established in the country by the general court.

CHAPTER III.
Of the Protection and Provision of the Country.

1. FIRST, a law to be made (if it be not made already) for the training of {120} all men in the country, fit to bear arms, unto the exercise of

military discipline and withal another law to be made for the maintenance of military officers and forts.

2. Because fishing is the chief staple commodity of the country, therefore all due encouragement to be given unto such hands as shall set forwards the trade of fishing: and for that end a law to be made, that whosoever shall apply themselves to set forward the trade of fishing, as fishermen, mariners, and shipwrights, shall be allowed, man for man, or some or other of the labourers of the country, to plant and reap for them, in the season of the year, at the public charge of the commonwealth, for the space of the seven years next ensuing; and such labourers to be appointed and paid by the treasurer of the commonwealth.

3. Because no commonwealth can maintain either their authority at home, or their honor and power abroad, without a sufficient treasury: a law therefore to be made for the electing and furnishing of the treasury of the commonwealth, which is to be supplied and furnished,

1st. By the yearly payment,

First, Of one penny, or half a penny an acre of land to be occupied throughout the country. Land in common by a town, to be paid for out of the stock or treasury of the same town.

Secondly, Of a penny for every beast, horse or cow.

Thirdly, Of some proportionable rate upon merchants.—This rate to be greater or less, as shall be thought fit.

2d. By the payment of a barrel of gunpowder, or such goods or other munitions, out of every ship that bringeth foreign commodities.

3d. By fines and mulets upon trespassers' beasts.

4. A treasurer to be chosen by the free burgesses, out of the assistants, who shall receive and keep the treasury, and make disbursements out of it, according to the direction of the general court, or of the governor or counsellors, whereof they are to give an account to the general court. It shall pertain also to the office of the treasurer, to survey and oversee all the munitions of the country, as cannons, culverins, muskets, powder, match, bullets, &c. and to give account thereof to the governor and council.

5. A treasury also, or magazine, or storehouse, to be erected, and furnished in every town, [*as Deut. 14:28]* distinct from the treasury of the church, that provision of corn, and other necessaries, may be laid up at the best hand, for the relief of such poor as are not members of the

church: and that out of it such officers may be maintained, as captains and such like, who do any public service for the town. But chiefly, this treasury will be requisite for the preserving of the livelihood of each town within itself. That in case the inheritance of the lands that belong to any town, come to be alienated from the townsmen, which may unavoidably fall out; yet a supply may be had and made to the livelihood of the town, by a reasonable rent charge upon such alienations, laid by the common {121} consent of the landowners and townsmen, and to be paid into the treasury of the town. This treasury to be supplied,

First, By the yearly payment of some small rate upon acres of land.

Secondly, By fines and amercements put upon trespassers' beasts.

A town treasurer to be appointed for the oversight and ordering of this, chosen out of the free burgesses of the same town, who is so to dispose of things under his charge, according to the direction of the judges of the town, and to give account, at the town's court, to the judges and free burgesses of the town, or to some selected by them.

CHAPTER IV.
Of the right of Inheritance.

1. FIRST, forasmuch as the right of disposals of the inheritance of all lands in the country lyeth in the general court, whatsoever lands are given and assigned by the general court, to any town or person, shall belong and remain as right of inheritance to such towns and their successors, and to such persons and to their heirs and assigns forever, as their propriety.

2. Whatsoever lands, belonging to any town, shall be given and assigned by the town, or by such officers therein as they shall appoint, unto any person, the same shall belong and remain unto such person and his heirs and assigns, as his proper right forever.

3. And in dividing of lands to the several persons in each town, as regard is to be had, partly to the number of persons in a family—to the more, assigning the greater allotment, to the fewer, less—and partly by the number of beasts, by the which a man is fit to occupy the land assigned to him, and subdue it; eminent respect, in this case, may be given to men of eminent quality and descent, in assigning unto them

more large and honorable accommodations, in regard of their great disbursements to public charges.

4. Forasmuch as all civil affairs are to be administered and ordered, so as may best conduce to the upholding and setting forward of the worship of God in church fellowship; it is therefore ordered, that wheresoever the lands of any man's inheritance shall fall, yet no man shall set his dwelling-house above the distance of half a mile, or a mile at the farthest, from the meeting of the congregation, where the church doth usually assemble for the worship of God.

5. Inheritances are to descend naturally to the next of kin, according to the law of nature, delivered by God.

6. Observe, if a man have more sons than one, then *a double portion* to be assigned and bequeathed to the eldest son, according to the law of nature; unless his own demerit do deprive him of the dignity of his birth-right.

7. The will of a testator is to be approved or disallowed by the court of governor and assistants, or by the court of judges in each town: yet not to be disallowed by the court of governors, unless it appears either to be counterfeit, or unequal, either against the law of God, or against the due right of the legators. {122}

8. As God in old time, in the commonwealth of Israel, forbade the alienation of lands from one tribe to another; so to prevent the like inconvenience in the alienation of lands from one town to another, it were requisite to be ordered:

1st. That no free burgess, or free inhabitant of any town, shall sell the land allotted to him in the town, (unless the free burgesses of the town give consent unto such sale, or refuse to give due price, answerable to what others offer without fraud), but to some one or other of the free burgesses or free inhabitants of the same town.

2d. That if such lands be sold to any others, the sale shall be made with reservation of such a rent charge, to be paid to the town stock, or treasury of the town, as either the former occupiers of the land were wont to pay towards all the public charges thereof, whether in church or town; or at least after the rate of three shillings per acre, or some such like proportion, more or less, as shall be thought fit.

3d. That if any free burgesses, or free inhabitants, of any town, or the heir of any of their lands, shall remove their dwelling from one town to

another, none of them shall carry away the whole benefit of the lands which they possessed, from the towns whence they remove: but if they still keep the right of inheritance in their own hands, and not sell it as before, then they shall reserve a like proportion or rent charge out of their land, to be paid to the public treasury of the town, as hath been wont to be paid out of it to the public charges of the town and church, or at least after the rate of three or five shillings an acre, as before.

4th. That if the inheritance of a free burgess, or free inhabitant of any town, fall to his daughters, as it will do for defect of heirs male, that then if such daughters do not marry to some of the inhabitants of the same town where their inheritance lyeth, nor sell their inheritance to some of the same town as before, that then they reserve a like proportion of rent charge out of their lands, to be paid to the public treasury of the town, as hath been wont to be paid out of them, to the public charge, of the town and church; or at least after the rate of three or five shillings an acre; provided always that nothing be paid to the maintenance of the church out of the treasury of the church or town, but by the free consent and direction of the free burgesses of the town.

CHAPTER V.
Of Commerce.

1. FIRST, it shall be lawful for the governor, with one or more of the council, to appoint a reasonable rate of prices upon all such commodities as are, out of the ships, to be bought and sold in the country.

2. In trucking or trading with the Indians, no man shall give them, for any commodity of theirs, silver or gold, or any weapons of war, either guns or gun {123} powder, nor swords, nor any other munition, *which might come to be used against ourselves.*

3. To the intent that all oppression in buying and selling may be avoided, it shall be lawful for the judges in every town, with the consent of the free burgesses, to appoint certain selectmen, to set reasonable rates upon all commodities, and proportionably to limit the wages of workmen and labourers; and the rates agreed upon by them, and ratified by the judges, to bind all the inhabitants of the town. The like course to be taken by the governor and assistants, for the rating of prizes throughout the country, and all to be confirmed, if need be, by the general court.

4. Just weights and balances to be kept between buyers and sellers, and for default thereof, the profit so wickedly and corruptly gotten, with as much more added thereto, is to be forfeited to the public treasury of the commonwealth.

5. If any borrow ought of his neighbour upon a pledge, the lender shall not make choice of what pledge he will have, nor take such a pledge as is of daily necessary use unto the debtor, or if he does take it, he shall restore it again the same day.

6. No increase to be taken of a poor brother or neighbour, for any thing lent unto him.

7. If borrowed goods be lost or hurt in the owner's absence, the borrower is to make them good; but in the owner's presence, wherein he seeth his goods no otherwise used than with his consent, the borrower shall not make them good; if they were hired, the hire to be paid and no more.

CHAPTER VI.
Of Trespasses.

1. IF a man's swine, or any other beast, or a fire kindled, break out into another man's field or corn, he shall make full restitution, both of the damage made by them, and of the loss of time which others have had in carrying such swine or beasts unto the owners, or unto the fold. But if a man puts his beasts or swine into another's field, restitution is to be made of the best of his own, though it were much better than that which were destroyed or hurt.

2. If a man kill another man's beast, or dig and open a pit, and leave it uncovered, and a beast fall into it; he that killed the beast and the owner of the pit, shall make restitution.

3. If one man's beast kills the beast of another, the owner of the beast shall make restitution.

4. If a man's ox, or other beast, gore or bite, and kill a man or woman, whether child or riper age, the beast shall be killed, and no benefit of the dead beast reserved to the owner. But if the ox, or beast, were wont to push or bite in time past, and the owner hath been told of it, and hath not kept him in, then both the ox, or beast, shall be forfeited and killed, and the owner also put to {124} death, or fined to pay what the judges and persons damnified shall lay upon him.

5. If a man deliver goods to his neighbour to keep, and they be said to be lost or stolen from him, the keeper of the goods shall be put to his oath touching his own innocency; which if he take, and no evidence appear to the contrary, he shall be quit: but if he be found false or unfaithful, he shall pay double unto his neighbour. But if a man take hire for goods committed to him, and they be stolen, the keeper shall make restitution. But if the beast so kept for hire, die or be hurt, or be driven away, no man seeing it, then oath shall be taken of the keeper, that it was without his default, and it shall be accepted. But if the beast be torn in pieces, and a piece be brought for a witness, it excuseth the keeper.

CHAPTER VII.
Of Crimes. And first, of such as deserve capital punishment, or cutting off from a man's people, whether by death or banishment.

1. FIRST, blasphemy, which is a cursing of God by atheism, or the like, to be punished with death.

2. Idolatry to be punished with death.

3. Witchcraft, which is fellowship by covenant with a familiar spirit, to be punished with death.

4. Consulters with witches not to be tolerated, but either to be cut off by death or banishment.

5. Heresy, which is the maintenance of some wicked errors, overthrowing the foundation of the christian religion; which obstinacy, if it be joined with endeavour to seduce others thereunto, to be punished with death; because such an heretick, no less than an idolater, seeketh to thrust the souls of men from the Lord their God.

6. To worship God in a molten or graven image, to be punished with death.

7. Such members of the church, as do wilfully reject to walk, after due admonition and conviction, in *the churches' establishment,* and their christian admonition and censures, shall be cut off by banishment.

8. Whosoever shall revile the religion and worship of God, and the government of the church, as it is now established, to be cut off by banishment. *[I] Cor. 5:5.*

9. Wilful perjury, whether before the judgment seat or in private conference, to be punished with death.

10. Rash perjury, whether in public or in private, to be punished with banishment. Just is it, that such a man's name should be cut off from his people, who profanes so grosly the name of God before his people.

11. Profaning of the Lord's day, in a careless and scornful neglect or contempt thereof, to be punished with death.

12. To put in practice *the betraying of the country,* or any principal fort therein, to the hand of any foreign state, Spanish, French, Dutch, or the like, {125} contrary to the allegiance we owe and profess to our dread sovereign, lord king Charles, his heirs and successors, whilst he is pleased to protect us as his loyal subjects, to be punished with death. *Num. 12:14, 15.*

13. Unreverend and dishonorable carriage to magistrates, to be punished with banishment for a time, till they acknowledge their fault and profess reformation.

14. Reviling of the magistrates in highest rank amongst us, to wit, of the governors and council, to be punished with death. *1 Kings 2:8, 9, & 46.*

15. Rebellion, sedition, or insurrection, by taking up arms against the present government established in the country, to be punished with death.

16. Rebellious children, whether they continue in riot or drunkenness, after due correction from their parents, or whether they curse or smite their parents, to be put to death. *Ex. 21:15, 17. Lev. 20. 9.*

17. Murder, which is a wilful man-slaughter, not in a man's just defence, nor casually committed, but out of hatred or cruelty, to be punished with death. *Ex. 21:12, 13. Num. 35:16, 17, 18, to 33. Gen. 9:6.*

18. Adultery, which is the defiling of the marriage-bed, to be punished with death. Defiling of a woman espoused, is a kind of adultery, and punishable, by death, of both parties; but if a woman be forced, then by the death of the man only. *Lev. 20:10. Deut. 22:22 to 27.*

19. Incest, which is the defiling of any near of kin, within the degrees prohibited in *Leviticus,* to be punished with death.

20. Unnatural filthiness to be punished with death, whether sodomy, which is a carnal fellowship of man with man, or woman with woman,

or buggery, which is a carnal fellowship of man or woman with beasts or fowls.

21. Pollution of a woman known to be in her flowers, to be put to death. *Lev. 20:18, 19.*

22. Whoredom of a maiden in her father's house, kept secret till after her marriage with another, to be punished with death. *Deut. 22:20, 21.*

23. Man-stealing to be punished with death. *Ex. 21:16.*

24. False-witness bearing to be punished with death.

CHAPTER VIII.
Of other Crimes less heinous, such as are to be punished with some corporal punishment or fine.

1. FIRST, rash and profane swearing and cursing to be punished,

1st. With loss of honour, or office, if he be a magistrate, or officer; meet it is, their name should be dishonoured who dishonoured God's name.

2d. With loss of freedom.

3d. With disability to give testimony.

4th. With corporal punishment, either by stripes or by branding him with a hot iron, or boring through the tongue, who have bored and pierced God's name.

2. Drunkenness, as transforming God's image into a beast, is to be punished {126} with the punishment of beasts: a whip for the horse, and a rod for the fool's back.

3. Forcing of a maid, or a rape, is not to be punished with death by God's law, but,

1st. With fine or penalty to the father of the maid.

2d. With marriage of the maid defiled, if she and her father consent.

3d. With corporal punishment of stripes for his wrong, as a real slander: and it is worse to make a whore, than to say one is a whore.

4. Fornication to be punished,

1st. With the marriage of the maid, or giving her a sufficient dowry.

2d. With stripes, though fewer, from the equity of the former cause.

5. Maiming or wounding of a freeman, whether free burgess, or free inhabitant, to be punished with a fine; to pay,

1st. For his cure.

2d. For his loss. Ex. *21:18, 19.* And with loss of member for member, or some valuable recompence: but if it be but the maiming or wounding of a servant, the servant is to go forth free from such a service. *Lev. 24:19, 20. Ex. 21:26, 27.*

6. If any man steal a beast, if it be found in his hand he shall make restitution two for one; if it be killed and sold, restitution is to be made of five oxen for one; if the thief be not able to make restitution, then he is to be sold by the magistrate for a slave, till by his labour he may make due restitution. *Ex. 22:1, 4.*

7. If a thief be found breaking a house by night, if he be slain, his smiter is guiltless; but in the day time, the thief is to make full restitution as before; or if he be not able, then to be sold as before. *Ex. 22:2.*

8. Slanders are to be punished.

First, With a public acknowledgement, as the slander was public.

Secondly, By mulets and fine of money, when the slander bringeth damage.

Thirdly, By stripes, if the slander be gross, or odious, *against such persons whom a man ought to honor and cherish;* whether they be his superiors, or in some degree of equality with himself and his wife.

CHAPTER IX.
Of the trial of causes, whether civil or criminal, and the execution of sentence.

1. IN the trial of all causes, no judgment shall pass but either upon confession of the party, or upon the testimony of two witnesses.

2. Trial by judges *shall not be denied,* where either the delinquent requireth it in causes criminal, or the plaintiff or defendant in civil causes, partly to prevent suspicion of partiality of any magistrates in the court.

3. The jurors are not to be chosen by any magistrates, or officers, but by the free burgesses of each town, as can give best light to the causes depending in {127} court, and who are least obnoxious to suspicion of partiality; and the jurors then chosen, to be nominated to the court, and to attend the service of the court.

4. The sentence of judgment given upon criminal causes and persons, shall be executed in the presence of the magistrates, or some of them at least.

5. No freeman, whether free burgess or free inhabitant, to be imprisoned, but either upon conviction, or at least probable suspicion, or some crime, formerly mentioned; and the cause of his imprisonment, be declared and tried at the next court following, at the furthest.

6. Stripes are not to be inflicted, but when the crimes of the offender are accompanied with childish or brutish folly, or with lewd filthiness, or with stubborn insolency, or with brutish cruelty, or with idle vagrancy; but when stripes are due, not above forty are to be inflicted.

CHAPTER X.
Of causes criminal, between our people and foreign nations.

1. IN case any of our people should do wrong to any of another nation, upon complaint made to the governor, or some other of the council or assistants, the fact is diligently to be inquired into, and being found to be true, restitution is to be made of the goods of offenders, as the case shall require, according to the quality of the crime.

2. In case the people of another nation have done any important wrong to any of ours, right is first to be demanded of the governor of that people, and justice upon the malefactors, which if it be granted and performed, then no breach of peace to follow. *Deut. 20:10, 11. 2 Sam. 20:18, 19.*

3. If right and justice be denied, and it will not stand with the honour of God and safety of our nation that the wrong be passed over, then war is to be undertaken and denounced.

4. Some minister is to be sent forth to go along with the army, for their instruction and encouragement. *Deut. 20:2, 3, 4.*

5. Men betrothed and not married, or newly married, or such as have newly built or planted, and not received the fruits of their labour, and such as are faint-hearted men, are not to be pressed or forced against their wills to go forth to wars. *Deut. 20:5, 6, 7, 8: & 24:5.*

6. Captains are to be chosen by the officers.

7. All wickedness is to be removed out of the camp by severe discipline. *Deut. 23:9, 14.*

8. And in war men of a corrupt and false religion are not to be accepted, much less sought for. *2 Chron. 25:7, 8.*

9. Women, especially such as have not lain by man, little children, and cattle, are to be spared and reserved for spoil. *Deut. 20:14.*

10. Fruit trees, whilst they may be of use for meat to our own soldiers, are not to be cut down and destroyed, and consequently no corn. *Deut. 20:19, 20.* {128}

11. The spoils got by war are to be divided into two parts, between the soldiers and the commonwealth that sent them forth. *Num. 31:27.*

12. A tribute from both is to be levied to the Lord, and given to the treasury of the church; a fiftieth part out of the commonwealth's part, and a five hundredth part out of the soldiers' part. *Num. 31:28, 29, & 47.*

13. If all the soldiers return again in peace, not one lacking, it is acceptable to the Lord if they offer, over and above the former tribute, a voluntary oblation unto the treasury of the church, for a memorial of the redemption of their lives by the special providence and salvation of the Lord of Hosts.

Isaiah 33:22.
The Lord is our Judge,
The Lord is our Law-giver,
The Lord is our King: He will save us.

2.
CHRISTIAN RECONSTRUCTION

Contemporary Preaching: *Biblical Preaching vs. Obfuscation*

Rousas John Rushdoony

Preaching has an important place in God's purpose, and it is basic to the life and health of the church. If the church is faltering or straying, the preaching is clearly at fault. If the church is lukewarm, sterile, or dead, the preaching again is at fault. True preaching cannot leave men unconcerned: it will either arouse them to repentance and to godly action, or it will arouse them to ungodly hostility as they see themselves in the light of God's word.

While Scripture often applies terms of great importance to the preachers, it also uses very homely language about them. Their function is compared to that of a watchdog in one instance, whose duty is to bark a warning, and false preachers are said to be "all dumb dogs, they cannot bark; sleeping, lying down, loving to slumber" (Isa. 56:10). Others are compared to "greedy dogs, which can never have enough, and they are shepherds that cannot understand: they all look to their own way, every one for his gain, from his quarter" (Isa. 56:11).

To illustrate fallacious preaching, let us invent a text, and then approach it from various preaching perspectives. Our text thus shall be, "Man, your house is on fire." This is a good text, because, like all of Scripture, it is an urgent text, and Scripture as a totality carries God's urgent word to man.

Clearly, no one approaches a text with more scholarly seriousness than the *traditionally orthodox* pastor. He takes his text with an earnestness that few others manifest, but it is the seriousness of the *classroom,* not of the world and life. The seriousness of the scholar is a necessary one and has its place in the study, but not in the pulpit, where the results, not the mechanics, of study must show. A theory of combustion is an important scientific fact, but, with a burning house, something more relevant is needed. The theory of combustion should

tell us, *in the study,* how to cope with fire; *in the pulpit* we must cope with fire itself.

The orthodox pastor, however, carries the study into the pulpit. The text, as he sees it, has three key words, *man, house,* and *fire.* The etymology of each is given, the history of their use in Scripture, their Hebrew and Greek forms, and a survey from Genesis to Revelation of their usage and development. The result is a long and sometimes interesting treatise on the Biblical doctrine of *man,* and the history of the word. *House,* too, proves to be a rich word: the house or temple of God, the houses built by man, the house of man's body, the church as God's house, and much more provide a mine of material for our thorough preacher. *Fire,* too, gives us a long history from Sodom to the Lake of Fire in {130} Revelation. By the time the sermon is ended, those still awake know a great deal about what Scripture teaches about *man, house,* and *fire,* but they have been left too stupefied to get the urgent message, *Man, your house is on fire.* They leave grateful that they have not been given a history also of the types of architecture used in Biblical houses, their floor plans, modes of construction, and much more of like character. They feel guilty, on leaving, because they were bored. Why should a man be bored with God's word, the faithful ask themselves, and answer, perhaps because I am too much the sinner to appreciate God's word. Meanwhile, their house, city, and civilization burn down around them.

The *modern evangelical* preacher comes to the text, "Man, your house is on fire," with a different approach. Neither in the pulpit nor in the study has he any desire to be scholarly; such a perspective is anathema to him. For him, it is important to reach man's heart, not man's mind. He must speak from his heart to the hearer's heart; *experience* must be stressed, and the personal witness. "I want," he declares earnestly, "to give you my personal testimony about fire. Once, when my wife and I were newlyweds, and our dear little baby had just arrived, our little house, our first possession, caught on fire. We grabbed our baby and fled into the night and stood helplessly by as the fire devoured our house and all our precious though humble possessions. As I stood there in the chill of the night, watching that fearful blaze devour our sweet little cottage, I felt suddenly ashamed of my tears when I thought of our precious Lord. How much He gave up for us,

and how much we have in Him, treasures in heaven, and how wrong to weep over a house that is destined to perish. The house is nothing, the fire is nothing, I told myself, compared to what I have in our precious Savior. Why worry about a house which the fire of judgment will finally consume anyway? Thus, dear friends, this was a precious experience. I lost a house and all my worldly possessions, but how much more I gained from that experience, I cannot begin to tell you. And so, dear friends, if your house is on fire, do not be dismayed. Out of this, the Lord may give you a more wonderful witness. Are you ready to look at the fire and say, How good of the Lord to burn my house of wood and to save my soul; how good of the Lord to give me this joyful witness in the face of a burning house. Beloved in Christ, can you say this? Do you have this witness in your heart?" Thus, for such preachers, when your house, city, or civilization burn down, its purpose is to give you a nobler and more spiritual witness.

The *modernist* preacher comes to the text, "Man, your house is on fire," with a variety of anti-Scriptural presuppositions. "Fire," he tells us, "must be viewed very seriously, but not literally. We are here in the domain of holy history, not real history, and we lose the whole point of the text if we insist on a literally burning fire. Fire is a symbol, a sign of judgment. Fire has great cleansing properties, and the fear of fire by the superstitious and the reactionaries has led to a depiction of a supposed hell as the ultimate in fire and burning. For some cultures, however, hell is a place of ice and cold, an insight Dante had in his depiction {131} of the final circle of hell. For the Eskimos, for example, fire is heavenly and a sign of paradise. Thus, we must disabuse ourselves of any medieval or fundamentalist horror of fire. Hellfire and damnation preachers should have embraced what they damned. Above all, fire is a symbol of revolution, of purging and refining. Remember the wisdom of Thoreau: 'In wildness is the preservation of the world.' Fire is wildness, revolution is wildness, and the faint of heart fear it. We begin to see now why reactionary and fascistic religionists have had a pathological fear of fire. They refuse to live in terms of the future. They fail to see that the past is dead, and the present must be destroyed. They try to put out the fires of revolution, but they cannot. No man can arrest history. Therefore, the wise man will not seek to halt history: he will welcome it and speed its course. We must thus see as God's word, as the

meaning of history, that the fires of revolution must be welcomed. If your house is not yet on fire, light a match to it! If your neighbor's house is not yet ablaze, burn it down!" Thus, such preachers see hope in destruction, and they want total destruction as the means to freedom, and perpetual war for perpetual peace.

The new school of *reformational preaching* is sharp in its denunciation of these other schools, and often rightly so. Its own answers, however, worsen the situation all too often. The so-called reformational preacher, as he approaches the text, "Man, your house is on fire," will begin by denouncing all other preachers. Now at last we expect to hear the clear word of God. What shall we say about the statement, "Man, your house is on fire," asks the reformational preacher? "First of all," he assures us, "we are not here dealing with truth in a propositional form. Again, we must not see this as a moralistic warning to save our houses. The Bible is not rationalistic nor is it moralistic. It is not in the least bit interested in our middle-class virtues and our Victorian pride in our homes. No! God in this world crisis is confounding your homes. He has raised up the blacks in the ghettos, with the cry, 'Burn, baby, burn,' to put a match to all your middle-class structures, and you sin against Yahweh if you try to throw water on your burning house. You show thereby that you love your middle-class possessions more than the covenant God!"

"Second," the reformational preacher declares, "Scripture is an account of the mighty acts of God, and man's response to those acts. When God sets fire to your house and world, say Amen! We have here a law-word of God, but we must not read it humanistically or moralistically as a warning designed to save our houses. God despises your houses and your middle-class virtues! The law must always be read as the constitution of God's Kingdom. It is the law of justice, and it requires us to help the poor, aid the widows and orphans, work for racial brotherhood, and to be a faithful partner to God and our neighbor. *The law means love.* Thus, the word, Man, your house is on fire, means that your middle-class virtues are on fire, when you instead should be on fire with love for everyone (except the orthodox and evangelical church people whom we detest). The question thus is, where is the fire? If it is not in your heart and action to create a {132} truly reformed world of racial and industrial love and brotherhood,

then there will be fire in your house. Burn, baby, burn, or *your* house will burn. We have the match and the gasoline. Where do you want the fire? Hear the word of the Lord!" These preachers thus no more declare the word of the Lord than the evangelicals and the modernists, while the orthodox declare a sterile word.

What is faithful preaching? When God says, Man, your house is on fire, we declare that, simply and directly, and then we say, with God's help, let us work to put it out!

Instead of endless reinterpretation, explanation, and long-winded analyses, God's word needs rather simple and direct declaration. It summons men to hear and obey, to listen and to act. Anything else is preaching that stinketh.

Contemporary Religious Journalism: *Drifting Along with Christianity Today*

Gary North

Christian newspapers and magazines that stick rigorously to the doctrine of the infallibility of the Bible as it appeared in the original manuscripts, the doctrine of salvation through Christ alone, the doctrine of Christ as the sole link between heaven and earth, and the doctrine of Christian victory, on earth and in time, are almost nonexistent. There are a few newsletters, but regularly published magazines are as scarce as Christian colleges that would hold to those same premises. Christians are therefore tempted to settle for second best, in magazines and colleges. The great problem—indeed, spiritual danger—with this approach is that deviations found in a "second-best" magazine or academic institution are not so easily spotted as they would be if they appeared in *Playboy* or the *Harvard Crimson*. When an essay appears favoring federal aid to education in some liberal, secular journal of opinion, we are not impressed; when the same argument appears in our "second-best" weekly, we are tempted to pause and wonder, "Could this idea have some merit that I had not considered?" I have often toyed with the idea that conservative Roman Catholics would be wise to send their children to liberal Protestant schools, and conservative Protestants would be wise to send their children to liberal Roman Catholic schools (colleges and university level). Each could then warn the student to watch every assignment and critically evaluate every lecture like a hawk, since "you can never tell what those insane Protestants (Catholics) are trying to put over on you." What they are trying to put over on us is simple: modern secularism, baptized—whether immersed, sprinkled, or poured—by the vocabulary of the denomination involved. For every Father Groppi there's a Bishop Pike; for every Jesuit Ph.D. from Columbia, there's a Methodist from Yale.

Perhaps the most widely read "second-best" Protestant journal is *Christianity Today*. It is a kind of clearing house for the neo-evangelical movement. The contributors are very often Ph.D.'s, instructors in Christian colleges and seminaries. Unquestionably, many of the contributors are widely read men. Most of the articles adhere to the official position of the infallibility of the Scriptures. But the careful reader has his mind jolted at least once each issue. "What, in the name of heaven, is going on here?"

The underlying problem with *Christianity Today* is the underlying problem of all ostensibly orthodox Christian movements that attempt to be "relevant" in a secular world. They are tempted to allow just a bit of deviation if the {134} contributor is a Congressman or, most important of all, a Ph.D. from Harvard. (Not *at* Harvard; God restricts the number of miracles permitted in any generation.) Just a bit of drift, for the sake of relevance.

Compounding the problem is the social antinomianism that is the curse of Christianity in this century. Biblical law is divided into categories, usually the moral, the ceremonial, and the Jewish civil. We all know that the moral law is still in force. These are the Ten Commandments. But there is no attempt to relate the principles of the Decalogue to the concrete applications found in the so-called Jewish civil law. The moral laws are nice, big, vague, pious-sounding phrases that make us look like well-grounded people in the midst of a sinful generation. In effect, the moral laws are operationally defined as those restrictions that my background has imposed on me, and to which I have grown accustomed. They are those laws that need to be imposed on THEM. The ceremonial law is abolished in our age, as the Book of Hebrews teaches. That "almost everyone" agrees on, unless tricky questions are brought up, such as the legitimate application today of the Sabbath. But the catch-all for all those laws that modern Christians have not become accustomed to (and whose absence of application constitutes the real drift of twentieth-century civilization), and have no desire to become accustomed to, is the "Jewish civil law." So the preaching of the law is general, and not specific (except to step on THEIR toes). The fund of concrete, revelational law in the Old Testament is ignored. As a result, the preaching of the modern churches is culturally impotent, retreatist, filled with despair for earthly transformation. The tool of transforma-

tion—law—is not acknowledged as being distinctly Christian, distinctly revelational, legitimately operative today. Law becomes the baptized secular "program of social and cultural renewal" that was taught at seminary, which in turn came from the textbooks used in Harvard classes of sociology in, say, 1968.

Publications like *The Christian Century* are, of course, far worse. They include excerpts from textbooks that Harvard will use *next* year, or that the Free University of Amsterdam is using (in mimeographed translation) this semester. But the fact remains that few good, solid, Protestant families subscribe to *The Christian Century.* What they do subscribe to is *Christianity Today.* Therefore, just for the record, let's have a look at what *Christianity Today* has seen fit to publish in the name of Protestant orthodoxy and "warm Christian faith." The following selections are biased, not in order to demonstrate that *Christianity Today* is, from cover to cover, a hotbed of Christian socialism, but only to show that the trade-off between academic respectability and commitment to Christian-conservative principle has mostly been in favor of academic respectability. The question is not whether the magazine is characterized by such opinions, but only how such opinions could ever have wormed their way into its pages in the first place. Read the following extracts with this question in mind: "If my son or grandson were to come home from college next week, for which we are shelling out $3,500 a year, spouting these ideas in the name of relevant Christianity, would I be tempted to cut off his funds?" {135}

* * * * *

On the validity of the idea that the United States of America was originally founded on Christian principles, and that this nation at one point in history could have legitimately been regarded as uniquely Christian:

> "Laugh-In" recently presented its "Flying Fickle Finger of Fate" award to state-automobile-license bureaus that sell names and addresses for direct-mail advertising. I have no idea whether this is the source of the vast quantities of junk mail I receive; perhaps such mail simply represents one of the occupational hazards of the ministry. The invitations to join Hefner's Bunny Clubs at a reduced rate I can stand (they are invariably well printed); what I have great difficulty in tolerating is the not inconsiderable quantity of politically rightist propaganda misdi-

> rected to me. Behind it seems to lie the thoroughly fallacious assumption that anyone who is "conservative" theologically must of course believe that the United States is "God's country" and must join the crusade to "bring America back to the Christian political philosophy of the Founding Fathers."...
>
> The most influential Founding Fathers of the eighteenth century were not Christian in any biblical sense of the term: they were either outright deists or mediating religious liberals....
>
> In reality, ours is no more "God's country" than is any other part of this sin-impregnated globe. We are not the Israelite theocracy repristinated, nor are we the pinnacle of Christian civilization. What we have accomplished positively as a nation is due, not to ourselves, but to God's grace....
>
> Let us therefore demythologize our American religion, cease our presumptive removal of motes from the eyes of other nations and ideologies, and return to the Christ who stands in judgment (and—praise heaven—in grace!) over the history of all peoples.—John Warwick Montgomery (January 30, 1970), p. 40

Answer: Why did the more radical deists (like Jefferson) keep their opinions on theology to themselves? Who elected them? Why did Rev. John Witherspoon become a leading figure in the Revolution, along with multitudes of other clerics? Miss Verna Hall's two-volume set, *Christian History of the Constitution,* Rushdoony's *This Independent Republic,* Bridenbaugh's *Miter and Scepter,* and Perry Miller's crucial essay, "From the Covenant to Revival," in his book, *Nature's Nation,* should help to clarify the issue.

* * * * *

On the possibility of fruitfulness stemming from a "Christian-Marxist dialogue":

> Christian leaders of broader persuasion have encountered rude shocks in their attempts to build bridges between themselves and the orthodox followers of Marx. This fact does not, however, rule out the possibility of further explorations in quest of common ground upon the part of all Christians, provided it be borne in mind that they debate with theoreticians who have little to do with day-to-day decision-making within Communist lands. {136}
>
> If and when the occasion presents itself for creative conversations with Marxists, he may bear in mind certain legitimate points of contact

> between the two systems. Some of these are: the common desire for a better world, the concern with man's alienation, the recognition of God's concern with the material, and man's irrepressible desire to seek for and move toward the Transcendent.
>
> Above all, both seek to produce *a new man.* True, the Marxist seeks to produce this by the superficial method of changing man's economic order. But he just might be touched by a vital contact with men and women who have become "new creatures" through the grace of our Lord.—Harold B. Kuhn (July 31, 1970), p. 39

Answer: There is but one point of common contact (though not common ground) between Christians and Marxists: they are all made in the image of God, and they are all in ethical rebellion against him until the day He chooses to regenerate them. Anyone thinking otherwise is hopelessly naive. For proof of this (it is incredible that a self-proclaimed orthodox Christian would require it), see the Introduction to my book, *Marx's Religion of Revolution,* especially the statement by the Marxist theoretician, Sidney Finkelstein. Marx wanted to regenerate mankind through the literal shedding of the blood of a portion of mankind, namely, the bourgeois class. Jesus Christ chose to regenerate a portion of mankind, namely His elect, through the shedding of His blood. Between these two positions, there is no common ground, there is only intellectual warfare, and at times, actual warfare. Mao wrote that political power begins with the barrel of a gun. I will let liberal clerics dialogue with that philosophy, unarmed. If the staff at *Christianity Today* wants to join in, it's their party. But I know which Party will emerge. Don't take my word for it; take Kerensky's, or Trotsky's, or even Lin Piao's. Those boys don't fool around even when dialoguing with each other!

* * * * *

On the use of coercive taxation by the federal government to finance Christian colleges; by (of course) the President of a Christian college:

> If that should happen and grants become available to church colleges, evangelicals may have to rethink their position. They may have to wrestle with the question whether it is better to have tax dollars support religious colleges—Jewish or Mormon or Catholic or Protestant—for their respective constituencies, than to have a tax-supported system that is exclusively secular and godless.

> Some will insist that there is a third alternative: keeping private schools alive through private funds. There was a day when this argument was realistic. It is no longer.
>
> Evangelicals must wise up to the danger of secularized education and the necessity of keeping Christian colleges alive and vigorous. To do so, we must take a searching look at the legitimate ways in which tax money may be used to help. Either we must agree on a program and fight for it, or we must face the alternatives. They are just two. One is to let Christian colleges die and secularism triumph. The other is to undertake the private financing of {137} Christian colleges, and this would call for the kind of zeal that hitherto we have shown only for evangelism and missions.—Everett L. Cattell (July 3, 1970), pp. 3–5.

Answer: Two alternatives, but one of them is dismissed as unrealistic. Guess how many alternatives are left? My, we Christians do catch on fast, don't we? He is right, however: as he sets up the dilemma, there is only one alternative, if Christian education is to remain "alive and vigorous." We pay for it. The man who pays the piper calls the tune. Until the so-called intellectuals in the so-called Christian schools get that through their heads, we will be exposed to countless more articles like this one. The federal government has not been in the neutrality business for a long time—never, to be precise.

* * * * *

On the problem with sex education in the schools and the organization known as SIECUS; by the editor of *Christianity Today:*

> Some people are opposed to sex education in the schools regardless of what it consists of and who does it. For them the question is not one of curriculum or teachers or value judgments about extramarital sex. Even if the materials used were wholly acceptable, they would still hold that sex education has no place in the school....
>
> If one were to decide for or against sex-instruction programs solely on the basis of SIECUS, a strong case could be made for scrapping them. No one can deny that the idea behind SIECUS—that children need instruction in this area because parents and churches have not fulfilled their duties adequately—is sound. Moreover, by no means is all the instructional material endorsed by SIECUS unsatisfactory. The most telling argument against SIECUS is this: the organization has become so embroiled in controversy that much of the value it might once have had has been nullified. Its usefulness may have been irretrievably lost....

> Because of these and other aspects of SIECUS, the organization has been under heavy attack. And since in many minds sex education and SIECUS are inseparably linked, the fortunes of sex education tend to rise or fall on the basis of support for, or opposition to, SIECUS. This is unfortunate....
>
> Given the present situation, what can Christians do about sex education?
>
> First, Christians should get involved in their local schools. They can do this through the PTA. They can review the books and other materials used in sex education courses. They can try to persuade school administrators, elected school-board members, and even teachers, to maintain standards that do not violate biblical teaching. (January 30, 1970), pp. 10–13

Answer: If this is the best we can muster, in the name of Jesus Christ, against the public schools and the sex education programs, or against SIECUS itself, then we are incomparably impotent. And I use "impotent" advisedly. {138}

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To be charitable, the best you can say for these authors is that they are frighteningly naive. It is almost a studied, practiced naivete. With never a good word for anyone to the right of Sen. Hatfield, and "balancing" this by an occasional snipe at Jerry Rubin, *Christianity Today* keeps on being second-best. When you can read, in the February 13, 1970 issue that Dietrich Bonhoeffer was the founder of the idea of "religionless Christianity" (he was influential, by the way, in the advent of the now dead "Death of God" theology), and then read in the July 17, 1970, issue that "Bonhoeffer was an authentic evangelical ecumenicist, and this is why his writings have a catholic relevance," you begin to wonder what in the name of heaven is going on.

Jesus and the Tax Revolt

Rousas John Rushdoony

In Matthew 22:15–22, we read of a challenge to our Lord to give grounds to justify a tax revolt. In view of the fact that this episode is sometimes cited by contemporary tax revolt advocates, it is important to examine it closely to see what its meaning is.

We are told that its purpose was to "entangle" Jesus, i.e., to place Him in an intolerable predicament. Paying taxes to Caesar, a foreign ruler, was highly unpopular with many; to deny the validity of a tax revolt would cost Jesus, the Pharisees reasoned, popular support. The populace in disgust would regard Him as an appeaser, an ally of an unpopular and hated regime. However, to favor the tax revolt would invite reprisals against Jesus by Roman authorities. The question, then, was carefully designed to be deadly in its consequences to Jesus, and it was asked with flattering guile, asking Him to tell the truth without fear of consequences:

> Master, we know that thou art true, and teachest the way of God in truth, neither carest thou for any man; for thou regardest not the person of men. Tell us, therefore, What thinkest thou? Is it lawful to give tribute unto Caesar, or not? (Matt. 22:16–17)

Jesus, after condemning the Pharisees as *hypocrites,* went directly to the heart of the matter. To understand His answer, we must appreciate the distinction made then and now by tax revolt advocates. They were not anarchists. They were ready to pay taxes to a legitimate civil government, but not to an illegal one, i.e., one illegal in their eyes. Similarly, contemporary tax revolt advocates are able to document at length the unconstitutional aspects of the federal government of the United States and to give a lengthy analysis of legal justification for denying taxes to an unconstitutional regime.

The distinction made by the Judeans then was one which we still have with us in Latin form, common to our dictionaries now as good English. It is the distinction between a *de facto* civil government and a *de jure* one. A *de jure* civil government is one which rules rightfully and

legally, by right of law; modern Americans would say that it is a truly constitutional civil government. A *de facto* order is one which actually exists and is in command and is not necessarily or at all legal. Thus, to cite an extreme case, the communist rule over Poland is a *de facto* one, not *de jure.* Rome was an outsider in Palestine, a foreign invader and conqueror; its rule was plainly *de facto.* Although Rome was trying to give good administration and to win over the people to its rule, its rule was all the same *de facto,* not *de jure,* and there were many among the Jews who argued that taxes {140} paid to a *de facto* ruler were not legal and hence should *not* be paid. Hence the framing of the question in terms of the tax revolt theory of the day: "Is it *lawful* to give tribute unto Caesar, or not?" The argument was that it was an unlawful tax. The reasoning was identical with what we encounter today. The *de jure* argument is used, by the way, by radicals and conservatives alike. It is an easy argument. History is so rife with illegality and evil, that there is little that cannot be nullified by an appeal to a *de jure* argument. One man once argued with me that, because white Americans had no legal title to America but seized it from the Indians, the Indians should be compensated at current value for it. I pointed out, first, that the current value was a product of the white settlers' work, and, second, the Indians themselves had seized the continent and killed off entirely a previous dweller, a pygmy people. Should we out both Indian and white, and locate pygmies to compensate, or to use to resettle America? Such arguments end in absurdity, and they begin by idolizing or deifying a particular model as the *de jure* factor. I believe that I regard the U.S. Constitution with equal or more respect than the tax revolt advocates, but its framing was *de facto* act. The so-called Constitutional Convention had no authority given it to frame a constitution. Should we therefore call for its abolition until a *de jure* status can be given it?

Our Lord's answer was unequivocally grounded on the *de facto* aspect:

> Shew me the tribute money. And they brought him a penny. And he saith unto them, Whose is this image and superscription? They say unto him, Caesar's. Then saith he unto them, Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's. (Matt. 22:19–21)

Caesar was the *de facto* ruler; he provided the coinage, the military protection, the courts, the civil government, and the basic civil authority. This *de facto* status was a reality which could not be ignored. They were duty bound, not only by Caesar's demands, but by Christ's, to render to Caesar the things which by a *de facto* state belonged to Caesar. A *de jure* argument can be used to deny virtually all authority, civil, parental, religious, vocational, etc., in a fallen world. A fallen world is itself a *de facto* world, not a *de jure* world; it is the reality, but it is not a lawful reality.

Does this mean that we content ourselves with evil? Do we relax and accept all things as inevitably *de facto* in a fallen world, and therefore beyond remedy? Far from it: what our Lord ruled out was the tax *revolt,* revolution as the way, rather than regeneration. Sinful man cannot create a truly *de jure* state; he is by nature doomed to go from one *de facto* evil to another.

The key is to "render unto God the things that are God's." We render ourselves, our homes, our schools, churches, states, vocations, *all things* to God. We make Biblical law our standard, and we recognize in all things the primacy of regeneration. Only as man, by the atoning blood of Jesus Christ, is made *de jure,* made right in his relationship to God by God's law of justice, can man, guided by God's law, begin to create a *de jure* society. {141}

A tax revolt is exactly what Karl Marx in 1848 hoped it would be: a shortcut to anarchy and therefore revolution. In his articles of November 12, 1848, "We Refuse to Pay Taxes"; on November 17, 1848, "The Ministry Under Indictment"; and on November 17, 1848, "No More Taxes," he called upon Germans to break the state by refusing to pay taxes[154] While much earlier he had argued against the legality of taxation without proper representation, on December 9, 1848, he said plainly, "Our ground is not the *ground of legality;* it is the *ground of revolution.*"[155] Marx believed, as Gary North has shown in *Marx's Religion of Revolution,* in the regenerating power of chaos, anarchy, and revolution.

154. See Saul K. Padover, ed. and trans. *The Karl Marx Library,* vol. I, *On Revolution* (New York: McGraw-Hill, 1971), 452-55.

155. *Ibid.,* 456, from "The Bourgeoisie and the Counterrevolution."

Those who render unto God the things which are God's, believe rather in regeneration through Jesus Christ and the reconstruction of all things in terms of God's law. In such a perspective, a tax revolt is a futile thing, a dead end, and a departure from Biblical requirements.

3.
DEFENDERS OF THE FAITH

John Wyclif

Diana Lynn Walzel

The fourteenth century was a critical century in English history. In 1337 the One Hundred Years War with France began, a war which brought social and economic, not to mention political, difficulties on all involved, but which also helped strengthen the national consciousness of both countries. Prior to the war, French influence was still very strong among the nobility of England, but in 1362 English officially became the national language. The Black Death ravaged the country beginning in 1348 and reappearing every few decades, greatly unsettling the social order. The resulting labor shortage led to higher wages and a far more mobile labor force than was traditional. In order to try to deal with the resulting chaos in the economy, Edward III issued statutes in 1351 regulating wages and prices. Years of social and economic unrest finally led to the Peasants' Revolt of 1381, which only brought more confusion and discord upon the country. William Langland wrote a satirical allegory, *The Vision of Piers Plowman,* to point out the hard conditions of the day laborer of the period, the clerical abuses, the decadence of the courts, and the general corruption which abounded on all sides and in all areas of life. As new issues came to the fore, Langland revised his work several times between 1362 and 1393. Throughout various revisions Langland continued to look for a coming reformer who would change the world. He recognized that the solution to the many problems facing England was a good "plowman" who, following the teaching and example of Christ Himself, would produce and provide spiritual food for the people. Langland's contemporary Chaucer also wrote against the degeneracy of the day, especially pointing out the decadence of the religious orders and the misgovernment within the churches. The time was ripe for reform, and there were many reformers during this period, both in England and on the Continent. This was the period of the flowering of the German mystics; Savonarola was working in Italy for moral reformation; there were var-

ious people throughout Europe working for ecclesiastical reform and attempting to correct the growing secular tendencies of the clergy.

One man who saw beyond these surface areas of reformation to the more important doctrinal areas was John Wyclif. Two centuries later, John Foxe looked back upon this period when the Church was in darkness and ignorance, and he recognized Wyclif as a valiant champion of the truth. Foxe recognized that even when all are in despair, Almighty God continues to provide help and aid to us. John Wyclif was the Lord's help to his generation. To him Foxe {143} applied Ecclesiasticus 50:6, "Even as the morning star being in the midst of the cloud, and as the moon being full in her course, and as the bright beams of the sun; so doth he shine and glisten in the temple and Church of God." An early eighteenth-century Puritan work, following Foxe, described Wyclif as the "Morning Star of the Reformation," and so he has been known ever since.

Wyclif was born about 1330 in Yorkshire, in the northern portion of England. His father seems to have been lord of the manor of Wycliffe in Teesdale, near Richmond (a position Wyclif held in his own right at least by 1360). In 1345 Wyclif entered Oxford, and thus must have been in the town when the Black Death was at its worst in 1349 and 1353. Wyclif never made any mention of the plague in his writings, so that it is impossible to know his impressions or thoughts when faced with such widespread death. Indeed, it is impossible ever to develop fully an understanding of Wyclif as a person. His works are almost totally void of any autobiographical references or anecdotes. Wyclif, unlike Augustine, wrote no confessions that enable us to peer even partially into his inner soul.

In 1360, Wyclif was elected master or principal of Balliol college, one of the oldest colleges at Oxford and a college especially connected with the Scots and the north of England which was Wyclif's home. This election as headmaster by the students and fellows indicates the esteem in which Wyclif was held. During the next year, he acquired a living at Fillingham. Before Wyclif could fully enter into his benefice and begin his pastoral duties, he must have been ordained, probably by the archbishop of York. In the summer of 1363 Wyclif decided to obtain a dispensation of absence from Fillingham so that he could study for a degree in theology. The dispensation was granted, and Wyclif began his

studies which finally led to a doctorate in theology. In 1363 he was named prebend at Aust, in the collegiate church of Westbury. The prebends at Aust were basically sinecures and had no residential duties attached to them. Apparently for the rest of Wyclif's life he received stipends from the estate of the church of Westbury. It is a contradiction in Wyclif's life that he should have accepted benefices and prebends, besides being an absentee clergyman, when his later writings so strongly inveighed against benefices and absenteeism among the clergy. That his opponents never attacked this seeming contradiction in Wyclif's life suggests that, though absent, Wyclif did oversee and provide for the care of the souls under him, probably by hiring a vicar. Apparently it was through this desire to keep more oversight over his flock than had previously been possible that in 1368 Wyclif relinquished his living at Fillingham for a living at Ludgershall, which would be more accessible from Oxford.

In 1369 Wyclif received his Bachelor of Divinity and three years later his Doctor of Theology. This latter degree required the unanimous approval of all the doctors at Oxford before it was bestowed. From this it is certain that as late as 1372, Wyclif was not considered a holder of heretical views. For all of Wyclif's later career, it must be remembered that Wyclif was not an obscure fanatic, but a leading scholar of the most highly respected school of Europe at the time. That {144} Wyclif was not actually condemned for heresy in his own day was partially due to the high intellectual position he had established at Oxford. Even the archbishop of Canterbury, though he despised Wyclif's views and attacked his disciples, did not have the strength to attack directly such a highly respected scholar.

Only the last twelve or so years of his life brought Wyclif into prominence. In 1366 he became one of the king's chaplains. Exactly why Wyclif should enter the political arena is not known. Previously he had taken a strong position in favor of the disendowment of the English church, and apparently he saw this as an opportunity for seeing his ideas put into practice. From Archbishop Fitzralph of Armagh, a previous chancellor of Oxford University, Wyclif inherited his doctrine of lordship or dominion. In two works, *On Divine Dominion* and *On Civil Dominion,* Wyclif argued that all lordship is from God and consequently is dependent on moral principles. Property is to be held in

accordance with divine law. Taking his logic to its ultimate conclusion, Wyclif wrote that no one in mortal sin had a right to lordship and everyone in a state of grace had real lordship over the whole universe. Proprietary right was limited by proper use, so that the pope or any ecclesiastical body abusing property could be deprived of it by the state. According to God's law outlined in Scriptures, the Church is not to hold temporal power. Christ himself taught that the state or Caesar is to have dominion over temporal affairs. When wealth is accumulated and misused as it had been by the monasteries, the state, under God, has the right to take the property and redistribute it. Such wealth that had been accumulated by ecclesiastical bodies should be overtaken by the state. The point of Wyclif's mode of argument was that the New Testament purpose of the regular clergy is opposed to large accumulations of wealth. God has given the state authority and control over temporal affairs, not the Church. Wyclif's arguments were often tedious and always scholastic, but he made the important point that lordship and property must be exercised under God and according to His designs. It is interesting to note that when reform did finally come in the English Church, it began in a way similar to that outlined by Wyclif—with the state disendowing the Church.

Because of Wyclif's emphasis on the role of the state in overseeing the Church's proper use of its goods and property, the Crown naturally found Wyclif's arguments useful. In a very patriotic vein, Wyclif argued against clerical possessions in perpetuity. In times of national emergency, it is the government's duty to seize the endowments of the Church, because this would further God's kingdom on earth. Why should the nation be burdened by further taxation when the state could properly use the riches of the Church? The Parliament of 1371, with its lay demands for the submission of the clergy and their exclusion from governmental office, was in the same spirit as Wyclif's writings on disendowment. {145}

A struggle was brewing concerning state versus papal control over Church affairs. The clergy had been taxed by both King and Pope. The King's control was greatest, however, and often the Pope was quite lax in his collections. When the Pope in 1372 tried to enforce his tax on the English clergy, the clergy protested, and the royal government supported them. Edward III forbad papal levies and complained of papal

jurisdiction. The problem continued to smolder. In 1374 Wyclif was appointed a member of the commissioners sent to Bruges to negotiate with the paper envoys the various problems of papal and royal jurisdictions. Even as a commissioner, Wyclif was apparently unwilling to become a full servant of the Crown. He was not reappointed as commissioner the following year, though his colleagues were. The absence of Wyclif from the group of commissioners who finally concluded negotiations on the settlement was probably due to his unwillingness to yield to the compromise deal between the King and the Pope. The final settlement was very favorable to the Pope, and the clergymen who were the chief *royal* commissioners were advanced by the *Pope* for their services! Wyclif's uncompromising spirit made him unsuitable for such work.

For several years after Bruges, Wyclif worked in cooperation with John of Gaunt, Duke of Lancaster. That Wyclif should work for John of Gaunt can in part be explained by the fact that Lancaster was Wyclif's overlord, and Wyclif owed him feudal obedience. Though the two men did not share the same theological outlook, there were two teachings of Wyclif's that Lancaster and his followers found useful. Wyclif was against the employment of the clergy in secular business and favored the King taking back the endowments of the Church which the Church habitually abused. Wyclif was later able to profit by John of Gaunt's protection, but he never compromised his views to maintain the good favor of Lancaster.

Though Wyclif had not as yet made any frontal attack on the doctrine of the Church, in 1337 William Courtenay, then bishop of London, summoned Wyclif to appear before him at St. Paul's to answer charges about his teaching. John of Gaunt recognized this as an attack on himself through Wyclif. Besides supplying four theological doctors from the four mendicant orders to defend Wyclif, John of Gaunt went in person to overawe the bishop and the clergy in the assembly. A quarrel between Bishop Courtenay and Lancaster led to a general riot which forced the proceedings to be suspended.

Evidently in 1373 or earlier, Pope Gregory XI had promised Wyclif a prebend at the Church of Lincoln, but in 1377 he gave the prebend to someone else. Because of Wyclif's position at Bruges and his quarrel with the Church in some of his writings, Gregory did not see fit to ful-

fill his promise. To the contrary, in May of 1377, Gregory sent bulls to the archbishop of Canterbury, the bishop of London, the university of Oxford, and Edward III condemning nineteen sentences in Wyclif's writings as dangerous and erroneous to Church and state. Significantly, all of Wyclif's views attacked had to do with ecclesiastical {146} organization and policy rather than theology.

The court, the clergy, and Oxford were all interested in maintaining independence from papal authority. Each, for reasons of its own, failed to take action against Wyclif. Gregory's bulls were not simply attacks upon Wyclif; they were attempts to establish the papal inquisition in England. According to English law, the bishops had jurisdiction in all charges of heresy. Gregory hoped to transfer that jurisdiction to himself and to try Wyclif in Rome. Early in 1378 Wyclif did appear at Lambeth Palace to explain his views to the archbishop and the prelates. Once again Wyclif's hearing was interrupted. Not only did citizens disrupt the meeting by breaking into the hall, but a message from the widow of the Black Prince, the mother of Richard II, urged them not to bring judgment against Wyclif. Wyclif was at the peak of his influence in governmental circles and of his popularity among the people. Most of his published statements up to this point had been defending the English Church against papal control.

After 1378, Wyclif almost totally withdrew from political questions and began increasingly to attack the theological structure of the Church. It is this area of Wyclif's work, in the last few years of his life, that gives him the reputation as the forerunner of the Reformation. Contemporaries of Wyclif, such as Langland and Chaucer, saw similar complaints within the Church. Wyclif, however, went deeper in his criticisms to the fundamental principles of the Church's very existence and urged a total reformation of the Christian objectives and life. At least as early as 1377, Wyclif had been organizing his poor preachers, sending them forth to teach the people the basic truths of Christianity. Wyclif recognized the corruption in the monasteries, the degeneracy of the mendicant friars, and the temporal preoccupation of the prelates. In his move to return to the strength of the primitive Church, Wyclif did not set up a new order of monks as previous medieval reformers had done. Rather, he sought to strengthen the teaching and moral character of the parish priests. Wyclif's Christianity was more Scriptural

than Sacramental, and he saw the role of the parish priest as primarily teaching the Scriptures to his flock. The sermons of the friars, who had been traveling throughout England since the early 1300s, consisted mostly of legends and tales of saints. Wyclif showed his true reforming spirit and his opposition to the contemporary medieval tradition in his strong emphasis on Scriptural exegesis in his sermons. Wyclif thought the pastoral office the highest one ordained by God, and he saw no need for the additional offices and orders which had grown up within the Church.

Though many of Wyclif's works are difficult to understand today because of their scholastic style, his work "On the Office of Pastor" still can be profitably read. The two qualities Wyclif thought most necessary in a spiritual shepherd were "hoolynesse of life & hoolsumnesse of his lore," or a holy life and sound teaching. Pastors should not have benefices, i.e., receive their living from the Church, but should live on the alms of their flock. Their manner of life should not be ostentatious, but should follow the simplicity of Christ. When the teaching is good, the flock will be motivated to support the shepherd of its own {147} will, but when the priest is wicked, it is lawful for the people to withhold their alms from him. The good shepherd should live near his sheep, so that by both words and his manner of life he can show the flock the worthy road to heaven. Those shepherds who absent themselves from their flocks should no longer receive payment.

Wyclif outlined three main duties for the pastor. *First,* he must preach the gospel. God's Word, properly understood, is always true and superior to all the authorities of men. The friars and others opposed Wyclif's emphasis on the Scriptures and his desire to teach them to the people in English. Wyclif argued that it was not a heresy to translate the Bible, since St. Jerome had translated the Bible into Latin. The friars themselves taught the Lord's Prayer in English; why couldn't the people have all of Matthew's gospel? The French had a translation which was read by the nobles in England; why should the English people be deprived? The Apostles at Pentecost had the gift of tongues whereby they could make known the gospel in many languages. What was wrong with the gospel being made known in English? Wyclif firmly held that declaring God's Word was the most worthy deed the priests could do. Christ in his own ministry spent most of his time preaching,

and the pastors should follow Christ in this. Standing contrary to the entire religious establishment of his day, Wyclif taught that preaching is more important than administering the sacraments, since it is by preaching the Word of God that Christ's Body is truly built up. *Second,* besides preaching God's law, the pastor also has the duty of keeping his sheep from wolves, whom Wyclif primarily interpreted as the friars. Such wolves come to rob the sheep of their wool or production as well as to do the sheep themselves harm. The shepherd should warn his flock of the wolves and encourage the sheep to avoid the wolves when they attempt to enter the fold. *Third,* the shepherd should "greese" or anoint the scabbed sheep, giving them the medicine of God's law whereby they can be made whole. In sending out his poor preachers into the countryside, Wyclif was not operating on any emotional appeal to save lost souls. His simple promise was that right thinking leads to right living. By teaching the truth to the people, their lives would naturally become more Christian, such as characterized in the epistle of James (Wyclif and his followers, contrary to Luther, highly regarded this practical epistle). Wyclif's method of sending out preachers to teach the people God's law was very similar to the program of John Wesley centuries later. Both reformers recognized that only by the mass of the people of England receiving instruction in the truths of God could a true reformation take place, resulting in a regeneration of English life in all areas.

In his earlier career Wyclif had had occasion to question the moral life and spiritual discernment of various popes, but he never had attacked the institution of the papacy. With the Great Schism, Wyclif became increasingly critical of the papacy. He wrote that the debacle of the Great Schism, when there were two popes vying for power, was really the Lord's gracious means of fully exposing the Antichrist. When Urban VI first attained the papacy, Wyclif was in hopes {148} that the papacy was to be reformed. He was soon disillusioned. The excesses of Urban VI, the struggle of pope and antipope, and the archbishop of Canterbury's crusade against Urban's opponents goaded Wyclif into a fierce attack on the papacy and the entire concept of the medieval Church. In his earlier work, *On Civil Lordship,* Wyclif had defined the Church as the whole body of the predestined—past, present, and future—whose head is Christ. Since not all popes or priests were elect,

not all were truly members of the Church. The Church does not need the papacy. Any primacy the bishop of Rome has is due to spiritual character. The idea that the bishop of Rome is St. Peter's successor is an idea of merely human origin. Wyclif's attack on the pope was violent, and some of his descriptions of that bishop include: the apostate from the rule of Christ, limb of Lucifer, leader of the army of the devil, head vicar of the fiend, simple idiot who might be a damned devil in hell, and more frequently simply the antichrist.

Wyclif had been condemned by the pope and had been brought before the hierarchy of the Church. Most people assumed the hierarchy was the Church, but Wyclif attacked this idea. In 1378, the year of Gregory XI's death, he wrote *De Ecclesia,* in which he delineated his views on the nature of the Church. During the middle ages, the importance of the organized Church and the sacraments was emphasized more than predestination and the election of individuals. Thomas Bradwardine, archbishop of Canterbury who died in the Black Death in 1349, had begun the attempt to revive the concept of individual predestination. Wyclif came under Bradwardine's influence. Defining the Church in terms of divine election, Wyclif provided the option of individual salvation of the elect apart from the authority, sacerdotalism, and organization of the medieval Church. No longer was salvation dependent on the connection with the visible Church. Involved was the universal priesthood of the elect. The simple Christian layman can have access face to face with God no less than the cleric. Not only did Wyclif attack the concept of the institutionalized Church of his day; he also emphasized that the Church needed a renewed emphasis on the kind of spiritual life Christ outlined in the Bible. The primitive, apostolic Church was held up as a model for the Church in his own day. As we shall see shortly, after his death, many of Wyclif's writings found their way to Bohemia. When John Hus brought out his own *De Ecclesia* in 1413, it was simply an abridgment of Wyclif's work on the subject. It was chiefly for this work that Hus was condemned at Constance and executed.

In 1381 England suffered from the Peasants' Revolt led by Wat Tyler and John Ball, among others. John Ball claimed to have sympathies with the teachings of the poor priests, and several writers accused Wyclif's poor priests of being responsible for stirring the people up to revolt

against their lords. No legal accusations were ever brought against any of the poor priests, however, and Wyclif soon brought out a tract outlining the Biblical duty of servants to their masters. Admitting that the devil moved some men to teach that Christian men shall not be servants to heathen lords, since they are false to God, or to Christian {149} lords, since they are their brothers and equals, Wyclif showed from Scriptures that the Christian servant is especially to have a pleasing attitude to his master. Wyclif showed from Scripture, both in the Old Testament and the New Testament, what the proper relationship between the servant and the lord should be, while also recognizing that the lords do often wrong poor servants. Even though Wyclif had neither encouraged nor approved the Peasants' Revolt, his influence suffered from it. Parliament and the leaders were no longer willing to listen to any attacks on property, even ecclesiastical property, such as Wyclif or John of Gaunt's party had previously made.

Wyclif was arousing increasing controversy over his doctrinal teachings, however. In 1379 he made his first attack at Oxford against the current theology of the Eucharist. Since 1215 and the Fourth Latern Council, transubstantiation had been a dogma of the Church. According to this doctrine, the bread and wine became, through the ceremony of the Mass, the literal body and blood of Christ. Though the *accidents* of bread and wine remained (it still looked, smelled, and tasted like bread and wine), the *substance* was no longer literal bread and wine. Wyclif was opposed to the idolatry which was encouraged by the practices of the Mass and the importance placed on the priest "making" Christ's Body. In his arguments against transubstantiation, Wyclif showed the recent origin of the doctrine and appealed back to the Bible and the Church Fathers. As late as the eleventh century, no dogma of transubstantiation was known. Wyclif argued that for the first one thousand years of the Church, Satan had been bound, but now he is loose and spreading his pernicious doctrines through the Pope as the antichrist. Transubstantiation is one of his false doctrines.

Wyclif attacked the very metaphysical base of this doctrine. Throughout his career, Wyclif had attacked the Nominalists, those who believed that there are no ideals or universals in back of things, as threatening Christian principles. Wyclif himself was a moderate Realist who had a fundamental belief in the final existence of universals. For

him it was impossible for accidents to exist without substance. That the accidents of bread and wine should remain while the substance was changed into Christ's body and blood was contrary to all sense, had no substantiation in Scripture, and was simply the fantasy and dreams of new heretics. Wyclif himself held that the spiritual presence of Christ was present as in a symbol, along with the bread and wine. Though not always clear, he seems to have held to a doctrine of consubstantiation very similar to that later defined by Luther. Wyclif concluded his treatise on the eucharist with the assertion that the truth of reason would prevail over all things. Wyclif's teaching on the eucharist shocked his contemporaries more than any of his other teachings. John of Gaunt repudiated it and sought to get Wyclif to remain silent. Wyclif refused.

In May of 1382, Archbishop Courtenay of Canterbury summoned to Blackfriars convent in London a Council of the province of Canterbury to consider Wyclif's opinions for judgment. Especially under consideration were his teachings on consubstantiation; that Christ did not ordain the ceremonies of the {150} Mass; that if a man is contrite, all exterior confession is superfluous and useless; that after Urban VI no one should be accepted as Pope and England should live under her own laws; that regular orders (friars) are useless; and that the clergy should not have secular possessions or landed wealth. On May 19 these theses were all pronounced to be heresies and errors. At 2 P.M. there was suddenly a great earthquake which shook the entire house. Everyone was terrified, and the earthquake took some of the impact out of the condemnation. Wyclif, who had never been summoned during the entire proceedings, did not fail to point out the moral of the earthquake. Blackfriars Synod continued to meet to deal with Wyclif's followers. Oxford was enjoined to condemn Wyclif's doctrines, and the Crown brought pressure to ensure that the ecclesiastical decrees were followed. Wyclif was forbidden from teaching at Oxford and retired to his pastoral living at Lutterworth, which he had first obtained in 1376.

Wyclif never lamented the loss of Oxford to his teaching, but continued to write at Lutterworth. Wyclif was beginning to have a certain disdain for a university education, writing that, "An unlearned man with God's grace does more for the Church than many graduates." This growing detachment from the speculations of the university enabled Wyclif to appeal more successfully to the English people on the basis of

the common sense of Scripture rather than on the basis of scholastic disputations. Wyclif's followers at Oxford were thrust out to become Lollard missionaries. (Wyclif's followers were called Lollards. The exact derivation of the term is questionable, but it seems to have been a term applied to several heretical groups before being specifically applied to Wyclif's followers). On the negative side, the close of Oxford to Lollardy meant that the next generations were denied an educated leadership. The Lollards of the next centuries, until the advent of Lutheranism, had a minimum amount of education, but they still cherished those of Wyclif's tracts that had managed to survive, as well as the Lollard Bible.

The systematic work of translating the Bible into English began in the last years of Wyclif's life. The work was primarily done by Wyclif's associates and not by Wyclif himself, though Wyclif of course provided the inspiration. Nicholas Hereford translated a very accurate version from the Vulgate. The original manuscript of this version is still preserved in the Bodleian Library at Oxford. Though accurate, this version could not have been used by the English people as Wyclif had hoped. John Purvey, Wyclif's secretary at Lutterworth, began a major revision during Wyclif's lifetime, rendering Hereford's translation into more idiomatic English. This was completed about 1395 and came to be known as the Lollard Bible. Though legislation against the Bible in English continued into the fifteenth century, over one hundred manuscripts of the Lollard Bible are known. This first translation of the entire Bible into English influenced William Tyndale (the sixteenth century English Reformer who translated the New Testament and parts of the Old into the vernacular. His efforts were condemned, and he was burnt as a heretic), and its influence is with us to this day—as anyone who is able to compare a Lollard Bible with the King James translation will readily acknowledge. {151}

Wyclif had a stroke in 1382 which left him partially paralyzed but did not prevent him from continuing to write tracts and sermons. Increasingly, he inveighed against the sacramentalism of the medieval church and the mere forms of religiousness such as pilgrimages, the consecration of buildings, and the worship of the saints. In 1384, while attending church, Wyclif had a second stroke which led to his death a few days later. Though buried in Lutterworth, Wyclif's bones were not

to rest in peace. In 1413 the Council of Constance was called to end the Papal Schism. Before also taking upon itself to condemn John Hus and send him to his death, the council in forty-five articles condemned Wyclif's teachings and ordered his bones to be disinterred. The order was finally carried out in the spring of 1428. Wyclif's remains were burnt to ashes and cast in the River Swift running through Lutterworth. Thomas Fuller could not help but editorialize that, "Thus this brook hath conveyed his ashes into Avon, Avon into Severn, Severn into the narrow seas, they into the main ocean. And thus the ashes of Wyclif are the emblem of his doctrine, which now is all the world over."

John Wyclif had anticipated almost every doctrinal area of reform touched upon by the later Reformers. His concept of predestination, his exaltation of the Scriptures and of preaching, his condemnation of transubstantiation and the sacerdotalism of the Church, and his denial of papal infallibility all were key points in the later Reformation. Possibly only justification by faith was not proclaimed so clearly as it was to be done by Luther. Why didn't Wyclif then bring the Reformation to England in the fourteenth century? When John Milton looked back upon Wyclif's day, he considered it a particular sign of Heaven's favor that Wyclif had lived among the English people, but he recognized that Wyclif's rejection by the English did not speak to the glory of that race:

> …the favor and the love of Heaven, we have great argument to think in a peculiar manner propitious and propending towards us. Why else was this nation chosen before any other that out of her as out of Sion should be proclaimed and sounded forth the first tidings and trumpet of reformation to all Europe? And had it not been the obstinate perverseness of our prelates against the divine and admirable spirit of Wycliffe to suppress him as a schismatic and innovator, perhaps neither the Bohemian Huss and Jerome, no, nor the name of Luther, or of Calvin, had been ever known; the glory of reforming all our neighbors had been completely ours (*Areopagetica* ii. 91).

Wyclif's works were repeatedly burned in England, so that his influence did not continue strongly down to the Reformation. Small Lollard groups continued to assemble to read what tracts of Wyclif's they were able to preserve and to study the Lollard Bible. Wyclif's influence was more strongly felt on the Continent, however. A 1572 Bohemian psalter has a picture of Wyclif striking the spark, Hus kindling the coals, and Luther brandishing the lighted torch. This well portrays

Wyclif's influence. In the fourteenth century, there were numerous links between the Universities of Oxford and Prague. Richard II even married Anne, sister of Wenzel of Bohemia. Peter Payne, principal of St. Edmund's {152} College, Oxford, and a follower of Wyclif, took refuge in flight when the persecutions came. He became a leader of the Hussites in Bohemia. Almost all of Hus's works were merely repetitions or paraphrases of Wyclif's writings. Even today, Vienna and Prague have the largest manuscript collections of Wyclif's writings, and it was the German scholars who provided the impetus for the foundation of the Wyclif Society in 1882 to publish Wyclif's works.

In time, England did come to appreciate her great reformer. For two centuries after his death, it was the official policy to persecute the Lollards. Civil authorities had to take an oath to extirpate "all manner of heresies, errors and lollardies." This continued until Sir Edward Coke, Lord High Sheriff of Buckinghamshire, refused to take the oath, since the Church of England had adopted the principles of Lollardy! In 1608 James I similarly stated that Wyclif conformed to the new Church of England. The assessment of the martyrologist John Foxe perhaps best describes Wyclif's continuing influence:

> …as there is no counsel against the Lord, so there is no keeping down of verity, but it will spring up and come out of dust and ashes, as appeared right well in this man; for though they digged up his body, burnt his bones, and drowned his ashes, yet the word of God and the truth of his doctrine, with the fruit and success thereof, they could not burn; which yet to this day, for the most part of his articles, doth remain.[156] {153 }

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4.
BOOK REVIEWS

Book Reviews

The Price of Perfect Justice, by Macklin Fleming.

Basic Books, 1974. 196 pp., $10.95.

Reviewed by Gary North

Basic Books, book for book, produces the most interesting, stimulating, relevant, and intelligently written titles found in *Books in Print.* Macklin Fleming's contribution, however, is more than interesting reading: it is one of the most important books published in recent years, in terms of its content, and if there is any justice left in American intellectual circles—a doubtful proposition—it ought to become a reference book. It should be on the shelf with Helmut Schoeck's *Envy,* Edward Banfield's *Unheavenly City,* and Robert Nisbet's *Quest for Community.*

Fleming, a justice of the Court of Appeal of California, has written perhaps the most effective critique of the Warren Court that is presently available. He does not use the phrase "Warren Court," but his constant references to the "last two decades" of Supreme Court decisions leaves no doubt in the reader's mind concerning the source of our legal difficulties. What has happened, says Fleming, is that the proliferation of technical law—legal formalism run wild—has begun to destroy the very goal of all formal law: legal predictability. Furthermore, by slowing down and even eliminating sanctions against criminal behavior, the courts have removed a fundamental element of any legal system. Fleming minces no words:

> This book argues that, in our perpetual adjustment and tinkering with the Goddess's scales in order to strike a perfect balance, we have allowed her sword to rust and her right arm to atrophy; that, as a consequence of this neglect of the compulsive element, the legal system as a whole has been thrown out of kilter and into disarray. In criminal law judges and legislators are hard put to devise suitable sanctions: capital punishment is attacked as cruel and unusual, hard labor is proscribed as involuntary servitude, confinement with loss of privileges is challenged as an infringement of personal right, and money fines are suspect as a denial of equality under the law. Moreover the sanctions

> that are adopted may never be put into execution because the judicial process finds itself incapable, more or less, of reaching final judgment in its endless preoccupation with minute adjustments of the scales and new combinations of weights in the balance pans. (vii)

Modern American courts have become impotent in applying the law to particular cases, yet at the same time they have become proficient in creating wholly new general laws by means of judicial decree. Judicial avant-gardism, though a minority preoccupation within the legal profession, has nevertheless disrupted the predictability of law. Fleming offers the following explanation for the plight we are in:

> The fuel that powers the modern theoretical legal engine is the ideal of perfectibility—the concept that with the expenditure of sufficient time, patience, energy, and money it is possible eventually to achieve perfect justice in all legal process. For the past twenty years this ideal has dominated legal thought, and the ideal has been widely translated into legal action. Yet a look at almost any specific area of the judicial process will disclose that the noble ideal has consistently spawned results that can only be described as pandemoniac. For example, in criminal prosecutions we find as long as five months {155} spent in the selection of a jury; the same murder charge tried five different times; the same issues of search and seizure reviewed over and over again, conceivably as many as twenty-six different times; prosecutions pending a decade or more; accusations routinely sidestepped by an accused who makes the legal machinery the target instead of his own conduct. (3)

Why have our courts failed? Fleming cites Macauley's rule: the government that attempts more than it ought ends up doing less than it should. Human law has its limits. "The law cannot be both infinitely just and infinitely merciful; nor can it achieve both perfect form and perfect substance. These limitations were well understood in the past. But today's dominant legal theorists, impatient with selective goals, with limited objectives, and with human fallibility, have embarked on a quest for perfection in all aspects of the social order, and, in particular, perfection in legal procedure" (4). When today's legal perfectionists are unable to persuade a majority of fellow citizens of the validity of this or that goal, they can paralyze traffic by an appeal to a higher court. The claim is usually imperfect procedure. All they need to do is to convince five men on the Supreme Court (158).

> Once in control of a system or function by means of the device of legal procedure, they can then direct the course of subsequent events by imposing impossible procedural demands, in much the same fashion that the king in *Rumpelstiltskin* directed the miller's daughter to spin straw into gold. Since the accordeonlike nature of legal procedure can be expanded to cover practically any matter of substance, the perfectionists have acquired a powerful weapon to shape policy and effect change in society along lines of their desire. (4)

The requirements of legal perfection involve the following hypothetical conditions: totally impartial and competent tribunals, unlimited time for the defense, total factuality, total familiarity with the law, the abolition of procedural error, and the denial of the use of disreputable informants, despite the fact, as Fleming notes, that "the strongest protection against organized thievery lies in the fact that thieves sell each other out" (5). Costless justice has used the slogan, "Better to free a hundred guilty men than to convict a single innocent man." But what of the costs to the future victims of the hundred guilty men? The legal perfectionists refuse to count the full costs of their hypothetical universe (6).

The goal of correct procedure is eroding both the concept of moral justice and the crucially important deterrent, a speedy punishment. Everything is to be sacrificed on the altar of technical precision. "In this way the ideal of justice is transformed into an ideal of correct procedure" (9). But that ideal is impossible to achieve, and by sacrificing all other goals, the cost has become astronomical. The incredible complexity of perfect procedures has led to a revival of judge-made law—judicial arbitrariness—for judges have been able to pick and choose from the morass of conflicting decisions. Almost total legislative power has therefore been transferred to the courts. And, as Fleming argues, the courts are not efficient in creating law. They have no staffs, little time, too many cases, and too theoretical a knowledge of law. "Partisans are quick to furnish whatever literature will promote their cause, and a cottage industry has grown up in the preparation of the sociological brief...." (120).

The use of the Fifth and Fourteenth amendments—the due process clause—has led to the destruction of the remaining sovereignty of state courts. Federal courts, since 1953, have become the true interpreters of the U. S. Constitution, despite the fact that Congress, in setting up

lower federal courts in 1789, did not give them the right to review state court decisions. Only the Supreme Court had {156} that right (22–23). Now, however, two separate courts of appeal exist as escape hatches for the convicted criminal. Back and forth the accused can appeal, before and after the trial. The lower federal judge *must* interfere and hold an evidentiary hearing if he believes the state court has not provided, in Chief Justice Warren's words, "a full hearing [which] reliably found the relevant facts" (25). Three fine weasel words, says Fleming, perfectly calculated to permit total *subjectivism* on the part of the lower federal court judge, but all in the name of legal formalism.

The whole system procrastinates: judges, defense lawyers, prosecutors, appeals courts, even the stenographic corps (71). Speedy justice is no longer a reality. Prisoners appeal constantly to federal courts on the basis of *habeas corpus*—illegal detention because of an unconstitutional act on the part of someone, anyone. In 1940, eighty-nine prisoners in state courts made such an appeal. In 1970 the figure was 12,000 (27). Thus, concludes Fleming, "The consequence of this expansion of federal power over state criminal procedure through the creation of fiat prohibitions and rigidly ritualistic rules has been to elevate formalism to constitutional right, to complicate every significant phase of criminal procedure to the point where in some instances the system of criminal law has difficulty functioning and in others it turns loose persons who are patently guilty" (97).

Formal, predictable, and preferably written law is at the heart of the free market economic system. Max Weber and F. A. Hayek devoted many years and many pages in the defense of this proposition. Yet in the name of legal formalism, the written law, especially the Constitution, is being eroded by an increasing ambiguity (115). Fleming cites one of Hugo Black's dissents which warned that "diluting or expanding a constitutionally guaranteed right is to substitute for the crucial word or words of a constitutional guarantee another word or words, more or less flexible and more or less restricted in meaning" (115). Fleming continues, "Through the use of this device broad, abstract, ambiguous concepts are substituted for specific provisions of the written constitution, and the latter's terms may thereby be expanded or contracted at the pleasure of the judges to achieve a predetermined result." He offers the example of *Shapiro v. Thompson* (1969), in which the Supreme

Court nullified residence requirements for welfare recipients on the ground that such requirements infringed on an inherent constitutional right to travel. A new element of instability has therefore entered our legal system (160).

The book goes into detail concerning the various ploys used by defense attorneys and the accused to evade a conviction. In addition to multiple appeals up two separate court systems, there are such ingenious devices as *sidetracking* (creating a spurious side issue, thereby bringing consideration of the main crime to a halt), and *mainlining* (a deliberate stall on the main issue). Sidetracking is by far the more interesting. It involves attacks on the whole system. Attack the trial jury panel for discrimination. This involves finding a minority membership of some kind, and then claiming that this minority is not represented on the jury (sex, race, economic class). Attack the judge, the defense counsel, the steps in the law-enforcement machinery, the constitutionality of the law, the unfavorable pretrial publicity, or call for a change of venue (new location for the trial). Fleming does not mention it, but Charles Manson used many of these sidetracking operations most skillfully. So, for that matter, did Richard Nixon.

Every system of law needs a final authority. Ours is the Supreme Court. "Our first step, then, is to recognize the existence in the Supreme Court of absolute power in oligarchical corporate form, power the court exercises without any {157} effective restraint" (161). We have created a system of elitism. Elitism is a delusion of appellate judges, he says, but it is checked by the Supreme Court. But no body lies beyond the Supreme Court. "For all practical purposes that court can issue a ruling on any legal or political question that strikes its fancy, and in so doing it becomes answerable to no one and is subject to no review" (155). The absolute power of the Court is exercised by five men on the Court, "and is neither limited by precedent nor circumscribed by any requirement that the judgments of the court be accompanied by reasoned opinions" (155). He cites Chief Justice Charles Evans Hughes: "We are under a Constitution, but the Constitution is what the judges say it is...." (Fleming accepts this statement, but what if it were a quotation from James I claiming that he was under God, but only God had the right to tell him he was wrong?) Chief Justice Harlan Stone said, "the only check upon our own exercise of power is our own sense of

self-restraint ..." (156). (They did not make these statements as Chief Justices, however.) Fleming's book is a legal brief showing how weak a reed judicial self-restraint has become. "Unfortunately, judicial restraint tends to be a counsel of perfection, to which an individual justice pays tribute only when he finds himself in the minority on a particular issue" (160). Judicial self-restraint is "a rope of sand" (160).

> A court which declares that it is bound neither by custom, nor precedent, nor statute, nor the specific language of the Constitution itself, is a court that has asserted its right to disregard the law. A court free to disregard the law is an instrument of absolute power, and, to the extent a court uses that power to transform its personal views into law, to that extent does it become a lawless court. Lord Acton's maxim that all power tends to corrupt and absolute power corrupts absolutely is one that has particular application to the Supreme Court. (161)

These are stirring words. Fleming's language gives evidence that in his mind is a conception of law that is permanent rather than the positive creation of fiat pronouncements of five (or more) Supreme Court justices. But where do we find these principles? He does not say. How do we enforce them? He does not say. What does he recommend to call a halt to elitism, absolutism, and Supreme Court oligarchy? A fixed term of sixteen years for the Supreme Court justices. Nothing more? No.

Willmore Kendall once mentioned in a lecture that James Madison had wanted to insert a clause in the Constitution that would have permitted the Congress, by a three-quarter majority in both houses, plus the President, to overturn a Supreme Court decision. That is far closer to the limited government doctrines of the Founding Fathers. They wanted to divide sovereignty, making sure that no single branch of government would ever achieve anything approaching total sovereignty. Until we return to Madison's solution, or something analogous, we will live under a legal system guaranteed to lead either to anarchy or to totalitarianism. We now know what the Court has done with its assertion of final sovereignty; they had not seen it in 1789.

In the words of Irving Kristol, "I don't want to say that everything is hopeless, since for all I know, it may be." As far as late-twentieth-century American jurisprudence is concerned, we are facing a major crisis. The more conservative Supreme Court is scheduled to consider *habeus corpus* this session, and possibly limits will be placed upon the extent of

the interference by federal lower courts into state court affairs. Furthermore, the advent of conservative public interest law foundations, most notably California's Pacific Legal Foundation, may paralyze the various state and federal bureaucracies by using the existing complexities {158} of legal formalism against the government itself. This, however, is no substitute for the reconstruction of secular law. At best, it is a holding action, and it will not survive the collapse of the courts, as political power becomes even more lawless.

The tension between substantive law and formal law, i.e., between ethics and predictable judgment, is always present in any legal system. It is the conflict between the spirit of the law and the letter of the law. Christians know that there is perfection in each form of law, but only on the Day of Judgment. We need not wring our hands in despair because men's courts, in time and on earth, fail to meet the standards of perfection in God's court. We shall not be saved either by the perfect spirit of the law, the perfect letter of the law, or imperfect imitations thereof. But we can strive to conform our legal codes to the case-law applications of the Ten Commandments that we find in the Bible. The answer to our legal crisis is to be found neither in the formal reasoning of autonomous man nor his substantive logic. Our errors should be made within the framework of God's law-order. If this were our framework, our errors would not be so devastating socially.

Christians can hardly point the finger at the Supreme Court. When it comes to the quest for perfection, for precise judgments, for exact conformity to Roberts Rules of Order, to arbitrary decisions (or, more often in conservative church circles, failure to make a decision), to overburdened courts, and to almost total paralysis, nothing matches modern denominational courts. The conservative churches are paralyzed, and the liberal churches are arbitrary and lawless. They have not taken seriously Jethro's warning to his son-in-law, Moses, when Moses insisted on handling every case himself, in order to bring each dispute before God. Jethro warned, "Thou wilt surely wear away, both thou, and this people that is with thee: for this thing is too heavy for thee; thou art not able to perform it thyself alone" (Ex. 18:18). If Fleming thinks the secular courts are slow, he ought to study some of the pending decisions—pending ten to fifteen years—in the Orthodox Presby-

terian Church. Fortunately, he has plenty of time to take a look at them. Fortunately for him, that is. Not for speedy justice.

> For the existence of a monumental shadow of failure the courts have a number of excuses pointing the finger of responsibility in other directions and absolving themselves from a share of the responsibility for the present disorder. Yet the shadow adheres to the courts, for it is the price of perfect justice. (170)

***Thinking About Crime,* by James Q. Wilson.**

Basic Books, 1975. 231 pp., $10.

Reviewed by Gary North

James Q. Wilson—for years many have wondered what the "Q" might stand for—is a professor of government at Harvard University. He is, understandably, concerned about crime. (What the Harvard students did to harass his former colleague, Edward Banfield, out of Harvard was nothing short of criminal.) Wilson's latest book is a literate, cautious examination of crime in America, but more important, it is a critique of what American Liberals have written about crime in America. Chapters of the book appeared previously in *The Public Interest, Commentary, Atlantic,* and *The New York Times Magazine.* Wilson is a card-carrying {159} member of the so-called *Public Interest-Commentary* crowd, which is made up primarily of disaffected ex-Liberals who are pragmatic enough to grasp the fact that the New Deal remedies no longer work. Some of them might even admit, in a moment of weakness, that those policies never really did work, or did not work so well as other policies might have. Wilson, Banfield, Irving Kristol, Daniel Bell, Robert Nisbet, Peter Drucker, and numerous others have steadily chipped away at the myths of pre-1965 social science for a decade, and *Thinking About Crime* is as good a book as any to introduce readers to the ways in which these men think about society.

Wilson's book deals with crime: who commits it, who punishes it, and who has tended to ignore it or explain it away for the sake of ideology? The answers: young men, practically nobody, and pre-1969 American Liberals. Not that crime is strictly an American phenome-

non. Wilson quite properly states that it is worldwide, increasing steadily on both sides of the Iron Curtain (xiii). The obvious question to ask is simple: what has caused this increase? That is the one question Wilson tries to avoid, since it is his contention that the idea of the "root cause" of criminal behavior is mythical. Even if such a root cause did exist, he argues, there is very little in the way of effective social policy that the civil government could devise to reduce crime (xv). He does admit, reluctantly, that the breakdown of the family is closely intertwined with the rise in crime:

> My strong inclination is to resist explanations for rising crime that are based on the alleged moral breakdown of society, the community, or the family. I resist in part because most of the families and communities I know have not broken down, and in part because, had they broken down, I cannot imagine any collective action we could take consistent with our civil liberties that would restore a moral consensus, and yet the facts are hard to ignore. Take the family: Over one-third of all black children and one in fourteen of all white children live in single-parent families. Over two million children live in single-parent (usually father-absent) households, almost *double* the number of ten years ago. In 1950, 18 per cent of black families were female-headed; in 1969 the proportion had risen to 27 per cent; by 1973 it exceeded 35 per cent. (206)

Wilson does not stress the implications of the magnitude of the change in these statistics, but any time a statistic dealing with social or family structure rises (or falls) by 30% in *four years* (35 – 27 = 8 ÷ 27 = 29.6% increase), you have a social revolution in the making. Wilson continues:

> Studies done in the late 1950s and the early 1960s showed that children from broken homes were more likely than others to become delinquent. In New York State, 58 per cent of the variation in pupil achievement in three hundred schools could be predicted by but three variables—broken homes, overcrowded housing, and parental educational level. Family disorganization, writes Urie Bronfrenbrenner, has been shown in thousands of studies to be an "omnipresent overriding factor" in behavior disorders and social pathology. And that disorganization is increasing. (206)

Families *must* teach morality to their children. It is not enough, he says, that they teach of the dangers of getting caught and punished by legal authorities, but they must teach that crime is morally wrong

(204). But what kind of religious foundation is to be used in order to judge right from wrong? He does not say. There is no discussion of religion in the book. Wilson is basically a pragmatist. He is concerned, he tells us again and again, about *workable* solutions—precisely what social scientists have avoided studying for too long. On the one hand, he argues that where an appropriate technology exists and the self-interest {160} of men can be linked to that technology, "there are virtually no limits to what men in organizations can achieve" (xvi). Yet he also claims that he has very limited goals: "I argue for a sober view of man and his institutions that would permit reasonable things to be accomplished, foolish things abandoned, and utopian things forgotten. A sober view requires a modest definition of progress" (198–99). This could almost be a creedal formulation for the *Public Interest* crowd. Marginal, reasonable progress. Down with utopia. This is a healthy attitude in our age, but where are the shock troops for marginal gains, the vision of triumph in a world in which the needed reformational technology does not exist? In short, can pragmatic marginalism, in and of itself, ever serve as a foundation for steady improvement? Should not the goals of men be utopian, but the expectations of success in any man's lifetime be essentially marginal?

Wilson has surveyed a considerable body of scholarly publications in his attempt to document the state of our society today. The data are grim. A child born in 1974 in a major American city will, if it spends its whole life in a major city, be more likely to die of murder than a World War II soldier was likely to die in combat (17). If the statistics on reported crime look bad, consider: unreported crimes outnumber reported crimes by two to one, at least (88). We know that crime has an atomizing effect on society, destroying it. (He should have said that in a society unsure of its own moral foundations, crime atomizes it. It did not atomize the frontier; it called forth civilized institutions to stamp it out.) Yet it seems unstoppable today.

What successes are the legal institutions of enforcement having? Not many. By all standards, the programs of rehabilitation have been a massive failure (169). We know that in California, 88% of those charged with burglary who had been in prison before were not returned to prison (165). A robber in England is three times as likely to be jailed as an American robber (201). We know that prior to 1960, only one mur-

derer out of 140 actually was executed; since then, even fewer (192). We know that in Massachusetts, the average time served in jail by convicted murderers is two and a half years (186). (This state has passed a gun control law that makes it an automatic felony to be found with an unlicensed pistol in one's possession; the judge *must* sentence the violator to a year in jail. Yet the time spent in jail for a murder is not much more than this. In effect, this new law is a hunting license on policemen who happen to arrest armed men.) We know that about 90% of those arrested for a serious crime have been arrested before (162). We know, in short, that salvation by humanistic law has failed:

> In retrospect, little of this should have been surprising. It requires not merely optimistic but heroic assumptions about the nature of man to lead one to suppose that a person, finally sentenced after (in most cases) many brushes with the law, and having devoted a good part of his youth and young adulthood to misbehavior of every sort, should, by either the solemnity of prison or the skillfulness of a counselor, come to see the error of his ways and to experience a transformation of his character.... We have learned how difficult it is by governmental means to improve the educational attainments of children or to restore stability and affection to the family, and in these cases we are often working with willing subjects in moments of admitted need. Criminal rehabilitation requires producing equivalent changes in unwilling subjects under conditions of duress or indifference. (170)

Rehabilitation also demands the ability of parole officers to predict the success or failure of treatment. Yet studies of specific parole boards indicate that random parole would very often be equally effective as far as recidivism (returning criminals) is concerned (172). "Furthermore, if rehabilitation is the goal, and {161} persons differ in their capacity to be rehabilitated, then two persons who have committed precisely the same crime under precisely the same circumstances might receive very different sentences, thereby violating the offenders' and our sense of justice" (171). It would also violate the concept of formal, predictable, written law. It would create a new elite of arbitrary rulers, which is in fact what parole boards now have become—a new humanistic elite. But Wilson does not press hard on this issue.

The Liberal theory of crime for over a generation has asserted that poverty is the breeding ground of crime. Why, then, is wealthy America so crime-ridden? Furthermore, professional criminologists have

consistently refrained from offering solid empirical data to confirm this hypothetical relationship (47). Incredible as it may seem, prior to 1966, *there was no generally accepted body of criminological theory.* Most criminologists blamed "social causes," thereby indicating that individual responsibility for criminal behavior is in some way reduced, but there were almost no arguments showing how the civil government might reduce crime. In fact, as Wilson argues, broad, social explanations of ultimate causality tend to make specific policy conclusions almost impossible. Prior to 1966, there were no data indicating whether or not punishment, including prisons, had any retarding effects on crime (55). Some criminologists, for purely ideological reasons, even asserted that negative sanctions do not reduce crime, though they had no evidence to support this conclusion. "It was not until 1966, fifty years after criminology began as a discipline in this country and after seven editions of the leading text on crime had appeared [Sutherland & Cressey's *Principles of Criminology*], that there began to be a serious and sustained inquiry into the consequences for crime rates of differences in the certainty and severity of penalties" (54–55). This fact boggles the imagination. Fifty years of rhetoric on crime and crime prevention, fifty years of Liberal solutions, fifty years of messianic promises—indeed, a hundred and fifty—and yet the whole edifice was a house of cards! All in the name of science, and all without scientific foundation. (The same anomaly repeated itself in education; it was not until the Coleman Report was published in 1966 that the first full-scale educational study of the effects of school programs and financing appeared, and Coleman's conclusion was straightforward: the family and peer group standards are far more important than any combination of public school inputs.) Thus, concludes Wilson:

> If the government becomes alarmed about crime, it assumes that those who have studied it most deeply can contribute most fully to its solution. Criminologists have rarely sought to show statesmen the error of this assumption.… In the mid-1960s, when the federal government turned toward social scientists for help in understanding and dealing with crime, there was not in being a body of tested or even well-accepted theories as to how crime might be prevented or criminals reformed, nor was there much agreement on the "causes" of crime

> except that they were *social,* not psychological, biological, or individualistic. (58)

Where, then, did the policy recommendations come from? What were the intellectual origins of the "poverty-crime-rehabilitation" thesis? *Ideology.* Ideology which was not grounded in hard, empirical, scientific research. Wilson's comments on the academic discipline known as sociology bear repeating:

> Only later did I realize that criminologists and perhaps all sociologists, are part of an intellectual tradition that does not contain built-in checks against the premature conversion of opinion into policy, because the focal concerns of that tradition are with those aspects of society that are, to a great extent, {162} beyond the reach of policy and even beyond the reach of science. Those matters that are within the reach of policy have been, at least for many criminologists, defined as uninteresting because they were superficial, "symptomatic," or not of "causal" significance. Sociology, for all its claims to understand structure, is at heart a profoundly subjectivist discipline. When those who practice it are brought forward and asked for advice, they will say either (if conservative) that nothing is possible, or (if liberal) that everything is possible. That most sociologists are liberals explains why the latter reaction is more common, even though the presuppositions of their own discipline would more naturally lead to the former. (62–63)

Are there any policy recommendations that *are* within the power of the civil government to impose and which would have some limited success? Yes, says Wilson, there are. The most important single decision of the government would be to bring swift, predictable, and severe punishment in cases of serious crime (178). The courts should concern themselves more with *sentencing* than with trying cases, since over 80% of those indicted plead guilty (163). What we need, he concludes, is more prisons, more actual incarcerations, far more often (180). He appeals to the prison—that old humanistic standby—rather than to restitution where possible and the execution of habitual criminals. One study of crimes in New York State, he reports, has concluded that serious crimes could be reduced by two-thirds if every person convicted of a serious offense were given three years in jail (201). Nevertheless, he argues that we cannot control the recidivism rate (208). All we can do is to hope that since all habitual criminals eventually get caught, if we

can take them off the streets, crime will go down. The key is the repeater: what shall we do with him (199)?

Money alone will not accomplish much. It may, and probably will, make things worse (208). We must not pretend to know how to solve problems when we do not know. Unfortunately, "governments are run by men and women who are under irresistible pressures to pretend that they know more than they do," so the problems multiply (208). He concludes his book with these remarks:

> Wicked people exist. Nothing avails except to set them apart from innocent people. And many people, neither wicked nor innocent, but watchful, dissembling, and calculating of their opportunities, ponder our reaction to wickedness as a cue to what they might profitably do. We have trifled with the wicked, made sport of the innocent, and encouraged the calculators. Justice suffers, and so do we all. (209)

These are fine sentiments, but they cannot get the job done—which, as a pragmatist, Wilson should be concerned about. Predictable, speedy, and severe justice is precisely what today's humanistic, bureaucratic, arbitrary, and legalistic justice system cannot provide, as Macklin Fleming demonstrates so well in his book, *The Price of Perfect Justice* (see above, 208–15). Bureaucratic humanism, unlike Wilson, is not thoughtful, humane, anti-messianic, and willing to abandon the ideology of political salvation. The world of crime is engulfing us all. Tinkering with the present system will not work. Modern men have lost faith in their institutions, especially political institutions, yet they have not replaced their lost faith with a new, positive faith. This is a fine, thoughtful book, but its commitment to marginalism as a way of life is unrealistic. As his book so thoroughly demonstrates, the commitment of our era is to ideology, and the reigning ideology of modern man is humanism. As that religious system crumbles, men will either be broken by the debris or else conformed to a vision of society which sets forth permanent standards, but denies the perfectibility of man.

(The book suffers from pages that have not been evenly cut, making it difficult {163} to turn the pages. It looks cheap enough to have been published by Random House. Basic Books, sad to say, appears to be cutting corners by not cutting corners. Books of quality substance are entitled to quality form.)

***The Victims,* by Frank G. Carrington.**
New Rochelle, NY: Arlington House, 1975. 326 pp. $9.95.

Reviewed by Rousas John Rushdoony

Carrington, a lawyer, criminal investigator, and executive director of Americans for Effective Law Enforcement, has written an important and telling study of the current crisis in law enforcement.

The roots of the problem, he points out, are in the philosophy of permissiveness. The roots of this permissiveness are twofold: *first,* there is a general philosophy common to vast areas of current life which regards it as anathema to punish, execute, or discipline anyone in society; *second,* there is the specific manifestation of this philosophy in a legal permissiveness which favors the criminal as against the victim of crime. This philosophy, in fact, views the criminal as the victim of society and therefore in need of extensive care, concern, and rehabilitation. Carrington's basic concern in this study is with this second aspect, but he is not oblivious to the first.

The need, say the permissivists, is to rehabilitate the criminal, but they do not know specifically what can rehabilitate a criminal, nor indeed are they able to comprehend the criminal character. Criminals, instead of being social victims and unfortunates, are aggressively evil. Carrington cites Ridgely Hunt on the criminal character: "It appears that many robbers lack any shred of compassion or sympathy for their victims—and probably for anyone else. They are alienated from the rest of mankind and thus indifferent to human suffering" (124).

The permissivists, however, have altered the legal process from a concern for justice and truth to a protectiveness for criminals. The Warren Court was the major instrument in this change. The exclusionary rule leads to the suppression of vital evidence. Carrington documents "the major Warren court rulings as suppressors of the truth" (p. 118), and he notes, "Very simply, when the truth is suppressed, justice is mocked" (102).

There are "three principal ways to prove the guilt of the accused: physical evidence, statements of the accused, and eyewitness identification of the accused" (69). Since the Warren Court, the truth in all three

areas is barred from court to a very considerable degree. The result is a decay of justice and a growing sense of immunity and arrogance among criminals. The roots of our problem are thus in the philosophy of permissiveness; the criminals are simply taking advantage of its logical consequences. As a result, crime pays. Figures from 1965, when things were not as bad as they are now, indicate that the possibility of arrest for the commission of a crime is only one in seven, and, if convicted, the possibility is "only one in sixty that you will be sent to prison" (x).

The victims of crime are thus the ones whose legal rights are unprotected, and we are all potential victims. Carrington cites case after horrifying case of miscarriages of justice, of the protection of criminals but not of threatened witnesses, of legal farce and delay, and much, much more. His study is an intensely important report and analysis.

He offers answers, a key one being a call for restitution for crime (249). {164} He does not seem to be aware that this is the requirement of Biblical law, the mandatory execution of habitual criminals, and restitution for all other crimes, from double to fivefold restitution. He provides information on Citizen Action Models, including his own organization, AELE, Americans for Effective Law Enforcement. It is to be regretted that, in a brief appendix, the addresses of such organizations are not listed. Moreover, compensation of the victims of crime, if made by the state, only punishes the taxpayer further. Carrington calls attention to the Iowa plan, which makes restitution a condition of probation or parole, which is a step in the right direction.

Although it is outside the scope of Carrington's excellent and telling study, attention should be called here to the very broad roots of our social permissiveness. They are basic to our statist schools, to liberal family life, to liberal religion, to our television and film entertainment, to our fiction, our politics, and to our contemporary culture. Men may resent permissiveness in crimes affecting them, but they practice it as a way of life, and expect a permissiveness with regard to their faults and failings from society. As a result, they are impotent in trying to maintain an order which their lives are in practical dissent from, day by day.

Our crisis thus is legal and social; it is a decay of serious proportions in law and order. Its roots, however, are religious and theological. Humanism has been instrumental in bringing about, and fundamental

to generating, this philosophy of permissiveness. Carrington's very able study gives us the legal and the human problem, and we need to reckon with it, and act in those areas. We cannot, however, succeed unless our action has theological roots.

***The Ethics of Smuggling*, by Brother Andrew.**

Wheaton, IL: Tyndale House Publishers, 1974, 138 pp.

Reviewed by Greg L. Bahnsen

This book will likely be very popular in general Christian circles given the present interest in Christian resistance to ungodly governments such as Hitler's Germany and the Communist lands of today. It concerns the morality or immorality of smuggling Bibles into countries which prohibit such.

The book is not intended to be a well argued, tightly reasoned, treatise which engages in extensive dialectical considerations and draws out many subtle qualifications and distinctions. Instead, its purpose is to persuade, and toward that end it uses a fast-moving, conversational, and casual style aimed at a general reading audience. Matters are treated with simplicity. Yet the book does probe to the heart of a very real and contemporary ethical dilemma (or seeming dilemma): obedience to civil authorities who prohibit the spread of the gospel. Naturally, the book engages in and draws upon the wider issue of Christian civil disobedience. This topic needs to be wisely thought through by all believers, and I think that the present volume will be helpful in showing them some basic principles which apply to the matter.

The author is known simply as Brother Andrew—a name he acquired in the course of publishing his previous book, *God's Smuggler.* In this previous work "Andrew" describes his early life in a Calvinistic Dutch home, his schooling, and his subsequent ministry of bringing the written word of God to believers in Communist countries where the Bible was scarcely to be found or obtained. {165} His name is not revealed, nor much of his border crossing tactics, for rather obvious reasons. Secrecy is the name of the game.

But is the game ethical? Of course, it is not a "game" at all in the popular or flippant sense of the word, it's deadly serious business to risk your well-being or life in taking the Scriptures to people in anti-Christian lands. But is this activity morally praiseworthy if it involves disobedience to the properly constituted authority? Christians are to submit for conscience sake to the powers that be, and thus we are seemingly in a moral bind if we attempt to smuggle in Bibles to a country where the Bible is not made available (at least in this manner). A couple of years ago I read a running series of arguments back and forth on this question in the pages of a popular evangelical magazine. The quality of the moral reasoning did not impress me much, but the fervor with which the positions were maintained was more than obvious. Well, what position should a Biblically guided Christian hold?

I was delighted to find that Brother Andrew himself had undertaken a discussion of this practical and relevant moral issue in the Christian community, and I bought the book immediately. It is not the kind of literature in ethics I usually run across (believing or unbelieving), and I did from time to time long for a more rigorous explanation or defense of points he tries to make; however, it was enjoyable reading, and it did not fail to stimulate my thinking on many issues involved.

There are some initial problems with the book which can be mentioned prior to getting down to the central question it confronts. The printer did Andrew's readers a great disservice in the combination of typeface, spacing, and general layout; it is often difficult to discern quickly the paragraph openings on a page, the quotations are not easily distinguishable from regular text, the paragraphs are unreasonably short (a concession to modern newspaper reading, I realize), and there is far too much empty space at the top of each page. I found the book hard to read in a general physical sense, although it does not take much time.

More importantly, Brother Andrew is often found using very loose or unguarded expressions. In discussing miracles he unwittingly refers to his own "luck." At one point he refers to "Karl Barth, that great Swiss theologian"—even though it is clear from Andrew's evangelistic message and concern that he is theologically worlds apart from Barth. At other times the author disconcertingly confuses issues or fails to stay on his point. For instance, he not infrequently goes into discussions of

the Christian's obligation to do what is required of him despite the threat of persecution and pain. What Andrew says is all well and good, but his pointing to the courage of Bible smugglers has nothing to say about the morality of Bible smuggling as such. Socrates long ago noted that courage cannot be divorced from wisdom; to take on a foe where you have no opportunity of success is not courageous but foolish. The brave man knows when to display courage; the fool simply rushes in. Thus Andrew should concentrate on the relevant issue of smuggling's virtue or vice, not the dangers it involves. Undergoing these dangers is not commendable if the activity is not itself morally praiseworthy. Some of his distinctions, furthermore, are not immediately cogent to me: for example, "We must not hate people, but we must not love the God-haters." The problem here is that people are God-haters (and the mediating position of indifference toward them would still be a sin of omission, failing to love one's enemy). Finally, I will mention that there are serious problems with Andrew's concept of a "miracle" as "a sovereign act of God based on Truth." With such an understanding he often refers to his experiences at border crossings as "miraculous." Now, he is correct in arguing against those {166} who relegate his experiences to mere coincidence, but the error of this position does not establish that a *miracle has* taken place. His definition is too vague and ambiguous, and his examples could quickly be taken to justify seeing "miracles" in many ordinary answers to prayer according to the workings of God's common patterns of historical providence. I am not sure that we can correctly say that God has stricken border guards with unusual confusion, ignorance, or oversight just as Andrew approaches; however, I am sure that Andrew's prayers for safe passage have been answered in a variety of ways. The whole question of modern day "miracles" would take us too far afield to be discussed here, and after all this is not the main point of Andrew's book.

While there are infelicities such as I have mentioned above, the book also presents the reader with many fine, capturing passages of wit and exhortation. You cannot help enjoying Andrew's story of the border patrol who found his flannel graph of the "Christian's armor" and the map of Paul's missionary journeys, thinking that these were evidence of an extensive plot for military overthrow! Of course, they were. But not in the sense initially feared by the guards. Further, Andrew does not

fail to arouse the reader with stirring indictments and challenges, such as this one: "Christians in the West generally are the silent majority.... Spineless, colorless, passive individuals, we as the silent majority form the bridge over which the world of corruption, revolution and hatred passes unhindered. Passes over to corrode and curse the lives of the rising generations." These are powerful, and distressingly accurate, words. The reader must often sit up and listen to the powerful preaching found in the book.

But, now, how about the central question of the ethics of smuggling? Obviously Andrew is going to argue that Bible running is morally commendable and that Scripture does not prohibit his activities. Does he make his case? In my opinion, he certainly establishes beyond any shadow of a doubt that the Christian has abundant Scriptural support for disobeying a government which requires disobedience to God—indeed, even defying its authority and agencies. In Acts 5, Peter said we must obey God rather than men: this is the main issue, says Andrew. In Daniel 3, we see that Daniel's three friends defied the state with God's favor. Hebrews 11 numbers Rahab among the faithful for her allegiance to God and treason toward Jericho. 1 Samuel 16 tells us of Samuel's concealment of his real purposes from Saul; 1 Samuel 19 shows us Jonathan betraying the king's desire to kill David. In Acts 5, Peter broke out of prison, and in Acts 9, 14, 17, and 19, Paul refused to cooperate with the agencies of the state and even defied their authority over him. These are all examples of the godly refusing to submit to ungodly rulers. Andrew says, "I want to be very plain here: if we are consistent in keeping the law of God, of necessity we will have to break the law of many governments." It is noteworthy, I think, that Andrew shows that this disobedience can legitimately extend beyond a mere *refusal* to do something which the government immorally *commands;* disobedience can also take the form of *doing* what the government *forbids,* and even failing to *cooperate* with its agencies (e.g., Paul did not show his "'passport" when he suspected the officials were waiting for him at the gate—he did not submit to their procedures at all, taking whatever punishment was laid on him for preaching the gospel, but rather he resisted actively).

The author also establishes that the basic question that we must answer is: who shall I obey? In Acts 17, we see that the Christian claims

to have *another* King—Jesus Christ. As Andrew portrays matters, we are special agents of a government which is not of this world. Our enemy is one who takes the place of God, forbidding God's claims to be advanced and followed. We must show {167} allegiance to our marching orders, working under the exclusive authority of Christ and refusing to make any deals with the adversary. A soldier cannot draw back or compromise simply because the enemy shows some resistance! And the order which we have been given as Christians is found in Matthew 28:18–20. This Great Commission by the one who has all power and authority in heaven and earth means that the Lord is not willing to let His word be kept out of any country on earth. Moreover, says Andrew, given this commission, we do not need anybody else's permission to take the word of God to people anywhere. Rightly he asserts that it is not a matter of one's conscience, nor a matter of prayer; it is a matter of obedience to Christ's explicit *command,* and to draw back into prayer or conscience is to evidence a basic unwillingness to get on with the job before us as believers. The command must be followed, and no government has the right to restrict believers from making Christ known.

Andrew argues from Romans 13 and I Timothy 2 that Paul defines the *kind* of government which we must obey. Also, says Andrew, the task of government is to insure us the liberty to fulfill the laws of Christ according to the Scriptures mentioned. "If a government, local or national or international, limits the church in its activity, and curbs the witness of Christians and even persecutes them, then we are no longer under any obligation to observe this government in this respect of conscience and worship. We are free, because God has defined what the role of the government is."

Andrew also argues that men can forfeit the right to know the truth from us, and thus we are under no obligation to tell such men (e.g., border guards who would hinder the Great Commission and violate the purpose for government) that we are bringing Bibles into the country. And a final kind of argument which I find in the book says that, even if the communist government is a legal government in the country to which Andrew is going, it is not *his* legal government. Thus he need not be obligated to obey its every command.

In retrospect it is obvious that there are two kinds of arguments being employed by Brother Andrew. First, the Christian is commanded

by the True Sovereign to disciple the nations, and he must obey God rather than men. Second, no earthly government has the right to restrict the church's task of making Christ known (given the Scriptural purpose of government), and communist governments can be disobeyed because (a) they are in violation of this purpose, (b) have forfeited a right to the truth, and (c) do not legally govern foreigners.

I am sympathetic to both kinds of arguments, and in the long run I agree with Andrew that he has a moral right to smuggle Bibles into communist lands. However, it must be noted that his argument are in some respects weak. First, the Christian's obligation to disciple the nations (irrespective of what men forbid in this regard) does *not in itself* demonstrate the morality of Bible smuggling *until* Andrew shows that the Great Commission requires the *distribution of Bibles.* I think this can eventually be exhibited, but Andrew has not yet done it—which is why his taunt at those who support radio broadcasting into communist lands but disdain Bible smuggling is premature.

The second kind of argument is somewhat stronger, for it purports to show that governments have no right to *restrict* the distribution of Christian knowledge, and thus they would have no right to hinder the spread of Bibles. Moreover, the case is reasonably established from Scripture that governments exist for the sake of Christian purposes (to promote the cause of God on earth), even though I think Andrew overstates his position by *implying* a positive or evangelistic aspect of the government's responsibility; as I see it, governments are ministers of God (serving public justice) and thus ought not *hinder* any {168} positive sense in some work of God, but I would want to guard against the implication that they are to have an eye toward evangelism. Perhaps Andrew would agree. However, at least we should ask that Andrew refine or qualify his position a bit, for it is *not* true that governments unqualifiedly have no right to restrict the distribution of Christian knowledge (e.g., they can forbid that it be distributed by means of the sword and violence, etc.). With requisite qualifications, we can agree that governments have *no right* to interfere and restrict the Great Commission. This is an essentially negative approach to the question (i.e., nobody is here appealing to an *explicit* prohibition), assuming that governments can *only* do what Scripture *delegates* to them to do; in turn, this assumption requires qualification and clarification (e.g., speed

limits are surely legitimate yet extra-scriptural, etc.). This can be done suitably, although Andrew has not carried it out in his book.

Given the above two ways of arguing, Andrew can proceed to show that smuggling is morally permissible when the communists prohibit or hinder the distribution of Bibles. He *can* make his case that border guards have no right to the truth in this regard, *but* I totally fail to see the force of his argument that, *as a foreigner,* he is not obligated to obey the local authority. This is not a general principle that can be given solid support; even as a visitor Andrew is subject to the ruler's commands. Thus he should simply drop this aspect of his argument, and stick to the fact that *nobody* (native or foreigner) is obligated to obey a restriction on the Great Commission (and its relevant means, e.g., Bible distribution). I also think he should more cautiously state his case for the Christian's *freedom* from the authority of any government which fails to match up to its definition in the New Testament passages discussed. First, the believer is not *completely* freed from this governmental authority until revolution is morally justified; a Christian might well disobey his government in some respects and yet obey it in other appropriate areas (e.g., Paul's history as an apostle). Second, Andrew has stressed the fact that the New Testament passages *define* a proper government and based his arguments completely on that fact; however, the conclusion of his argument (viz., civil disobedience is not immoral) *appears* to run counter to another element in the passages to which he appeals (viz., the command to obey the powers that be). This factor should be taken into account and integrated into Andrew's treatment of the subject; some qualification and reconciliation is called for. That is, while he might be right in his conclusion, you cannot get there as simply and as quickly as he seems to think.

The greatest weakness of his book, however, is not the incompleteness of his arguments in favor of smuggling. Rather, it is the attempt to maintain that his activity of smuggling is not a deviation from truth-telling. Andrew apparently feels compelled to argue that he does not *lie* when he smuggles in Bibles. There are two things which must be said here. First, Andrew should feel *no compulsion* to defend himself against the observation that he is not telling the truth as Scripture ordinarily requires, nor should he feel that he must draw back from overtly lying to border guards. His preceding argument has already shown that they

have no right to the truth; if that is his argument, then he should stick with it and not apologize for not telling the truth in these circumstances. Moreover, the example of Rahab which he cites demonstrates that (under very unusual and strained circumstances) lying can sometimes be our moral responsibility; in such cases it is not culpable, and need not be apologized for (indeed, James says Rahab was *justified* for her deception!). *If* civil disobedience is *warranted* in the case of smuggling Bibles (as Andrew argues), then there is *no need* to apologize {169} for lying to the authorities. It is merely a matter of loyalty to God instead of to those who would use the truth (in this specific situation) to advance the kingdom of Satan.

Secondly, not only does Andrew not *need* to refrain from lying or to defend his activity as consistent with truth-telling, but the *manner* in which he argues that smuggling does not deviate from truth-telling is highly suspect. For instance, "concealment is not lying. You must be careful to guard the distinction between partial truth and untruth." "As far as my own ministry is concerned, I will never tell a lie.... I pray mighty hard that I don't have to tell the truth either." In his last chapter he explains that he always tells the truth—but sometimes conceals a relevant part of it, and sometimes says things for which the guards will have a different interpretation. Now, I think such behavior could be morally justified if we are permitted to deviate from telling the truth under special circumstances, but it is fatuous to argue that such behavior is consistent with telling the truth. Reference could profitably be made to the Westminster Larger Catechism at this point. If Andrew *intends to deceive* his hearer, he has *not* told the truth in the way that Scripture ordinarily requires. By willingly misleading his hearer through his tactics, he has as much as lied. And his overall presentation is weakened by attempted rationalizations of this fact. If he is going to smuggle Bibles into countries where they are forbidden and do so by *deceiving* the border guards, he had better be prepared to accept the fact that he is *not* telling the truth (irrespective of the actual words that flow from his mouth) and then argue cogently that in such a circumstance the truth *ought not* to be told. He has a reasonably good (although incomplete) argument for that. He must now decide whether he is going to stick by it and its implications or not. His half-way mea-

sures and rationalizations will not satisfy critics on either side of the fence.

***Morality, Law and Grace,* by J. N. D. Anderson.**
Downers Grove, IL: Inter-Varsity Press, 1972. 128 pp.

Reviewed by Greg L. Bahnsen

J. N. D. Anderson is well known to the evangelical reading public as a writer who has published in the fields of comparative religion, historical apologetics (especially dealing with Christ's resurrection), and most recently modern theology. However, as he is Professor of Oriental Laws and Director of the Institute of Advanced Legal Studies at the University of London, perhaps his book *Morality, Law and Grace* should be the most welcome of all since it deals with matters in his own special field of competence. An expert in law who writes on the subject of morality and law from a Christian perspective is certainly performing a needed service in the evangelical community.

Anderson's book covers a wide field, ranging from questions about moral responsibility and permissiveness to questions of tyranny and theology. His style is readable and interesting, his examples well chosen, and his point of view easily accessible to the reader. His discussion of relevant issues in ethics is thoughtful and stimulating, as well as professedly committed to Biblical Christianity. The Christian ethicist will be interested to pick up Anderson's book and work through the issues he presents, not only for the exercise in moral reasoning, but {170} also for an insight into the weakness of even the best Christian teaching on morality which fails to endorse every jot and tittle of God's revealed law.

Of the book's five chapters, three were presented as the 1971 Forwood Lectures on the Philosophy and History of Religion at the University of Liverpool. These dealt with morality and the permissive society, morality and its relation to law, and then morality in relation to theology (especially the doctrine of grace). To these lectures Anderson has added a consideration of moral responsibility in the face of determinism, as well as a discussion of the problem of tyranny and injustice

(and how the Christian ought to respond to them). The latter addition turns out to be the strongest chapter of the book and most worth reading, whereas the former addition correspondingly emerges as the weakest chapter of the book and least helpful.

In chapter one Anderson engages the question of moral responsibility against the claims that human actions are inevitable and unavoidable (i.e., determinism). He wishes to argue in favor of our instinctive feeling that we enjoy a genuine, though limited, freedom of choice in the detailed conduct of our daily lives. He tackles this notoriously difficult problem from the standpoints of physics, psychology, philosophy, and theology (often with the aphoristic help of C.S. Lewis), although he admits from the outset that he is an amateur dealing in simple terms with an insoluble mystery of life. When he finishes his account, Anderson has really only summarized the determinism-freedom debate on four different planes and offered general support for his view that we continually find a two-way relationship between the person and his physical brain, psychological makeup, natural environment, and Creator. In the end, his point is not that determinism has been disproved, but simply that it (in various forms) has failed to show that ordinary men and women are mistaken in their firm conviction that they have genuine freedom of choice (within limits). As such they are morally responsible, and this responsibility is a necessary presupposition, says Anderson, for everything else said in his book. I feel that the author could have simply stated his presupposition in the introduction and then gone on to issues where he has more positive contributions to make; the chapter was not beneficial to any great degree, and Anderson's treatment of God's sovereignty and human responsibility, while admirably recognizing the inevitable mystery involved as well as the crucial difference between Christianity and Islam (viz., the reality of secondary causes), nevertheless goes astray in attempting to reconcile matters by speaking in terms of God's alleged "permissive will in allowing human beings to choose sin." The problem here is that unless divine determination is being denied or somehow weakened, the talk of "permission" is very misleading. Does it mean that God withdraws His causal efficacy in the matter? that God allows something to happen without determining it to happen? If so, then foreordination is curtailed or reduced to omnipotence (i.e., God is not overpowered by sin

but can accommodate its emergence in His overall plans). Of course then we no longer have the sovereign God of Scripture, nor the determinism-responsibility mystery. A source of possibility has been posited beyond God—which is theologically precarious.

Anderson's comments in his second chapter, on the permissive society, are a bit more helpful. He notes that if a permissive society is one in which individuals have the right to make their own moral decisions without the interference of others, then ours is *not* a permissive society—with respect to (for example) civil rights and warfare, among other things. The fact is, "the 'permissive' society can be singularly intolerant to opinions which it deprecates." Thus the whole question reduces to *what* should be permitted and what forbidden. *Where* should {171} others interfere? How and to what extent should individuals and the community as a whole be protected from the effects of damaging behavior? Such questions force us to look for moral *principles* since "situationism" is so clearly fault-ridden. Although Anderson has some insightful responses to arguments for pornography as well as some good criticisms of situational morality, the Achilles' heel of his entire book is uncovered when he holds that "in this very imperfect world two of these moral principles may sometimes conflict; and then the only thing we can do is try to choose the lesser of two evils." Anderson feels he must say this in response to problems raised by the situationist against absolute morality, but regrettably he does not perceive that such a response actually *undermines* absolute morality, forcing us to admit that it is sometimes *right* to do what is *wrong* (which makes no sense). Rather, the Christian must hold that God's moral principles do not conflict once we have enough information about our situation and a clear enough grasp of what the whole Bible has to say about it. There *are no* "tragic moral choices"; as much as men's imaginations would like to force God's law into compromising situations where we (allegedly) must abandon it at some point or another, all such situations are imaginary. The Lord requires of us not merely lesser evil in behavior but positive righteousness, and He as sovereign Lord over history and all men provides for what He requires. Cf. 1 Cor. 10:13.

Having shown the need to find a moral authority, Anderson turns to a presentation of the Bible as this source. Against the claims of competing religions and logical positivism, he sets forth the broad outline of

his basic Christian apologetic. We will, thus, be forced to conclude that his *ethical* system is only as valid as his *apologetic* for the metaphysical premises underlying it. This would be an acceptable situation were it not for the fact that Anderson's apologetic is in the final analysis impotent to disarm the challenges to Christianity. He says that the Christian's case "is based on the whole body of historical and experimental evidence" and *not* propositions which are self-authenticating. However, Anderson's well known non-presuppositional apologetic is really not difficult to pick apart from the autonomous standpoint of unbelief; historical and experimental evidence will be completely washed away unless the critic's presuppositions (with which he evaluates the evidence and experience) are altered—which can be done only with the self-authenticating truth of God's revelation in the face of the utter vanity of autonomous reasoning. Given a weak apologetic which shares elements of autonomous thought with unbelief, Anderson's ethic will of necessity be correspondingly weak at its foundations.

In chapter three the author provides us with a good discussion of the differences between morality and law (e.g., there are sometimes immoral laws enacted by those in authority) as well as the mutual support they provide each other (morality is better observed with the encouragement of law, and laws are more workable and beneficial when supported by morality). Although basic, his teaching needs to be heard more and more in our day of moral confusion. Potential readers do equally well to listen to Anderson's discussion of the enforcement of morals (in connection with the famous debate between Devlin and Hart in England); he argues convincingly that it is impossible to maintain consistently that criminal law ought to be paternalistic at points (protecting the weak and young, as well as shielding strong adults from things like addictive drugs, etc.) but should never attempt to enforce "morality as such." The basic dilemma here is that of finding a criterion by which we can decide on the nature of *harm* (against which we should be protected) and at the same time exclude all *moral* harm. However, the chapter is marred along the way by Anderson's inconsistent {172} rejection of euthanasia (direct intervention) under all conditions while accepting abortion under some limited circumstances.

Chapter four brings up the question of the Christian's response to tyranny. This is the most thought-provoking chapter, and the issue it

confronts is certainly one of the toughest to answer. Anderson uncompromisingly rejects the theology of revolution: "…it is not primarily by political action that the kingdom of God will be established," but rather by the preaching of the gospel. However, believers are called upon to take a concern for *justice in society,* and in light of that responsibility the possibility of revolution against an unjust government must be discussed. Anderson is well-suited to discuss this matter, having served as chairman of a Board of Social Responsibility for the Church of England, studying just such a question (viz., civil strife) in 1971. He begins by examining the relevant passages in Romans 13 and I Peter 2, arguing that they do not require unqualified obedience to civil magistrates in light of the (normative) description of the magistrate and his function. (Anderson perceptively dismisses the contrary argument which holds that Peter and Paul were endorsing submission to the present rulers, which included tyrannical and persecuting Nero; the date of the epistles works against this line of thought, which is essentially weak anyway.) He goes on to say that when the proper situation (described by the apostles) is turned upside down (e.g., corrupt and vicious laws are enforced so that the innocent suffer), then the obligation to obedience no longer applies. In light of Peter's defiance in Acts 16:37 (which Anderson says, correctly, cannot be limited to specifically "religious" issues), the Christian's obedience to the civil ruler is always contingent. He shows that Scripture portrays God often intervening in history to overthrow tyrants, and that it is an unwarranted assumption that this must always be done by the hand of unbelievers (cf. the book of Revelation). The author proceeds to apply the recognized criteria of a just war to the question of a just revolution—always marking his discussion with extensive explanation and qualification. While Anderson believes that believers ought to participate in the overthrow of wicked governments, *it is only under highly qualified and rare circumstances;* thus the reader must not get the impression that this lawyer plays fast and loose with our obligation to established law. Our boldness in protesting against evil and injustice, Anderson notes, must be accompanied with "a marked restraint"—the restraints of whatever the whole Bible has to say about our envisioned behavior. Not everyone will be satisfied with Anderson's cautious discussion, but everyone should read it and interact; it is a rare treat today to find a conservative in the-

ology deal with such a controversial subject with restraint, insight, and necessary qualifications—and yet still set forth a distinct and bold, definite and clear, conclusion. One major problem with his position that should be commented upon here is his reversion to "lesser necessary evil" doctrine again: "…violence is always evil in itself. The Christian can never, therefore, resort to violence except as a deliberate choice of one evil as the only possible alternative to a greater." Such reasoning is terribly faulty. Violence is *not* inherently evil: Old Testament holy war, civil execution of capital criminals, self-defense and "just" wars, not to mention eternal damnation are all examples of *righteous violence.* It may well be that violence should be our *last* resort, but that does not make it wrong when no alternatives remain. As I said above, the Christian is never forced into a position where it is right to do wrong. Anderson should simply ride out his argument to its proper conclusion; if his premises have been accurate, he has shown us that revolution is sometimes a moral responsibility and thus an expression of justice. He may wish to go back and change the premises, or a critic may wish to challenge them, but {173} given the way he has argued for his point, it is inconsistent to describe the conclusion as a necessary (albeit lesser) evil. Either violent revolution is just under some circumstances or just under none. Attempting to mediate those possibilities creates ethical chaos; one is right and the other wrong, and the author should decide which side of the fence he is going to stand on. It will not do to say that revolution under such and such conditions is called for and just, but nevertheless evil. My recommendation is simply that Anderson reject the "tragic moral choice" idea altogether.

In his last chapter the author discusses, first, the assertion that there can be no morality without religion. He thinks this wrong with respect to the content and motive for moral living; utilitarians and intuitionists, among others, give directions and incentives for ethical behavior—although religion greatly aids or reinforces them. But, says Anderson, the power for moral living (internal enabling from an external force) can be supplied only by valid religious convictions and a real God. I am not impressed with his thinking on this score, for it seems that an obvious distinction was overlooked in his discussion of the unbeliever's standard and motive for ethics. What Anderson should have said is that utilitarianism, etc., *attempts* to provide guidelines and motivation

for morality but in the last analysis cannot do so; thus the unbeliever engages in moral discussions and makes moral motions, but his ethic is always an immoral ethic (cf. Heb. 11:6). Moreover, no unbelieving system of ethics can harmonize and integrate the standard, motive, and goal of ethics in one system; inevitably one aspect is isolated and idolized with unavoidable problems. From this point Anderson goes on to the subject of morality and grace, giving fairly standard considerations for their compatibility in Christianity. Law is not antagonistic to grace, he argues, except as a way of justification; the purposes of law and grace complement each other.

However, before closing out this review, I must comment upon the author's questionable handling of Matthew 5:17 and his mistaken view of the Old Testament "civil" law; my understanding of these things is more fully available in my book, *Theonomy in Christian Ethics*. Anderson's problem is that he *begins* with a tripart division of the law of God (moral, ceremonial, civil) and then attempts to understand Matthew 5:17 in that light. My point is not yet that the tripart division is wrong, but simply that it will not do to read it into Matthew 5:17 where it is not introduced. Jesus declared that He came to "fulfill" the law, and no distinctions are drawn. When interpreting Christ's statement, Anderson explains the "fulfillment" in different ways for each of the (allegedly) three divisions of the law (viz., completing, obeying, and reinforcing the moral law; giving substance to the shadow of the ceremonial law; and taking away the civil law by removing the kingdom of God from one earthly nation). The obvious textual problem is that "fulfill" cannot mean *all* these various things at *one* simple place (indeed, it would simultaneously mean contradictory things on Anderson's interpretation!). Even granting that the author is correct in what he says about each of the divisions of the law, it cannot credibly be maintained that all this is intended in Matthew 5:17. The tripart division of the law should not be read into the passage. Moreover, even with respect to the *moral* law, Anderson has the word "fulfill" meaning *three* very different things! I feel that the context makes it clear that Christ is referring to His own divine *evaluation* of the *entire* corpus of the moral stipulations (*law*) of the Old Testament (Law and Prophets). Whatever "fulfill" means, it is a *singular and overall* declaration about the Old Testament law as a unit (although the *focus* of attention in the *following* verses is

on righteous behavior rather than cultic performance—a distinction {174} which Anderson explains unusually well in the context of modern discussions). Christ "fulfilled" the moral and ceremonial law—that is, He confirmed them both (to the jot and the tittle).

The reader will notice that in the preceding statement I did not mention the "civil" law; this brings me to my last disagreement with the author. I see no justification for creating this distinction; the civil law (by which we mean the *standing* law pertaining to social or civil morality, rather than specific and direct commands for one time situations—i.e., for instance, the obligation to execute murderers over against the command to conquer Canaan) is simply one aspect of the *moral* law. What God prescribed in civil matters represents an abiding standard of righteousness, the permanent requirement for social justice. The discerning Christian should draw back in fear from Anderson's conclusion that these civil laws have now been replaced with the various laws of the countries in which Christians live; he should harken back to Anderson's own words about civil disobedience: "It can never be right to break the law of the land except in obedience to a higher law." By abrogating the civil law of God's word, Anderson has *taken away this higher law* to which Christians can appeal against the injustice of their civil rulers. Without God's abiding word in the area of civil morality there are no necessary restraints on rulers, and justice washes away down the stream of positivism and relativism. We must never settle for replacing God's word with the opinions of the magistrates in the various countries in which we live. Further, not only is Anderson's treatment of the civil law gratuitous, destructive of his own thesis elsewhere, and dreadful in its effects, but it is wholly unwarranted by Matthew 5:17 (the passage under which he discusses his view). Christ did *not* come to *abrogate* the laws (as He declares twice in the verse), which is what Anderson implicitly has Him doing to the civil aspects of the moral law. Notice also the scope of Christ's confirmation of the law, given in verse 18: "*every* jot and tittle" has abiding in force until heaven and earth pass away. That includes the *civil law.*

Anderson's book is worth reading, but one must read discerningly. Its greatest strength is the initial work done in refining a just revolution. Its greatest weakness would have to be the author's regrettable rejection of that very portion of God's word which bears so directly on

his own field of endeavor as well as the key issues of the book: law in society.

The Ministry of Chalcedon

(Pr. 29:18])

Chalcedon [kalSEEdon] is a Christian educational organization devoted exclusively to research, publishing, and cogent communication of a distinctly Christian scholarship to the world at large. It makes available a variety of services and programs, all geared to the needs of interested laymen who understand the propositions that Jesus Christ speaks to the mind as well as the heart, and that His claims extend beyond the narrow confines of the various institutional churches. We exist in order to support the efforts of all orthodox denominations and churches.

Chalcedon derives its name from the great ecclesiastical Council of Chalcedon (A.D. 451), which produced the crucial Christological definition: "Therefore, following the holy Fathers, we all with one accord teach men to acknowledge one and the same Son, our Lord Jesus Christ, at once complete in Godhead and complete in manhood, truly God and truly man...." This formula directly challenges every false claim of divinity by any human institution: state, church, cult, school, or human assembly. Christ alone is both God and man, the unique link between heaven and earth. All human power is therefore derivative; Christ alone can announce that, "All power is given unto me in heaven and in earth" (Matthew 28:18). Historically, the Chalcedonian creed is therefore the foundation of Western liberty, for it sets limits on all authoritarian human institutions by acknowledging the validity of the claims of the one who is the source of true human freedom (Galatians 5:1).

Christians have generally given up two crucial features of theology that in the past led to the creation of what we know as Western civilization. They no longer have any real optimism concerning the possibility of an earthly victory of Christian principles and Christian institutions, and they have also abandoned the means of such a victory in external human affairs: a distinctly biblical concept of law. The testimony of the Bible and Western history should be clear: when God's people have been confident about the ultimate earthly success of their religion and committed socially to God's revealed system of external law, they have been victorious. When either aspect of their faith has declined, they have lost ground. Without optimism, they lose their zeal to exercise dominion over God's creation

(Genesis 1:28); without revealed law, they are left without guidance and drift along with the standards of their day.

Once Christians invented the university; now they retreat into little Bible colleges or sports factories. Once they built hospitals throughout Europe and America; now the civil governments have taken them over. Once Christians were inspired by "Onward, Christian Soldiers"; now they see themselves as "poor wayfaring strangers" with "joy, joy, joy, joy down in their hearts" only on Sundays and perhaps Wednesday evenings. They are, in a word, pathetic. Unquestionably, they have become culturally impotent.

Chalcedon is committed to the idea of Christian reconstruction. It is premised on the belief that ideas have consequences. It takes seriously the words of Professor F. A. Hayek: "It may well be true that we as scholars tend to overestimate the influence which we can exercise on contemporary affairs. But I doubt whether it is possible to overestimate the influence which ideas have in the long run." If Christians are to reconquer lost ground in preparation for ultimate victory (Isaiah 2, 65, 66), they must rediscover their intellectual heritage. They must come to grips with the Bible's warning and its promise: "Where there is no vision, the people perish: but he that keepeth the law, happy is he" (Proverbs 29:18). Chalcedon's resources are being used to remind Christians of this basic truth: what men believe makes a difference. Therefore, men should not believe lies, for it is the truth that sets them free (John 8:32).

Finis