

*"Behold, I long for your precepts;
in your justice give me life."
—Psalm 119:40*

IN YOUR JUSTICE

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Law and Theology

An aspect of the life of the early church too seldom appreciated is the fact that so many persons of stature, status, and ability came to the faith because of a hunger for justice and meaning. Among such were young mothers like S. Perpetua, and prospective mothers, like S. Felicitas, both of whom were martyred in the arena, killed by animals, on March 7, 203 A.D.¹ It was a sobering thing in those days to bring forth a child into so corrupt a world as Rome, and many intelligent and aristocratic young mothers hungered for a religious answer. They went to Christian study groups, became converts, and were often martyred for their faith.

The philosophers of the day were also drawn to the faith. The Greco-Roman world-view was, philosophically, in a state of collapse.² The world was desperately in need of a new foundation for social order.³ As a result, philosophers such as Justin and Tatian turned to Christianity to resolve the crisis of meaning and order.

This was no less true of lawyers. Tertullian, of course, is the notable figure here, but he was not alone. Because the religious foundations of Rome were eroding, law and authority were also eroding. Tertullian called attention to this erosion. In their insistence that Christianity could only exist on Rome's terms, Rome was asserting a concept of law which had no authority behind it save statist power:

Now first, when you sternly lay it down in your sentences, "It is not lawful for you to exist," and with unhesitating rigour you enjoin this to be carried out, you exhibit the violence and unjust domination of mere tyranny, if you deny the thing to be lawful, simply on the ground that you wish it to be unlawful, not because it ought. But if you would have it unlawful because it *ought* not to be lawful, without doubt that should have no permission of law which does harm; and on this ground, in fact, it is already determined that whatever is beneficial is legitimate. Well, if I have found what your law prohibits to be good, as one who has arrived at such a previous opinion, has it not lost its power to debar me from it, though that very thing, if it were evil, it would justly forbid to me? If your law has gone wrong, it is of human origin, I think; it has not fallen from heaven.⁴

Roman law was a man-made product, Tertullian pointed out; some of it was "hidden out of sight" because it obviously needed reforming. For a judgment to be rendered by a court, the judge must be "well assured that a crime has been committed." How long can such judgments be made if there be no assured and valid concept of crime and justice, Tertullian asked. Moreover, there must be a concept of justice common to society; it should be a part of the common faith:

It is not enough that a law is just, nor that the judge should be convinced of its justice; those from whom obedience is expected should have that conviction too. Nay, a law lies under strong suspicions which does not care to have itself tried and approved: it is a positively wicked law, if, unproved, it tyrannizes over men.⁵

Roman law, however, was an arbitrary statist product. It did not come from God: it came from men. Not only Roman laws, but even the Roman gods, were made by the state! Tertullian called attention to this fact, which implied that the state was the real god.⁵

To say a word about the origin of laws of the kind to which we now refer, there was an old decree that no god should be consecrated by the emperor till first approved by the senate. Marcus Aemilius had experience of this in reference to his god Alburnus. And this, too, makes for our case, that among you divinity is allotted at the judgment of human beings. Unless gods give satisfaction to men, there will be no deification for them: the gods will have to propitiate men.⁶

Rome's humanistic laws had become an expression, not of justice, but of popular (and changing) mores, Tertullian pointed out.⁷ Because Christians challenged Rome's iniquity parading as law, Christians were slandered with tales accusing them of cannibalism (eating little children), and incest.⁸

Tertullian and other Christian lawyers attacked the religious foundations of Roman law. Their attacks were often too involved in the specific absurdities of Roman law, but they did see the point, as did the early church. The issue was *lordship*, or to use the more modern term, *sovereignty*: Who is the Lord, Christ or Caesar, God or the state?⁹

Both law and theology are concerned with lordship or sovereignty. Theology is the word or study of the god of any system of thought. Theology in the modern world, as in ancient paganisms, is essentially political theory. Sovereignty in the modern world is either an attribute of man (anarchism in its most logical expression), or of the state (totalitarianism in its developed form). Wherever we talk about political sovereignty, we are talking about the actual godhead of that system.

Law, the codified norms and requirements of a social order, emanates from the god of that order. The source of law in any system is the god of that system. The standard or norm-maker is the sovereign. Law-making is an attribute of sovereignty. Hence, the hostility of the modern state to Biblical law, and to Christ's Church.

Thus, in every social order there is a sovereign or lord. Every state is a religious establishment, built on a particular faith in sovereign power. That sovereign power, lord, or god, has a *canon*. The word

canon comes from the Greek *kanon* (through Latin and Anglo-Saxon) and means *rule*. All law is some form of canon law, Christian or non-Christian. In origin, *canon* meant a straight rod, or line. Christians saw the Bible as their canon. The Baptismal creed or confession was called (by Irenaeus) "the canon of truth." Eusebius spoke of "the canon of truth" and "the canon of the preaching."

How the canon worked appears from the history of baptism. Circumcision was the original sign of the covenant, required of all male children on the eighth day (Genesis 17: 10-12; Leviticus 12:3; etc.). When baptism in the New Testament replaced circumcision, it too was practiced on the eighth day, as church history makes clear. Many churches were very strictly confining it to the eighth day for covenant children, because of their very zealous and rigid application of the canon, i.e., of the rule of Scripture. In a Council of Carthage, Cyprian and others opposed this rigidity, not to depart from the canon, but in order to make it more faithful and less wooden.¹⁰ A child might be ill, and the parents eager for an earlier baptism; the mother might be ill, and unable to go through the ceremony with the child, and so on. The canon *required* the baptism; the eighth day, we now know, was necessary with respect to circumcision, because only after seven days does the child's blood begin to coagulate. The necessity now is baptism, not the fixed date, which should be a norm, not a necessity.

The church then and subsequently had a canon. The canon was and is *Scripture*. The Cyprianic interpretation became *tradition*. Tradition later became a much more flexible thing, to which Protestantism objected vigorously, only to develop its own forms. (Thus, in studying or discussing baptism, Baptists and Presbyterians begin with their practice and then seek to vindicate it from the Bible, instead of beginning with Abraham, going through the Bible, and then applying that canon to their practice.) At any rate, the concept of the Bible as the canon or rule of faith governed Christendom until well into the modern era. Now, the new canon with churchmen is man, i.e., human welfare. The result is a growing antinomianism with respect to God's law, and a growing demand that concerns for human welfare be given a sovereign precedence.

As a result, in the church theology and law have been separated from one another in ostensibly orthodox circles, and each has been going in different directions. Theology has lost its jurisprudential focus, because, while the triune God remains the ostensible sovereign in formal dogmatics, in popular thought human welfare predominates and is sovereign. Law is thus oriented to human welfare, not God. Not surprisingly, orthodox theology is eroding under this antinomianism and is being taken over by "liberation" theology, a neo-Marxist faith.

Meanwhile, with the birth of the modern era, c. 1660 in Europe, the

state, while nominally Christian, began to assert its sovereignty without challenge. The voices of Protestantism and Catholicism were increasingly muted.

In English tradition, there had long been a war between royal law and canon or Biblical law. *Royal law* triumphed, as the crown became sovereign and asserted divine right. Challenges to the crown began to take other forms. One kind of law which developed was *common law*. Common law was a union of Biblical law and customary law; the customary law itself sometimes had a strongly Biblical source. In customary law, the community and/or the family enforced the law, usually more strictly than the state ever could. Customary family law has a long history in France and elsewhere. It prevailed in much of the rural United States until this generation, especially where the peoples had a common ethnic history. Thus, Harold Bedford, a Pennsylvanian born c. 1890, and dying in the late 1970s, described to me the operation of such law in his rural areas prior to the 1920s. All family law was customary law and required no state entrance whatever. If a man mistreated his wife, his neighbors would call on him. Mr. Bedford said, "We would strip him and drag him ass-backward through a field of nettles. The man always got the point of this friendly warning, and he behaved himself."

The next step was *civil law*, displacing royal law and common law. The state was now the source of law, and the state, as the acting god of society, developed a plan of salvation by law. There have been three stages to the development of salvationist law. The *first* was law as *reformation*, ie., a means of reforming men. The prison system, replacing restitution, is a witness to this purpose. Prisons were built in imitation of monasteries, and the very term "prison *cell*" comes from the monastic cell. Quakers, beginning with William Penn, were involved in this concept; through meditation in a cell, every man's "inner light" would lead him to salvation or reformation.

The *second* stage was law as *regulation*; whereas law as reformation seeks to save the law-breakers, law as regulation seeks by endless rules to make crime impossible, to prevent its commission by an increasingly totalitarian oversight through regulatory agencies.

The *third* stage is law as *redistribution*, to equalize all men and thereby to ensure "justice." All three stages are currently operative in almost every nation.

Meanwhile, civil law has been giving way to *class law*. The Marxists have charged that civil law is too often determined and/or governed by considerations of class, and by an establishment. Hence, the only true law is an openly class law, an aspect of class warfare, and a tool in the hands of the workers' class.

At the same time, we have had a growing disillusionment with the

priests of civil law and class law. Humanism is a failing religion, and hence its doctrines of law are in crisis. There is a widespread popular cynicism with respect to justice. When law is a human product, no fixed canon remains, except human whims. Today, we have abortion justified, and homosexuality, because a large number of people believe in it. No doubt, given the present trend, we can expect before too long essays in such periodicals as *Time* giving us the pros and cons of euthanasia, i.e. traditional faiths versus social necessities and popular outcries. The democratic consensus can give us anything, including our death sentence, as law.

Moreover, the tradition of modern philosophy has also worked to erode Biblical law. For Immanuel Kant, law was essentially statist. *First*, Kant separated law from the God of Scripture and made it a product of the new god, the state. *Second*, the state is the source of law and the determiner of good and evil. Crime is what the state says it is, not the Bible. *Third*, after Rousseau, Kant held that the state incarnates the *good* will of the people, the general will, and is thus the agency of justice as well as its definer.

The state thus became for Kant a rival incarnation. Hegel logically saw the state as god walking on earth.

In 1973, philosopher Walter Kaufmann (d. 1980) took humanism a step further towards its self-inflicted death. The concepts of *guilt* and *justice*, he held, are obsolete relics of a Biblical world and life view. Because man is an autonomous being, he must discard all notions of sin and guilt, crime, and justice. According to Kaufmann,

With the end of justice, the tyranny of guilt comes to an end. For without justice there is no guilt. To say that anyone is, or feels, guilty is to say that he deserves, or feels that he deserves, punishment. Once it is seen that nobody *deserves* punishment, it follows that nobody is guilty or should feel guilty.¹¹

The logic of humanism compels Kaufmann's conclusion. It also points to humanism's demise. There is an interesting comment in the Talmud, in *Abodah Zarah* 36; R. Judah cited Hab. 1:14, "Thou makest men as the fishes of the sea," and asked, "Why are men compared to fishes? This is to teach us that just as the fishes of the sea perish when they come upon dry land, so do men perish (spiritually) when they depart from the words of the Torah (God's law)."¹²

All this points to the importance of this study by Dr. Edward J. Murphy. As Matthews Professor of Law at Notre Dame Law School, he is bringing theology and jurisprudence together in this work as well as in his teaching. It is my belief that the revival of both law and theology requires their interpenetration and unity. One of the evils in

modern education is our implicit belief that, because departmental studies isolate particular subjects for academic purposes, they are isolated in life. In the real world, we never meet biology, chemistry, and physics as isolated and compartmentalized facts; there is wholeness and a unity to life. Even less can theology and law be isolated from one another. Like it or not, the professor of law is a theologian also, and vice versa, because the reality of the triune God and His canon requires it.

It is in terms of this conviction that we very happily publish this study.

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¹See R. Waterville Muncey, translator and editor: *The Passion of S. Perpetua*. London: J.M. Dent and Sons, n.d.

²Charles Norris Cochrane: *Christianity and Classical Culture*. London: Oxford University Press, 1944

³See R.J. Rushdoony: *The Foundations of Social Order*. Fairfax, Virginia: Thoburn Press, (1968) 1979.

⁴Tertullian, "Apologeticus," 4: in *Ante-Nicene Christian Library*, vol. XI, *The Writings of Tertullian*, vol. I, p. 62. Edinburgh: T.&T. Clark, 1872.

⁵*Ibid.*, I, p. 63.

⁶*Idem.*

⁷*Ibid.*, 6; p. 65f.

⁸*Ibid.*, 7; p. 67.

⁹See Ethebert Stauffer: *Christ and the Caesars*. Philadelphia, Penn: Westminster Press, 1955.

¹⁰Joseph Bingham: *Antiquities of the Christian Church*, I, 496f. London: Henry G. Bohn, 1850.

¹¹Walter Kaufmann: *Without Guilt and Justice, From Decidophobia to Autonomy*, p. 122. New York, NY: Peter H. Wyden, 1973.

¹²Rabbi Alexander Feinsilver, translator, editor: *The Talmud for Today*, p. 119. New York, NY: St. Martin's Press, 1980.

Preface

In preparing for a final examination, a student assembled all of the notes which he had taken in the course. They numbered in the hundreds of pages. Determined to put them into more manageable form, he began a process of condensing the notes. And he made spectacular progress. So much so, that the day before the examination was to be written, all of the voluminous notes had been distilled to one page. But not being content with this, he kept at it. One hour before the exam, he had them down to one line. And just before he was to write the exam, he had captured it all in *one word*. He then went in to write the exam...and forgot that word!

Much like this student, many of us today have forgotten *the* word. I mean the Word which was made flesh and dwelt among us, the One who existed at the beginning and through Whom all things came into being, and apart from Whom nothing came to be. This does not mean we have become "ungodly." Not at all. In a sense, this is a "god-ridden" society. There are all sorts of gods. It is that none is the true God, the One who made us, sustains us in being, and with Whom we hope to spend an eternity.

In this short book I endeavor to sketch the anatomy of a God-centered jurisprudence (Chapter One, "In Your Justice"), and in light of this to touch upon three issues of intense contemporary interest; namely, the right to life (Chapter Two, "Abortion and the Law of God"), sex, marriage and family (Chapter Three, "A Procreative and Governmental Unit"), and education (Chapter Four, "Educational Conflict").

I wish to express my indebtedness to Reverend R. J. Rushdoony, whose works have been of enormous help to me in shaping my own views and at whose suggestion I prepared these materials. I also want to thank my colleague, Professor Charles Rice of the Notre Dame Law School, from whom I have profited greatly as a result of our classroom collaboration.

E.J.M.

September, 1980

In Your Justice*

Would you think of the songs you know or may have heard during your lifetime? They must number in the thousands. Of all the songs that come to mind, are there any that sing the praises of law? (When I put this question in class, the only one the students came up with was "I Shot the Sheriff.") We simply do not sing songs about law or laws. Even the tax lawyers who live off the Internal Revenue Code do not sing about it, as they might, for instance, their Old Kentucky Home or their alma mater.

But this was not always the case. The longest psalm in the Bible is Psalm 119, and it is a song in praise of God's law. The following are a few of the verses:

Instruct me, O Lord, in the way of your
statutes, that I may exactly observe them.
Give me discernment, that I may observe
your law and keep it with all my heart.
Lead me in the path of your commands,
for in it I delight.
Incline my heart to your decrees
and not to gain.
Turn away my eyes from seeing what is
vain; by your way give me life.
Fulfill for your servant
your promise to those who fear you.
Turn away from me the reproach which I
dread, for your ordinances are good.
Behold, I long for your precepts;
in your justice give me life.¹

It is possible that one reason we do not sing about our law is that we do not believe there is much in it to sing about. We live in an age largely dominated by man-made or "humanistic" values. Our laws, which reflect those values, tend not to strike a responsive note in our hearts, in our total being. For are we not inclined to see our codes and statutes as purely conventional, unrelated to any overall pattern, purpose or direction? The psalmist saw in law a statement of how things really are; he saw a law-order ordained by a personal God and absolutely binding on men and nations. Our standards are generally relativistic and pragmatic; therefore, our law is, in the main, imperialistic, its binding force solely dependent upon coercive impositions of human authority. There is a vast difference in outlook here, and I shall

explore some of the implications and ramifications of these differing views.

No question is more fraught with legal or jurisprudential implications than this: *who or what is the ultimate authority in a society?* For when one identifies the ultimate source of law for a person or for a society, one has truly identified the "god" of that person or that society. Every law-order, of whatever kind, derives from some recognized sovereign ultimacy and is therefore, whether one likes the label or not, a "religious" establishment. But why, it may be wondered, call all of these "religious," especially when many of them repudiate any idea of a personal, transcendent God? R. J. Rushdoony offers this helpful comment:

[I]t is a fallacy to think of religion as a belief in a personal God. To do so is to define all religions in Biblical terms and to impose the nature of one religion as definitive of all religions. Most religions, in fact, are not theistic. In Shintoism, there is a multiplicity of spirits, not gods, and there is nothing comparable to the Biblical idea of a sovereign and absolute God. For Buddhism and for Hinduism, nothingness is ultimate. In the religions of Hellenic civilization, the gods were not ultimate; they were deified humans whose reign on Olympus was as subject to mutability as were all things else; ultimacy and therefore religious centrality belonged to the realm of ideas or abstract universals. In one religion after another, we have a non-theistic foundation, so that we can with justice say that virtually all religions in history have been varying forms of the religion of humanity, or humanism.²

The late Cardinal Wright once observed that man "remains unalterably God-centered. He cannot exist without a God, and if he rejects the true God he will invariably, instinctively, even perversely, create his own false god."³ In short, the question for man is not *whether* he will be guided by an ultimate authority, but *who* or *what* that authority will be. Is it to be God? Or is it to be himself? Or the state? Or a political party? Or a race? Or an economic class? Or the stars? Or Satan? Or what? Obviously, the choice will be consequential.

I submit that all existing legal systems are theological in origin in the sense that there is an ultimate authority in each. Moreover, this ultimate source is either God or man.

Recall a crucial event at the beginning of human history, the "fall" or "original" sin as recorded in Genesis:

Now the serpent was the most cunning of all the animals that the Lord God had made. The serpent asked the woman, "Did God really tell you not to eat from any of the trees in the garden?" The woman answered

the serpent: "We may eat of the fruit of the trees in the garden; it is only about the fruit of the tree in the middle of the garden that God said, 'You shall not eat it or even touch it, lest you die.'" But the serpent said to the woman: "You certainly will not die! No, God knows well that the moment you eat of it your eyes will be opened and you will be like gods who know what is good and what is bad." The woman saw that the tree was good for food, pleasing to the eye and desirable for gaining wisdom. So she took some of the fruit and ate it; and she also gave some to her husband, who was with her, and he ate it.⁴

At the very beginning of man's existence on earth, we see God, the creator, as *lawgiver*. He is portrayed as the source of all that is and as one who by sovereign decree has ordained how His creatures are to act. In short, He establishes a law-order. There is, as it were, but one jurisprudential system, and that is God's.

Now this idyllic situation was not to exist for long. By exercise of free choice (and not because he is a victim of circumstances or environment), the first man refuses to obey a divine decree and in doing so commits a basically treasonous act. He would, the Bible tells us, "be like gods who know what is good and what is bad." The commentators explain that "knowing" in this instance means *determining for himself* what is good and what is bad. He will thus make his own rules, his own laws. He is, in effect, saying: "I will be sovereign; I will construct my own law-order." The following is an elaboration of St. Thomas Aquinas: "The first man sinned principally by seeking similarity with God concerning the knowledge of good and evil...in the sense that, by virtue of his own nature he should be able to determine for himself what is good and what is evil"⁵ and "in order that, like God who, by the light of his nature, governs over all things, man too, by the light of his nature, without the aid of external light, should be able to govern himself."⁶

I called Adam's act *treasonous*. Indeed it was. It was not the mere violation of a rule; it was a rebellion which contested God's very authority to legislate for him. And that is serious. That is treason, as it would be in any legal system, including contemporary models. The punishment for treason is universally severe. So it was with Adam. The consequences of his rebellion were catastrophic. I shall not pause to elaborate upon these; the evidence is all around us. Here I maintain that "*original*" sin is the *prototype of all jurisprudential systems which do not recognize God and His sovereignty*.

Consider, for example, the anarchist, one who claims that he individually is "autonomous" (the root words are *auto* or self and *nomous* or law; *i.e.*, self-law). The anarchist is clearly another Adam. He will determine for himself what is good and what is bad, what is legal and what

is illegal. He will recognize no source beyond himself for morality or law. Though creature, he will not acknowledge his creaturely status. Though dependent, he will not acknowledge his dependence.

This, in my view, is a problem today for a large number of self-styled conservatives of the libertarian type. In opposing the inordinate claims and pretensions of the state, they often deny *any* authority beyond or above themselves, including that of God. Thus, one of their patron saints, Ayn Rand, proudly affirms her atheism. This is also a problem for philosophers of existentialist persuasion and those influenced by them. Recognizing no reality outside of themselves, they logically recognize no law-order above them to which they are subordinate. All who espouse a "do your own thing" morality are rebelling against God just as surely as Adam did and they wonder that they are frustrated in their efforts!

Consider also another type of jurisprudential system that might seem to be on the opposite end of the spectrum, but which upon closer analysis will be seen to be similar in fundamental orientation and character. For instance, what is the central legal postulate of Marxism? Or of any other collectivist system, such as Nazism? Ultimacy is placed not in God, who is denied outright, nor in the individual, who is not recognized as having even a limited autonomy. Rather, primacy is given to a limited number or group of individuals, an elite of some sort. With Marxism it is, at this stage of the historical process, the proletariat, whose will is infallibly declared by the Communist Party. With the Nazis it was (and is) a race of individuals whose will is infallibly declared by the Nazi party or the fuehrer. Here too man seeks to divinize himself, to be the sovereign God, determining what is good and what is bad. Man, in effect, "worships" himself, not individually, as does the anarchist, but as part of a group or a mass. But it is idolatry nonetheless, for it is the worship of something other than God. When tempted by the devil, Jesus quoted a *law* of God: "You shall do homage to the Lord your God and worship Him alone."⁷ Man is not God, nor are all men and women together or any subdivision thereof. Now this, if I may say so, is the temptation of the capital "L" Liberal, the person of the Left. He absolutizes something other than God, and he too wonders why his utopian dreams have not come true. "Unless the Lord build the house," sang the psalmist, "they labor in vain who build it."⁸ All forms of humanism, of either the individualistic or collectivist variety, of the Right or the Left, are doomed to fail.

Lest it be thought that I am concentrating unduly upon extremes, consider the "democratic" alternative. I assume that most people would agree with de Tocqueville that "the very essence of democratic government is the absolute sovereignty of the majority."⁹ This is a ver-

sion of the old *vox populi, vox dei*, the voice of the people is the voice of God. But the voice of the people is not the voice of God. To act as though it were is to risk dire consequences. Is it necessary to add, in this connection, that the voice of the courts or the judges is not the voice of God? *Vox curiae, vox dei* is likewise unacceptable.

De Tocqueville made this perceptive observation in his classic study, *Democracy in America*:

Unlimited power is in itself a bad and dangerous thing. Human beings are not competent to exercise it with discretion. God alone can be omnipotent, because his wisdom and his justice are always equal to his power. There is no power on earth so worthy of honor in itself, or clothed with rights so sacred, that I would admit its uncontrolled and all-predominant authority. When I see that the right and the means of absolute command are conferred on any power whatever, be it called a people or a king, an aristocracy or a democracy, a monarchy or a republic, I say there is the germ of tyranny, and I seek to live elsewhere, under other laws.¹⁰

To this point, I have emphasized the "revelational" character of law, its emanation from an authoritative source. Moreover, I have implied, as a corollary, that all jurisprudential systems are "presuppositional" in character. In every system there are various basic ideas or propositions, consisting of factual assumptions, moral values and ethical principles, which are, as it were, accepted on faith. These are, in turn, applied and implemented as law. Finally, I have maintained that in historical perspective the choice has been between some type of man-made or humanistic system ("my will be done") and a God-centered morality, ethics and law ("Thy will be done"). As much as one might wish otherwise, there can be no neutrality here. For as Jesus reminded us: "No man can serve two masters."¹¹

Permit me to elaborate briefly upon the latter choice as it relates to aspects of both space and time. If God made the world, then everything in it belongs to Him. It is His property. It has rightly been said that "[e]very political-economic theory rests upon a foundation of ownership. Whoever owns society will make the rules or laws by which society is to be governed. If man is the owner of society, then man will make the laws necessary for social organization. If God is the owner of society, then God will rule society by his standards and laws."¹² Obviously, the doctrine of creation has far-reaching legal implications.

But of equal significance is the doctrine of providence. By reason of divine providence there is meaning and direction in what may seem

superficially to be no more than a bewildering, if not random, succession of events. Events—those in the past, those of the present, and those to come—have meaning, because they all fit somehow into the divine plan. Life is not, as it was for Macbeth, “a tale told by an idiot, full of sound and fury, signifying nothing.” Human history is both meaningful and hopeful. Indeed, it was only because of a belief in the providence of God that there even emerged in man’s thinking the idea of “world” history, an overall account with a beginning, a middle, and an end. Pagan conceptions of time and history were cyclical, and the attitudes engendered thereby were markedly pessimistic; *i.e.*, the same old thing, over and over. In the Jewish-Christian tradition history is linear, and there is great hope and expectation.

Under these presuppositions there is an existing moral and legal order ordained by God. What, then, is man’s role? What is his response to be? How is he involved? Generally speaking, man’s task is to discern as best he can the content of this structure and to act in accordance with this knowledge. Some knowledge thereof can doubtless be gained through philosophical speculation (*i.e.*, reason alone), but as St. Thomas wrote: “If the only way open to us for the knowledge of God were solely that of reason, the human race would remain in the blackest shadows of ignorance.”¹³ For real guidance we must have recourse to divine revelation.

There is a law, to use St. Paul’s language, which is written in our hearts¹⁴ and discoverable by human reason. Man has this knowledge as a part of his nature. It is built into the very fiber of his being. This law, which may be referred to as “natural” law, is a kind of implicit revelation from the Creator. St. Thomas observes that “as to the common principles, the natural law, in its universal meaning, cannot in any way be blotted out from men’s hearts.” But, he notes realistically, the “secondary precepts” of the natural law can be blotted out from the human heart by what he termed “evil persuasions” or by “vicious customs and corrupt habits.”¹⁵ Anyone who works in the field of legal philosophy can attest to the rather meagre results of centuries of intellection.

Fortunately, God has not left us with this limited or implicit revelation. He has, in addition, disclosed patterns of His plan for us, or elements of His law-order, in a direct, explicit manner through Biblical revelation and the teaching authority which He established, the Church.

This divine “positive” law can, of course, be considered in terms of the historical period of promulgation: the “old” law of the Old Covenant or Old Testament and the “new” law of the New Covenant or New Testament. The new perfects and completes the old. Now it may well be that a particular precept of the old law is no longer binding in

view of the new law of Christ. But it still may be instructive. Therefore, before we discard any law of scripture as irrelevant to our life and our society, we ought to attempt at least to learn something of the reason for its initial promulgation. It might, to use contemporary language, help to highlight some element of "public policy" which will give us sound guidance in critiquing modern law and in effecting legal reform.

The following is a brief illustration of what I have in mind here. One of the sabbath laws prescribes a release of debts every seven years. Deuteronomy 15:1 reads: "At the end of every seven-year period you shall have a relaxation of debts, which shall be observed as follows: every creditor shall relax his claim on what he has loaned to his neighbor; he must not press his neighbor, his kinsman, because a relaxation in honor of the Lord has been proclaimed."

To put an extreme case, assume that the Indiana Legislature were to pass such a law. What would be the effect? To say the least, it would have a radical impact!

At a minimum, it would tend to discourage long-term debts, would it not? By the same token, it would tend to encourage a debt-free society. Would that be a good thing? A prominent financial analyst observed recently: "Among the greatest threats to the U.S. economy—and in fact, to economies the world over—is the massive total debt, consumer and international, overhanging our financial structures."¹⁶ Does anyone really have any idea how many personal and social problems derive from the worry and anxiety brought on by overpowering debts? In light of this unprecedented debt load, is it any wonder that many of us today are *restless*? We do not enjoy periodic rest in the Lord, which all sabbath legislation was designed to facilitate.

Clearly, the implications of a no-debt or short-term debt policy would be staggering, not just as regards individuals but also with respect to state policy and practice as well. There are many who regard inflation as the major economic problem of our time. What if the Federal Government could not increase the paper money supply by continuous long-term borrowing? Would it not then become more provident?

The foregoing is, of course, no more than a passing glance at the matter. There is much, much more to be said pro and con. My point, however, is not to urge verbatim adoption of this legislation, and still less to insist that we are obliged to do so. But I do suggest that we may have more to learn from laws of this type than we might think.

Surely, we could profit enormously from serious studies of such "old" laws as those relating to tithing, to the restoration of ancestral property in the Jubilee year, to the treatment of the poor, to family control of education, property and inheritance, etc. Likewise, would we not be enlightened by elaborations of such powerful Biblical legal

concepts as Covenant, Justification, Redemption, Lordship, Kingship, Fatherhood, etc.? (It is my hope that I will see the day when as much legal talent is expended in these areas as is now accorded, say, the Uniform Commercial Code and the Rule Against Perpetuities!)

Finally, a word about human involvement in this system of governance. God executes His plan through others; His government is mediated through individuals and institutions. The divine governor rules through other inferior governors whose power and authority derive from Him; namely, Family, State, Church, School and so on. One key agency of governance in this scheme that is often overlooked or insufficiently regarded is *self-governance*.

Now it is evident that God has not given us a detailed legal blueprint. Therefore, particular determinations and applications of divine law are to be made by these human agents or delegates. Since their power derives from God, their rule, authority and jurisdiction are limited. This is extremely important in that it precludes the exercise of total power by a human agency, and it diffuses power throughout society.

In sum, the task of all who are involved in the realm of law and government is to model their work upon what is known of the divine plan. They must view their roles as essentially "administrative" or "ministerial." They must not, as Adam would, become "as God," determining for themselves what is good and bad, legal and illegal. Their role is to exercise dominion under God, to participate in His providence. Therefore, every effort must be made to conform "human" law to "divine" law. Every human law that is in conflict with divine law should be regarded, just as Augustine insisted (and Aquinas after him), as not constituting law at all. Exercise of legal and governmental authority, if seen in the above light, is a calling from God. Power of this kind does not corrupt; it ennobles.

When the psalmist reflected upon God's law-order he was moved to sing: "Behold I long for your precepts, in your justice give me life."¹⁷ The laws found a response in his heart, for the same God who made his heart made the laws. Life is a gift of God, who has ordained how it is to be lived and perfected. All of God's laws are designed to assist men and women in the attainment of a supernatural destiny. And that is really something to sing about!

*Adapted from a lecture given upon installation as John N. Matthews Professor of Law at the University of Notre Dame on October 26, 1979.

¹Ps. 119:33-40. [Scripture texts throughout are taken from the *New American Bible*, a translation of the Confraternity of Christian Doctrine, Washington, D.C.]

²R. J. Rushdoony, "The State as an Establishment of Religion," *Freedom and Education: Pierce v. Society of Sisters Reconsidered* 37-38 (D. Kommers and M. Wahoske eds. 1978).

³Miceli, *The Gods of Atheism* xi (1975).

⁴Gen. 3:1-6.

⁵*Summa Theologica*, II-II, 163, 2.

⁶*Commentaries on Sententios*, II, XXXII, 1, 2, ad. 2.

⁷Matt. 4:10.

⁸Ps. 127:1.

⁹De Tocqueville, *Democracy in America*. Pt. 1, ch. 12.

¹⁰*Id.*

¹¹Matt. 6:24.

¹²E. A. Powell, *The Chalcedon Report*, August, 1978.

¹³*Summa Contra Gentiles*, ch. 4.

¹⁴Rom. 2:15.

¹⁵*Summa Theologica*, I-II, 94, 6.

¹⁶Sylvia Porter, "Your Money's Worth," *South Bend Tribune*, Oct. 3, 1979, p. 3.

¹⁷Ps. 119:40.

Abortion and the Law of God

There is one persistent theme of the pro-abortion lobby in this country: they insist that pro-life people have no right to impose their morality or moral values on others. Actually, in this one respect they are correct. For I have no right to impose my moral values; neither do you; and, if I may say so, neither do they. Nor, for that matter, do all of us put together have this authority. Why not? The reason is simple and fundamental: *we are not God*. Man, the *creature*, has no right to impose moral values; God, the *creator*, does. Indeed, *only* the triune God who creates a life has the authority to ordain how that life is to be lived. Whatever authority man has is derivative. In His final commission to the apostles, Jesus Christ, the second person of the divine Trinity, declared: "Full authority has been given to me..."¹ This is a declaration of total sovereignty in all areas of life. He is the ultimate authority and lawgiver; it follows that the function and role of all others in the law realm is essentially "administrative" or "ministerial." Moreover, it is utterly naive to imagine that there can be a law, any law, without the imposition of someone's moral values. For law is, as R. J. Rushdoony has noted, applied morality or procedural thereto. If there is to be any law at all, the imposition of moral values is inescapable. The question, then, is not *whether* there will be the imposition of moral values, but *whose* moral values are to be imposed. Viewed in historical perspective, the choice here is between God and man (in some form). Today the conflict is usually between God and the state acting as a god. This conflict is fundamental. In the most basic law of the Sinai covenant, God commanded that we have no "other gods" besides Him. Regrettably, the history of man upon the earth has been in large part the story of what the Bible deigns to describe as "whoring after other gods." The results have been catastrophic.

It is in this context that I propose to examine the abortion controversy. My premise is that there is an existing moral and legal order ordained by God, and for real guidance we must have recourse to divine revelation. We must attend, to be specific, to what God has explicitly revealed in the Old and New Testaments and to the authoritative teachings of the Church which He founded.

I was surprised to read the following in a book written by a perceptive advocate of the pro-life cause: "The Old Testament has nothing to say on abortion." This is misleading, for in a sense the Old Testament has *everything* to say about abortion. First and foremost, it states as a basic law: "You shall not kill."² By Biblical standards abortion is the unlawful taking of an innocent life. It is murder. The murdering of innocent life, is, under God's revealed law, an especially grievous offense.

For a human person, we are told, is made in the "image" of God. To strike at a person is actually to strike at the Creator as well. In Genesis 9:5,6 God solemnly declared: "*I will demand an accounting for human life. If anyone sheds the blood of man, by man shall his blood be shed; for in the image of God has man been made.*"

We live in a world largely dominated by man-made or humanistic values, where despite well publicized statements of respect for individual and human rights, human life is often held cheaply. Not so in scripture. To take another's life is serious, so much so that the murderer forfeits his own life. In the Bible the punishment is proportionate to the crime; the murderer is himself killed.³ Numbers 35:31 provides: "You shall not accept indemnity in place of the life of a murderer who deserves the death penalty; he must be put to death."

From a purely human perspective this may seem harsh, even cruel. But we do not see the full reality; our vision and perception are limited. Indeed, very often we seem oblivious even of the victim of the crime. Moreover, we indulge in foolish talk about so-called "victimless" crimes in situations where scripture more realistically sees an abundance of public harm and injury. Today there are those who cry "pollution" if they see a cigarette tossed on the street, but who ignore the blood shed by innocent babies in abortion mills. To know what pollution or desecration really is we must listen to God's word. For example, Numbers 35:33: "You shall not desecrate the land where you live. Since bloodshed desecrates the land, the land can have no atonement for the blood shed on it except through the blood of him who shed it." Or Psalm 106:38: "And they shed innocent blood, the blood of their sons and their daughters, whom they sacrificed to the idols of Canaan, desecrating the land with bloodshed."

There cannot be an abortion without the shedding of blood, innocent blood, and, almighty God has revealed to us, there can be no shedding of innocent blood that does not pollute the land and cry to heaven for vengeance.

Law in scripture is not conventional or arbitrary, as so often is the case with our human codes and statutes. God's law is a statement of how things really are, and there is no escaping the consequences of truly unlawful actions. Obedience or disobedience to God's law is presented in the Bible as a life-or-death matter. We read in the Book of Deuteronomy: "Here, then I have today set before you life and prosperity, death and doom. If you obey the commandments of the Lord, your God, which I enjoin on you today, loving him, and walking in his ways, and keeping his commandments, statutes and decrees, you will live and grow numerous, and the Lord, your God, will bless you in the land you are entering to occupy. If, however, you turn away your hearts and will not listen, but are led astray, and adore and serve

other gods, I tell you now that you will certainly perish; you will not have a long life on the land which you are crossing the Jordan to enter and occupy. I call heaven and earth today to witness against you: I have set before you life and death, the blessing and the curse. Choose life, then, that you and your descendants may live...''⁴

Many will readily agree that to deliberately kill a baby after birth would be to commit murder, but they contend that the case is altogether different prior to birth. But we do not need modern science to tell us that life begins prior to birth. This is also clear from God's revealed word. In Psalm 139, David is inspired of God to sing: "O Lord, you have probed me and you know me; you know when I sit and when I stand; you understand my thoughts from afar. My journeys and my rest you scrutinize, with all my ways you are familiar. Even before a word is on my tongue, behold, O Lord, you know the whole of it. Behind me and before, you hem me in and rest your hand upon me. Such knowledge is too wonderful for me, too lofty for me to attain... *Truly you have formed my inmost being, you knit me in my mother's womb.* I give you thanks that I am fearfully, wonderfully made; wonderful are your works."⁵ I will refer to New Testament texts later. Consider another Old Testament passage, this from the prophet Jeremiah: "The word of the Lord came to me thus: before I *formed you in the womb* I knew you, before you were born I dedicated you, a prophet to the nations I appointed you."⁶ In sum, as a distinguished scripture scholar has put it: "There is *nothing* in Scripture that even remotely suggests that the unborn child is anything less than a human person from the moment of conception."⁷

But, it may be asked, isn't there anything in scripture about the illegality of an abortion as such? There is.

Numerous laws in the Bible are elaborations of the basic commandments. They are, as we might view them from a contemporary legal perspective, statutory applications or "case" laws implementing basic principle. One of these is Exodus 21:23: "When men have a fight and hurt a pregnant woman, so that she suffers a miscarriage, but no further injury, the guilty one shall be fined as much as the woman's husband demands of him, and he shall pay in the presence of the judges. But if injury ensues, you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe."

Biblical scholars have, of course, debated as to the precise meaning of this passage, as they have, I suppose, with respect to virtually every passage in the Bible. But they are in agreement at least as regards the following: the injury referred to is that inflicted by accident, and whether death ensues or not, to either mother or child, the action is condemned and a punishment is provided. This is highly significant.

For if even an accidental abortion is penalized, how much more would a deliberate killing be legally proscribed and condemned? Beyond this, a strong case can be made for the view that, properly interpreted, the passage does not refer to a miscarriage, as we understand the term (*i.e.*, the expulsion of a dead foetus), but to premature birth (*i.e.*, the birth of a life child, but before anticipated time). Without detailing the whole of the argument, which relies heavily upon the words of the Hebrew text, the following has been put forward as an accurate interpretation or paraphrase of the passage: "And if men fight together and hurt a pregnant woman so that her child is born prematurely, yet neither mother or child is harmed, he shall be surely fined, according as the woman's husband shall lay upon him; and he shall pay as the judges determine. But if either mother or child is harmed, then thou shalt give life for life..."⁸

Under this interpretation, even an accidental abortion would be punishable by death. Nonetheless, even if this interpretation is rejected, the fact remains that the provision stands as a clear condemnation of abortion. To quote an eminent scholar of Biblical law, R. J. Rushdoony: "Clearly, the law strongly protects the pregnant woman and her foetus, so that every pregnant mother has a strong hedge of law around her...[S]ince even a mother bird with eggs or young is covered by law (Deut. 22:6,7), clearly any tampering with the fact of birth is a serious matter: to destroy life is forbidden except where required or permitted by God's law."⁹

In the world into which Jesus was born, abortion was commonplace, as it is today. So also was *infanticide*! (Can we be far behind? An ominous sign is the increasing use of amniocentesis to determine the sex of unborn babies and the use of this information in deciding to abort those of an unwanted sex.)¹⁰ The sin of abortion is not a new one, any more than other sins are confined to a particular era of history or to a select group of people. Consider the Greeks and the Romans. Even the great Aristotle approved of abortion under certain circumstances. So also did he approve of infanticide as well. I quote from his *Politics*: "As to the exposure and rearing of children, let there be a law that no *deformed* child shall live..."¹¹ Plato, in his utopian writings on the ideal society, evidently favored abortion as a means of population control.¹² So much for the reliability of unaided reason as a sure guide to reality!

A description of child abuse practiced among the Romans would perhaps shock even those living in this jaded age. I quote again from Rushdoony: "In Biblical law, all life is under God and His law. Under Roman law, the parent was the source and lord of life. The father could abort the child, or kill it after birth. The power to abort, and the power to kill, go hand in hand, whether in parental or in state hands.

When one is claimed, the other is claimed also. To restore abortion as a legal right is to restore judicial or parental murder."¹³

Professor Charles Rice, in his recent book *Beyond Abortion: The Theory and Practice of the Secular State*, comments as follows: "The abortion of the future will be by pill, suppository, or some other do-it-yourself method. At that point the killing of a baby will be wholly elective and private. We have, finally, caught up with the pagan Romans who endowed the father, the *paterfamilias*, with the right to kill his child at his discretion. We give that right to the mother. But it is all the same to the victim."¹⁴

In the infamous *Roe v. Wade* decision of January 22, 1973, Mr. Justice Blackmun, speaking for the court majority, makes this remarkable statement: "Ancient religion did not bar abortion."¹⁵ Precisely, providing one limits consideration to ancient *pagan* religions. It is noteworthy that in a section of the opinion which purports to describe "ancient attitudes" on the abortion question there is not a single reference to either Jewish or Christian sources.

In the Sermon on the Mount, Jesus said: "Do not think that I have come to abolish the law and the prophets. I have come, not to abolish them, but to fulfill them."¹⁶ Father John Hardon has commented: "So far from abrogating the covenant demands of God from his people, Christ came to intensify the moral imperatives by bringing them to perfection, *i.e.*, to reveal the full intention of the lawgiver."¹⁷ Thus, with respect to the law against unlawful killing prescribed in the Old Law, He not only reaffirmed it, He extended it: "What I say to you is: Everyone who grows angry with his brother shall be liable to judgment."¹⁸ Likewise, recalling the commandment not to commit adultery, He added: "What I say to you is: everyone who looks lustfully at a woman has already committed adultery with her in his thoughts."¹⁹

A deadly intellectual virus is at work in much of today's thinking about the law of God. It is the opposition that is set up between "law" and "love." Fall-out from this is seen in the opinions of those who disdain law observance and self-righteously proclaim love as a "higher" way. But the apostle John said: "The love of God consists in this: that we keep his commandments."²⁰ It is through law observance that we love; that is how we do it. Law is not, to be sure, a means of *justification*, for we are saved through faith in Jesus Christ and His grace. The law, or Torah, was "the way" for Old Testament man; in John's gospel Jesus said He is "the way." It is through Him, and only through Him, that man is saved or justified. Peter proclaimed boldly that there is "no other name in the whole world given to men by which we are to be saved."²¹ But obedience to God's law is a means of *sanctification*, a way of holiness. Most certainly the Kingdom of God is not a *lawless* regime!

Consider one of the most joyful moments in all of human history. A

messenger of God appears with a momentous announcement. Recall the inspired words of St. Luke:

In the sixth month, the angel Gabriel was sent from God to a town of Galilee named Nazareth, to a virgin betrothed to a man named Joseph, of the House of David. The virgin's name was Mary. Upon arriving, the angel said to her: "Rejoice, O highly favored daughter: The Lord is with you. Blessed are you among women." She was deeply troubled by his words, and wondered what his greeting meant. The angel went on to say to her: "Do not fear, Mary. You have found favor with God. You shall conceive and bear a son and give him the name Jesus. Great will be his dignity and he will be called Son of the Most High. The Lord God will give him the throne of David his father. He will rule over the house of Jacob forever and his reign will be without end."

Mary said to the angel, "How can this be since I do not know man?" The angel answered her: "The Holy Spirit will come upon you and the power of the Most High will overshadow you; hence, the holy offspring to be born will be called Son of God. Know that Elizabeth your kinswoman has conceived a son in her old age; she who was thought to be sterile is now in her sixth month, for nothing is impossible with God."

Mary said: I am the servant of the Lord. Let it be done to me as you say." With that the angel left her.

Thereupon Mary set out, proceeding in haste into the hill country to a town of Judah, where she entered Zechariah's house and greeted Elizabeth. When Elizabeth heard Mary's greeting, the baby leapt in her womb. Elizabeth was filled with the Holy Spirit and cried out in a loud voice: "Blest are you among women and blest is the fruit of your womb. But who am I that the mother of my Lord should come to me? The moment your greeting sounded in my ears, the baby leapt in my womb for joy. Blest is she who trusted that the Lord's words to her would be fulfilled."²²

Can anyone who believes in the truthfulness of this account persist in a belief that human life is not present at conception? After reading this, how can one possibly think of an unborn baby as anything other than a human person? The babies in the wombs of Mary and Elizabeth are clearly identified as persons. Indeed, Mary's baby is the second person of the divine Trinity! Elizabeth greeted Mary as the "mother of my Lord," and Mary would not have been a mother unless the child existed. Moreover, consider how young the divine child was at that time. The Bible says that after the annunciation Mary thereupon proceeded "in haste" to visit Elizabeth. Surely the baby was no more than a few days old. Comment is superfluous; the Biblical account says

it all.

Other New Testament texts should also be noted. In his letter to the Galatians, for example, St. Paul lists a number of vices, or works of the flesh, which must be avoided if one is to inherit the Kingdom of God. On this list, which includes lewd conduct, impurity, envy, orgies and the like, is "pharmakeia," a term usually translated as sorcery or witchcraft. Professor John Noonan insists that this is a mistranslation. He offers this helpful elaboration as to the usage in Galatians and a similar usage in the Book of Revelation:

Pharmakeia is a term best translated as "medicine" in the sense in which a North American Indian medicine man makes medicine. It is the employment of drugs with occult properties for a variety of purposes, including, in particular, contraception or abortion. Paul's usage cannot be restricted to abortion, but the term he chose is comprehensive enough to include the use of abortifacient drugs. The association of these drugs with sins of lechery and wrath was indeed a constant aspect of the Christian approach to *pharmakeia* (the practice of "medicine") and *pharmaka* (the drugs employed).

The same association and the same comprehensive use of the term appeared in the *Apocalypse*. The sinners who were not saved "did not repent of their homicides nor their medicine [*pharmaka*] or their fornications nor their thefts" (9:21). The *pharmakai*, the medicine men, were condemned by the Lord with the homicides and the fornicators (21:8). Those outside the heavenly city were "the dogs and the medicine-men and the fornicators and the homicides and the idolaters and everyone who loves and practices falsehood" (22:15).²³

A common form of abortion technique today, used most often in the later stages of pregnancy, is saline abortion. Professor Rice gives this succinct description of the method: "[S]ome of the amniotic fluid in which the child rests is withdrawn and replaced by a toxic saline solution which poisons the child and severely burns his skin. He usually dies within 90 minutes; within 72 hours the mother goes into labor and delivers a dead child."²⁴

Is there any doubt that this constitutes the crime of *pharmakeia* referred to by St. Paul? Moreover, the Hebrew word for "kill" in the commandment "Thou shalt not kill" in Exodus 20:13 is *rasah*. It means, generally, premeditated murder.²⁵ But it has as well a more specialized meaning; namely, "to dash to pieces."²⁶ In light of this, consider a description of the two most common abortion procedures performed during the first trimester of pregnancy, dilation and curettage (D & C) and suction abortion: "In dilation and curettage, the entrance to the womb is dilated and the child is cut to pieces and removed piece by

piece. In suction abortion, a tube attached to a highpowered vacuum is inserted into the womb, the child is pulled apart and the parts are sucked into a glass jar.'²⁷ *Rasah!*

Next, what does history disclose as to the application and implementation of Biblical teaching on abortion? The common pattern is that of intense conflict between worldly powers and authorities on the one side and the teaching authority which Jesus established, the Church, on the other. This was the case at the beginning of the Christian era and it is, of course, the situation today.

As already noted, the Christian religion emerged in a society in which abortion was almost the rule rather than the exception. But the Church reacted with courage and firmness. The first century compilation of doctrine, the *Didache* (or *Teaching of the Twelve Apostles*) stated flatly: "You shall not procure an abortion." And it is a matter of historical record that this uncompromising stance has been maintained ever since. For whether one reads a statement of an early Church father or of a contemporary Pope, the message is the same; namely, abortion is violative of the law of God. For example, Athenagorus, writing to the Emperor Marcus Aurelius in A.D. 177, said that "all who use abortifacients are homicides and will account to God for their abortions as for the killing of men."²⁸ Pope John XXIII put it this way in our time: "Human life is sacred; from its very inception the creative action of God is directly operative. By violating his laws, the divine majesty is offended, the individuals themselves and humanity are degraded, and the bonds by which members of society are united are enervated."²⁹ So also has it been with respect to the councils of the Church. At the Council of Ancyra in 314, there was a denunciation of those who "slay what is generated and work to destroy it with abortifacients."³⁰ More than 1600 years later the same view was reaffirmed by the Second Vatican Council: "Life from its conception is to be guarded with the greatest care. Abortion and infanticide are horrible crimes."³¹ The present Holy Father, Pope John Paul II, speaking in our nation's capitol, climaxed a fervent plea for the protection of human life from the moment of conception with these memorable words: "*When God gives life, it is forever!*"

Historically, Protestant opposition to abortion has been every bit as adamant as Catholic opposition. For example, the most influential Protestant theologian, John Calvin, spoke as follows: "If it seems more disgraceful that a man be killed in his own home than in his field—since for every man his home is his sanctuary—how much more abominable is it to be considered to kill a fetus in the womb who has not yet been brought into the light."³² Indeed, only in comparatively recent times do we hear of professing Christians dissenting from this view.

Incidentally, it would appear that the very first book in Western

Europe attacking the legal restrictions on abortion was published in 1795. The author? The notorious Marquis de Sade! "Sadism," the diseased condition of sexual perversion with cruelty, is named after him. De Sade contended that France was overpopulated and that the "Chinese" practice (as he styled it) of abandoning babies was to be desired.³³ De Sade saw no crime in murder. How could he? For to him, each man was a law unto himself, his own god. But as de Sade's life and philosophy amply demonstrate, this is not a god who creates life, but who destroys it. Divinity is, in effect, manifested by violence inflicted upon others, competing gods. Consider these words of this French aristocrat who qualifies as one of the founding fathers of the modern sexual revolution: "Ah, how many times, by God, have I not longed to be able to assail the sun, snatch it out of the universe, make a general darkness, or use that sun to burn the world! Oh, that would be a crime..."³⁴ A Biblical footnote is appropriate: "For whoso findeth me findeth life, and shall obtain favor of the Lord. But he that sinneth against me wrongeth his own soul: all they that hate me love death."³⁵

I began by saying that the conflict here is basic. It is, in fact, a conflict between God's will as normative and man's will as normative. The issue is: *who is to rule?* Christ or Caesar? Christ or the Marquis de Sade? Christ or the Supreme Court of the United States?

There can be no neutrality here, nor can there be any compromise. We must choose, and our choice will be consequential—for ourselves and for future generations.

¹Matt. 28:18

²Ex. 20:13; Dt. 5:17.

³E.g., Ex. 21:23-25; Lvt. 24:17 ff.; Dt. 19:21.

⁴Dt. 30:15-19.

⁵Ps. 139:1-6, 13-14.

⁶Jer. 1:4-5.

⁷Frame, "Abortion from a Biblical Perspective," *Thou Shalt Not Kill* 50-51 (Ganz ed. 1978).

⁸*Id.* at 56. See also Rushdoony, *The Institutes of Biblical Law* 263-4 (1973).

⁹Rushdoony, *supra* note 8 at 264.

¹⁰See, e.g., Beck, "Aborting Children of Unwanted Gender," *Chicago Tribune*, Sept. 10, 1979, p. 10.

- 11 *Politics*, VII, 1335b, 20.
- 12 *The Republic*, 5.461c.
- 13 Rushdoony, *supra* note 8 at 186.
- 14 Rice, *Beyond Abortion: The Theory and Practice of the Secular State* 98 (1979).
- 15 93 S.Ct. at 715.
- 16 Matt. 5:17.
- 17 Hardon, *The Catholic Catechism* 325 (1975).
- 18 Matt. 5:22.
- 19 Matt. 5:28.
- 20 1 John 5:3.
- 21 Acts 4:12.
- 22 Luke 1:26-45.
- 23 Noonan, *The Morality of Abortion* 8-9 (1970).
- 24 Rice, *Fifty Questions on Abortion*, Q.2 (1979).
- 25 Brown, Driver and Briggs, *Hebrew and English Lexicon of the Old Testament* 935 (1978).
- 26 *The International Standard Bible Encyclopedia*, Vol. III, p. 2094 (1939).
- 27 Rice, *supra* note 24.
- 28 Hardon, *supra* note 17 at 341.
- 29 *Id.*
- 30 Noonan, *supra* note 23 at 14.
- 31 *Id.*
- 32 Noonan, *A Private Choice* 59 (1979).
- 33 Noonan, *supra* note 23 at 37.
- 34 Rushdoony, *supra* note 8 at 332.
- 35 Prov. 8:35-36 (KJV).

A Procreative and Governmental Unit

“Have you not read that at the beginning the Creator made them male and female and declared, ‘For this reason a man shall leave his father and mother and cling to his wife, and the two shall become as one’? Thus they are no longer two but one flesh. Therefore, let no man separate what God has joined.”¹

There was a marriage in paradise, and in the foregoing passage Jesus tells us a great deal about this God-ordained relationship. First, God makes marriage what it is. A man and a woman may choose whether or not to marry, but they cannot determine for themselves what marriage is. God’s will is normative here, as it is in all areas of life and thought. Second, the marriage relationship is characterized by two important qualities; namely, unity and permanence.

The union of the spouses is so complete that they are said to be “one flesh.” In his letter to the Ephesians, St. Paul likens this unity to that which exists between Christ and His Church.² Moreover, this bond is so strong that no man may dissolve it. Hence, it is not so much that divorce is wrong as that it is impossible. Man and his courts are simply powerless to separate what God has joined.

The Christian view of marriage has seemingly never been popular, because man persists in trying to do things his way rather than God’s way. Indeed, even Jesus’ disciples complained, saying “If that is the case between man and wife, it is better not to marry.”³ In every age there have been dissenting voices, and they are heard on all sides today. Illustrative is a dictum of the United States Supreme Court in which the marital relationship is said to be no more than an “association of two individuals.”⁴ It is fashionable in some circles for the parties, who may or may not be of the same sex, to draw up an elaborate marriage “contract,” complete with extensive powers of termination and other terms worthy of any technical commercial agreement. Implicit in all of this is, of course, the view that marriage can be whatever the contracting parties desire it to be. They consider themselves as having the same sort of autonomy they would have if they were executing a contract for the sale of a used car. The lack of congruence between this outlook and the Biblical pattern could hardly be more palpable.

The truth is that by God’s power a man and a woman become uniquely related through marriage. They become husband and wife, a family. Frank Sheed has written: “They are united, not simply by an agreement to be so, but by some vital reality. The relationship of husband and wife is not brought into being in the same way as the

relationship of parent and child, for the latter arises in a union of bodies, the marriage relationship in a union of wills; but it is all the closer and more real for that. A husband and wife are not less vitally and really related to each other than they are to their own children, but more.'⁵ It is significant that Jesus Christ, the second person of the divine Trinity, chose to be born into a family. Moreover, it is of vital importance to know that through Jesus the marriage contract becomes a sacrament, a source of grace for the parties to assist them in fulfilling a call from God.⁶

What can we learn from scripture regarding the role or purpose of this familial unit? What is its function? The basics are set out in the first chapter of the Bible, wherein Adam and Eve are assigned functions which are *procreative* ('be fertile and multiply') and *governmental* (subdue the earth and exercise dominion over it).⁷ These commands were given to Adam and Eve as a husband and wife, as a family, and they are, by extension, given as well to all succeeding families.

God's procreative design involves men and women as no less than intimate collaborators of the Creator! They are pro-creators or "deputy" creators. This is a fact of enormous significance and profound meaning. It is of critical importance in any treatment of human sexuality, sexual differentiation, the marriage relationship, family rights and duties, and much else besides. Moreover, the action involved, sexual union of man and woman, provides an intensity of pleasure unlike any other. Reflecting upon the inexhaustibility and magnificence of it all, one is led to cry out with the psalmist in admiration and gratitude: "There is none like you among the gods, O Lord, and there are no works like yours...For you are great, and you do wondrous deeds; you alone are God!"⁸

After completing the work of creation, the Bible tells us, "God looked at everything he had made, and he found it very good."⁹ St. Paul echoes this in First Timothy: "Everything God created is good; nothing is to be rejected when it is received with thanksgiving, for it is made holy by God's word and by prayer."¹⁰ Everything God continues to make is also very good. No wonder that parents instinctively recognize this when they see their newborn. How could anyone not see that the baby is "a good"? The wonder is that so many do not so recognize the goodness of God's creation. Historically, one of the most persistent opposing views has been that which posits some sort of *dualism*, two ultimates of more or less equal power and validity. Normally, the one, the "good," is associated with spirit and light, and the other, the "bad," with matter and darkness. Evil in the world is ascribed to the latter source. Thus, there are two creators, which is to say, two "gods." A powerful manifestation of this view was the Manichaean heresy which arose in the third century. Influenced by ancient dualist religions, the

founder Mani constructed an elaborate and complicated system predicated on a belief in two eternal, uncreated first principles (the Father of Majesty, the good principle, and the King of Darkness, the bad principle) who contended for domination. The world, being material, was evil; hence, salvation was effected by escape from the world. It has been characterized as "the strongest religious undergrowth of all time;"¹¹ and we have not yet heard the last of it.

Some of the consequences of the dualist idea are easy to predict. Consider, for example, what your attitude would be if you believed as a fundamental that spirit (or soul) is good and matter (or body) is bad. You would disdain the body, would you not? You would, as did the Manichaeans, disdain procreation in all its aspects.

Some of the tales of the acting-out of such disdain are spine-chilling, to say the least. Consider Albigensianism, a dualist heresy of the 12th and 13th centuries. "On the principle that no true spiritual life was possible as long as the soul remained trapped in the evil material body, the Albigenses were committed to death as a final release and sought to hasten it by all means. Not infrequently they committed suicide by opening their veins, by drowning, by taking poison, sometimes literally starving themselves to death or having others wall them up. If some wavered in the resolution of their desire for death, they were suffocated by more decisive members of the sect."¹²

There were two classes of Albigenses, the ordinary "believers," and those of a higher status, the "perfect." Once one became "perfect," and this was accomplished through an elaborate liturgical ceremony, it was thought that the spirit so dominated that only the appearance of flesh remained. Life for the "perfect" became a life of complete renunciation in which he eagerly anticipated a death that was often effected through a form of sacred suicide called *endura*. Only one who was "perfect" was saved.

The mere "believers," on the other hand, were allowed to indulge whatever act of sexual excess or civic irresponsibility that appealed to them. Thus, they "were allowed to indulge in concubinage, adultery, fornication, and even incest. They did not feel bound to observe the sixth commandment or any traditional morality until they decided to embrace the life of the perfect. This decision was put off, if possible, until just before they died. Most believers made arrangements to have some of the perfect always at hand to receive them, in case of sudden illness or serious accident. But others, even at the point of death, refused to take the step for fear that they might recover and be forced to satisfy the rigorous demands of the perfect's life."¹³

All of this was an overt challenge to the goodness of material creation as affirmed by Christianity. It is understandable that the Albigenses emphatically rejected that most central of Christian doctrines,

the Incarnation. They insisted that Jesus was not the second person of the divine Trinity, but an archangel who came to earth as an apparition or illusion. They, of course, also rejected the Resurrection, claiming it as well to be merely an illusion. One could add an abundance of detail respecting additional outlandish behavior which followed logically from their heretical beliefs. Suffice it to say that here an erroneous doctrine of creation led to unimaginable acts of personal and social irresponsibility, and it seems appropriate that the highest good was conceived to be death by suicide. St. Paul had predicted as much: "The wages of sin is death..."¹⁴

Is it an exaggeration to characterize the dominant philosophy of our time as a "philosophy of suicide"? I do not think so. For the anti-life manifestations of this age, while not unique, are pervasive. Abortion is the most notable manifestation, but there are many others. It is commonplace for influential educators and publicists to seek to offer a justification for pre-marital and extra-marital sex, homosexual practice, contraception, euthanasia, incest, even suicide. And the list could be extended. It is not accidental that all of this coincides with what may be an unprecedented attack upon the family as the central unit of society. There is no shortage of contemporaries who are willing to heap ridicule upon the Christian norm of sex between a man and a woman united in marriage.

Without doubt, one of the ideas that has helped to fuel the modern sexual revolution is another rival "creation" theory that has virtually captivated the modern mind. I refer to the theory of evolution, both biological and cultural. In its boldest expression, the evolutionist affirms that man in all his being, body and soul, has evolved from primal form (matter), and the process will continue until perfection is reached (*i.e.*, until he becomes a "god"). There are, of course, milder varieties, but the influence of evolutionary theory, upon morals, ethics and law, has been precisely because of the rejection of a creator God and the encouragement of "monistic" and "pantheistic" presuppositions.

Monism (from the Greek *monos* meaning "alone" or "one") affirms that there is only one fundamental component constituting every real thing. With some this is matter; with others it is spirit. Pantheism adds to this by declaring that all this taken together is God. The root words are *pan* meaning "all" and *theos* meaning "God." Pantheism thus denies God's transcendence; He is not distinct from the world. There is a rejection of the creator-creature distinction; there is no dichotomy of uncreated and created reality. In the words of Danielou, "the characteristic of pantheism is to eliminate the frontiers that separate God from what is not God, to misunderstand at once God's absolute transcendence (since all is in some sense divine) and the existence of the

creature (since it does not exist apart from God, but is finally drawn back to Him.)”¹⁵

It is obvious that one who is already a god or who is evolving into a god will not readily perceive an obligation to obey the God of scripture who made heaven and earth! Or, looked at from another perspective, if one is an individual merged into the god (as just a wave in a big ocean, so to speak), there is the effacement of individuality and with it human freedom and responsibility. The evolutionary view is productive of both false optimism and false pessimism, neither of which is conducive to a respect for God and His sovereign will in the area of sex and marriage. Finally, it fosters an attitude toward family life which sees the family as no more than an historically determined institution which has become an anachronism.

In rejecting the evolutionary view of marriage, Pope Paul VI wrote as follows in his encyclical *Humanae Vitae*: “Conjugal love reveals its true nature and nobility when it is considered in its supreme origin, God, who is love, ‘the Father, from whom every family in heaven and on earth is named.’ Marriage is not, then, the effect of chance or the product of evolution of unconscious natural forces; it is the wise institution of the Creator to realize in mankind His design of love. By means of the reciprocal personal gift of self, proper and exclusive to them, husband and wife tend toward the communion of their beings in view of mutual personal perfection, to collaborate with God in the generation and education of new lives.”¹⁶

While it is obvious that marriage is divinely ordained for the propagation of the human race, it is equally obvious that the purpose is not thus limited to procreation. As noted, Adam and Eve were directed not only to “be fertile and multiply,” but were also directed to subdue the earth and exercise dominion over it. This dominion mandate establishes the family as the central and primary *governmental* unit in God’s plan.

As elaborated in the writings of R. J. Rushdoony, it is an indication of our deviation from the divine norm that modern man scarcely tends to regard the family as a governmental agency at all. When he hears the word “government,” he thinks only of some unit of *civil* government, usually the Federal Government. Dr. Rushdoony reminds us that “[e]very family is a government; it is man’s first church and first school, and also his first state.”¹⁷ He adds: “Historically and Biblically, the family is the central institution in law and in society. Although we do not think of the family normally as a law-making body, the family is nonetheless the basic law-making body in all history.”¹⁸ It is not accidental that totalitarian states are anti-family. Nor is it surprising that every effort to transfer authority from the family to the state, be it in the area of care and education of children or whatever, is likely to be in

conflict with God's law-order, which establishes that the family, not the state, is the central and primary unit of governance and control.

From a Biblical perspective the most basic family power is the control of children. This is, of course, a very important power, for whoever controls the children controls the future. Hence, it is not surprising that other institutions have sought to exercise this power. In addition to the basic obligation to support the child, it involves disciplining and educating him. Children are required to obey their parents, but the parents, in turn, are obliged to teach the basis of the duty to obey, the law of God.

The most basic principle of the Mosaic law and that which Jesus said was the "greatest and first commandment" is contained in Deuteronomy 6:5: "[Y]ou shall love the Lord, our God, with all your heart, and with all your soul, and with all your strength." Note the next two lines: "Take to heart these words which I enjoin on you today. *Drill them into your children.*"¹⁹ The teaching role and authority of parents are emphasized time after time. Also emphasized was the principal content of the education; namely, the law of God.²⁰

This theme is carried forward in the New Testament. We read, for example, in St. Paul's letter to the Ephesians: "Children, obey your parents in the Lord, for that is what is expected of you. 'Honor your father and mother' is the first commandment to carry a promise with it — 'that it may go well with you, and that you may have long life on the earth.' Fathers, do not anger your children. Bring them up with the training and instruction befitting the Lord."²¹

In almost every historical period it has been the state which has constituted the greatest threat to family authority and independence. It has been the state, especially as manifested in various totalitarian forms, which has sought to substitute its power and authority for that of parents. And in no area is this more avidly pursued than in the area of education. But it is not only in totalitarian regimes that serious infringements of parental rights in education are present. We see them in the United States, and conflict in this area is becoming more pronounced each day.

The extent to which the existing educational pattern in the United States varies from that commanded by Biblical law can be suggested by recalling one bit of American history. In 1647 the Commonwealth of Massachusetts passed a statute which came to be known as the "Old Deluder Act." This statute "enunciated for the first time among English-speaking peoples the principle that public authority had the right to *require* individual communities to establish and maintain schools."²² The statute was passed ostensibly because the "Old Deluder," Satan, was keeping people from knowledge of the scriptures. It is ironic that the avowed purpose of this pioneer legislation in the field of public educa-

tion was to promote the study of the Bible and that that is one study which cannot be pursued in public schools today.

Unless parents can control and direct the education of their children, they cannot fulfill their responsibility to God. Moreover, unless they exercise their responsibility in conformity to divine revelation, they are in default before God. The same may be said of other parental duties, such as that of disciplining their children and of providing them with the necessities of life (food, shelter and so on). It is an illusion that parental default in these respects can be remedied by some other agency. To be sure, people have persisted in so believing, going so far at times as to insist that parental control is inherently defective. One recalls, for example, Plato's prescription for the placement of children in state boarding schools. Collectivist utopians, ancient and modern, have sought to drive a wedge between parents and children, all the better to enhance the power of some sort of statist regime.

It is, of course, true that in many cases parents are ill-equipped, financially and otherwise, to discharge their duties. But the remedy is not in transferring control to others. The remedy lies in strengthening the family unit, not in making it more impotent. For one thing, despite the extravagant claims of those who would thus take over, it is safe to say that as a rule mothers and fathers love their children more and will work harder for their welfare than the bureaucrats who would replace them. Beyond this, there is the jurisdictional question. Family authority is God-given and may not be alienated.

The only solution is the basic one; namely, personal regeneration and social reconstruction. In order to exercise any call from God, one must be empowered by His grace. One must, first of all, be "born again" into supernatural life.²³ The "natural" man cannot succeed in this area, any more than he can in any other. Marital and parental obligations are not easily discharged; the husband and wife need help. We need reminding here, as elsewhere, of what Jesus said: "Apart from me you can do nothing."²⁴

With respect to social reconstruction, we must again seek guidance from divine revelation. It follows that if the family is to be the central unit for exercising dominion, it must have resources available for doing so. If parents are to support, discipline, and educate their children they must have property. For can family authority be safeguarded without power, and can there be this power without property? In his monumental work *The Institutes of Biblical Law*, Rushdoony discusses various laws of scripture which are supportive of the family, including those which help to assure familial control as regards property and inheritance. For example, the Biblical taxation scheme, the tithing system, would, on the average, take less than fifteen percent of earned income, and much of that would be expended on behalf of families.

There was no property tax, and property security was augmented by the legal requirement that in the Jubilee year rural land holdings reverted to their original owners. There were no inheritance taxes. Contrasting the Biblical pattern with that which prevails today, he notes: "The state, moreover, is making itself progressively the main, and sometimes, in some countries, the only heir. The state in effect is saying that it will receive the blessing above all others. There is, however, a perverse justice and logic in the state's position, in that it is assuming the dual roles of parents and child. It offers to educate all children and to support all needy families as the great father of all. It offers support to the aged as the true son and heir who is entitled to collect all of the inheritance as his own. In both roles, however, it is the great corrupter and is at war with God's established order, the family."²⁵ Clearly, any real reform legislation in this area must address in a realistic way the matter of family resources.

In considering any problem regarding human life, Pope Paul VI warned against limiting one's view to "partial perspectives—whether of the biological or psychological, demographic or sociological orders." Rather, every problem must be considered "in the light of an integral vision of man and of his vocation, not only his natural and earthly, but also his supernatural and eternal vocation."²⁶ Any treatment of sex, marriage or family from a secular perspective is, by its very nature, a partial one. For a total vision we must turn to God and His revealed word.

- 1 Matt. 19:4-7.
- 2 Eph. 5:32.
- 3 Matt. 19:10.
- 4 Brennan, J. in *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1971). See Rice, *Beyond Abortion: The Theory and Practice of the Secular State* 84-86 (1979).
- 5 Sheed, *Society and Sanity* 122-23 (1953).
- 6 Lawler, Wuerl, and Lawler, *The Teaching of Christ* 510-12 (1976).
- 7 Gen. 1:27-28.
- 8 Ps. 86:8, 10.
- 9 Gen. 1:31.
- 10 1 Tim. 4:4.
- 11 Hughes, *A History of the Church* 130 (1949).
- 12 *The Catholic Encyclopedia*, Vol. 1, pp. 129-30 (1965).
- 13 *Id.* at 130.
- 14 Rom. 6:23.
- 15 Danielou, *God and the Ways of Knowing* 43-44 (1957).
- 16 Pius VI, *Humanae Vitae* (1968).
- 17 Rushdoony, *Law and Liberty* 59 (1971).
- 18 *Id.* at 78.
- 19 Dt. 6:6-7.
- 20 See, e.g., Dt. 31:9-13.
- 21 Eph. 6:1-4.
- 22 McCluskey, *Catholic Viewpoint on Education* 16 (1959).
- 23 See, generally, Murphy, *Life to the Full* (1978).
- 24 John 15:5.
- 25 Rushdoony, *The Institutes of Biblical Law* 181 (1973).
- 26 Pius VI, *Humanae Vitae* (1968).

Educational Conflict

There is general agreement today regarding the importance of education, however defined. But there is precious little agreement beyond that. For if one asks a serious educational question, such as what should be taught (*i.e.*, content) or who should teach (*i.e.*, authority), the answers will certainly not reflect a consensus. For a myriad of reasons, including most especially a perception of weakness and disintegration in the dominant state system, people are increasingly asking hard questions and are not being satisfied with partial answers.

Education, by its very nature, is value laden and "religious." Basic faith is the principal determiner of educational content, and people seek to teach or have taught that which they believe to be important. There is a parallel to our earlier discussion of jurisprudence and legal philosophy. It was maintained that all legal systems have an ultimate legal source and a basic faith, whether stated or unstated. That is to say, they have a "god" and a "theology."¹ So it is with respect to education. In every educational system or philosophy there is posited an ultimate source of knowledge, and there are fundamental presuppositions which largely determine the particulars. Just as there is an ultimate lawgiver, there is an ultimate teacher. The choices reduce themselves, just as they do in jurisprudence, to God or man (in some form). Invariably, one will see God as the source of knowledge and meaning in the universe and in events, or one will see himself or a particular collection or grouping of individuals as that source. Thus, all educational philosophy will be God-centered or man-centered in this sense.

There is an understandable reluctance on the part of many to put questions in terms of conflicting ultimates. For why, it is asked, engender conflict which is both unnecessary and divisive? Hence, we witness avid searches for neutral principles or lowest-common denominator concepts to which everyone will readily subscribe. But has not history taught us that such a search is futile? We cannot ignore major premises and expect to reach valid conclusions. Nor can we paper over real differences, as by couching them in meaningless jargon, and hope to advance the welfare of anyone. There are matters about which one dare not, and indeed cannot, be neutral. Jesus once cautioned His listeners: "He who is not with me is against me, and he who does not gather with me scatters."² "Other gods," *all of them*, are no less uncompromising.

Consider the case of *State of Ohio v. Levi Whisner et al.*, decided by the

Ohio Supreme Court in 1976.³ Reverend Levi Whisner and eleven other parents were indicted by a grand jury for failure to send their children to a school which conformed to "minimum standards" prescribed by the state board of education. The children attended Tabernacle Christian School, a nonpublic religious elementary school. The defendants contended that the state standards espoused a philosophy of "secular humanism," in contravention of the Biblical pattern to which they adhered. The trial court found the defendants guilty, but this was reversed on appeal. The Supreme Court held that the prescribed standards infringed upon the right to free exercise of religion by the parents and students.

Whisner is a microcosm of basic, irreconcilable conflict in American education. Reverend Levi Whisner and the other parents sought to base their theory and practice squarely upon Biblical revelation. The Ohio officials, on the other hand, did not so much as acknowledge the possibility of a "word" higher than man's. Their position was humanistic to the core, and they did not claim otherwise. This type of conflict is emerging throughout the country, particularly as a result of the spectacular growth of the Christian school movement.

Is accommodation or compromise possible? Not so long as state agencies seek to control and regulate beyond minimal requirements of health and safety. There are, of course, those in the private sector who are willing, in the interest of bare survival, to make major concessions to the public authorities in the area of school accreditation, teacher certification, etc. But there are others, like Whisner, who will insist on principle that the state has no such authority to control and direct education.⁴ It is of interest to note that in *Whisner* defense counsel sought to introduce evidence that the students of Tabernacle Christian School scored well above average on standardized tests. The prosecution objected that this evidence was "irrelevant."⁵ Clearly, the underlying issue was not educational "quality," but educational control.

America's educational roots are private, Christian and pluralistic. There is no mention of education in either the Declaration of Independence or the United States Constitution. This did not reflect an indifference to education, for in Colonial America formal education was earnestly pursued at all levels. But it was indicative of the prevailing view that education was not properly a statist enterprise. Most schools were under the auspices of various Christian churches. It is fair to assume that the basic content of education in these early schools bore a much closer resemblance to that to be found in the Tabernacle Christian School than in the ordinary Ohio public school. Regardless of confessional differences, there was the overall shared view regarding the centrality of Biblical revelation in any course of study. Surely the

colonists would have looked askance at any state system from which all elements of Christian teaching were systematically excluded. It is indicative of a fundamental change of attitude that today such a system is evidently considered by most people to be the norm. Frank Sheed spoke to this as follows:

Throughout most of the Western World, the State is regarded as the normal educator. Schools not conducted by it are regarded as eccentric and in most countries they exist only precariously. This situation, I say, is taken as normal, whereas in fact it is grotesque. There are hundreds of definitions of education. But one may take as a minimum definition, one which would be accepted by practically everybody, that education is to fit men for living. Supposing you were to write the Education Department of your State something to this effect: 'I note that you are in business of fitting men for living. Would you mind telling me what a man is?' The only possible answer would be that we live in a liberal democracy: every man is entitled to accept any religion or philosophy as he pleases, and according to its teaching hold his own view—that man is matter, or spirit, or both, or neither: the State does not decide among them, it is wholly neutral, it does not know what a man is. If you were then to write further and say: 'I note that as the State you do not know what a man is. Do you know what living is for?' the answer could only be the same—that it is a matter for each citizen to decide for himself, the State is neutral, the State does not know. I have called this grotesque and that is to flatter it. To be fitting men for living, not only without knowing what man is or what life is for, but without even thinking the questions relevant, indeed without ever having asked them—it is odd beyond all words. Yet it does not strike people as odd. And the depth of their unawareness of its oddness is the measure of the decay of thinking about fundamentals.⁶

Sheed's point is well taken. For no doubt most public school administrators would vehemently deny that they press upon the students any type of orthodoxy. Indeed, they would likely insist, with pride, that they do not "indoctrinate." But indoctrination of some kind is inevitable; neutrality is a myth. An English educator, Sir Walter Moberly, once remarked of the so-called "neutral" university: "On the fundamental religious issue [the existence of God], the modern university intends to be, and supposes it is, neutral, but it is not. Certainly it neither inculcates nor expressly repudiates belief in God. But it does what is far more deadly than open rejection; it ignores Him... It is a fallacy to suppose that by omitting a subject you teach nothing about it. On the contrary you teach that it is to be omitted, and that it is therefore a matter of secondary importance. And you teach this not openly

and explicitly, which would invite criticism; you simply take it for granted and thereby insinuate it silently, insidiously, and all but irresistably.'⁷

As noted, at the beginning of our nation's history, virtually all schools were religious in character. What is not fully appreciated is that they still are. It is just that the religion has changed. Moreover, as *Whisner* illustrates, proponents of the new faith are becoming more and more hostile to the old faith.⁸

One of the founding fathers of the religious orthodoxy in American public education was the philosopher John Dewey. In terms of his basic tenets, he was a deeply religious person, and he did not shrink from the logical implications of those beliefs. For example, in *A Common Faith* he stated flatly: "I cannot understand how any realization of the democratic ideal as a vital moral and spiritual ideal in human affairs is possible without surrender of the conception of the basic division to which supernatural Christianity is committed."⁹ In 1933 Dewey and several other prominent and influential persons drafted, signed and issued what they called a Humanist Manifesto. This document was updated in 1973 by Humanist Manifesto II. The following is from the latter document:

We believe that traditional dogmatic or authoritarian religions that place revelation, God, ritual or creed above human needs and experience do a disservice to the human species.

Promises of immortal salvation or fear of eternal damnation are both illusory and harmful. They distract humans from present concerns, from self-actualization and from rectifying social injustices.

We affirm that moral values derive their source from human experience. Ethics is autonomous and situational, needing no theological or ideological sanction. Ethics stems from human need and interest. To deny this distorts the whole basis of life.¹⁰

It is just such a philosophy that pervades state schools, which by law cannot affirm and transmit the truths of Biblical revelation. This has precipitated a serious crisis, as R. J. Rushdoony has pointed out:

The issue not yet faced...is that the state schools are also religious schools whose curriculum embodies and incarnates the religion of secularism. The state schools are an establishment of religion. Education is inevitably religious...How the young are instructed and how the Society is regulated by law are the best ways of determining the religious faith of a culture. The problem in the United States is that the legal establishment is in essence humanist, and the education establishment is the same...Although the state is an establishment of religion, it does not

acknowledge that it is one, and this creates a major social problem.¹¹

How can this "major social problem," to which Dr. Rushdoony refers, be solved? Specifically with respect to education, what is the concerned parent to do? In the words of Professor Charles Rice: "What we can safely say...is that the differences of the militant Christian parent with the public schools are so fundamental that no cosmetic remedy will resolve the conflict."¹² As he carefully spells out, it is utterly impossible to effect changes in public school education sufficient to satisfy committed, conscientious Christian parents. A clear realization of this would itself go a long way toward removing a major roadblock to real progress. In short, the difficult, but clear alternative of such parents is the establishment of their own schools or the entrusting of their children to schools which conform to their standards.

As developed in the preceding chapter, parents have a God-given right to control and direct the education of their children, and they must resist all attempts to usurp that authority. In scripture both the Church and the family are empowered to teach; there is no comparable delegation to any agency of civil government. Moreover, with respect to what is to be taught, there is no reason for excluding *any* aspect of reality. Educational content should include not only what man has discovered for himself, but also those truths which are known because God has chosen to reveal them. To exclude any aspect of reality is, quite simply, bad from an educational standpoint. One cannot fully understand a part outside of the totality to which it belongs. Pere Sertillanges put it well: "Each truth is a fragment which does not stand alone but reveals connections on every side. Truth in itself is one, and the Truth is God."¹³ In sum, true education must be God-centered. Both natural reality and supernatural reality must be explored, for as Pope Pius XI wrote: "Education consists essentially in preparing man for what he must do here below in order to attain the sublime end for which he was created...It must never be forgotten that the subject of Christian education is man whole and entire, soul united to body in unity of nature, with all his faculties, natural and supernatural, such as right reason and revelation show him to be; man, therefore, fallen from his original state, but redeemed by Christ and restored to the supernatural condition of adopted sons of God."¹⁴

We must choose our ultimate teacher. Is it to be God...or someone else? The modern challenge is as it was centuries ago when Elijah appealed to the people: "How long will you straddle the issue? If the Lord is God, follow him; if Baal, follow him."¹⁵

¹See, generally, Barrett, "A Lawyer Looks at Natural Law Jurisprudence," 23 *American Journal of Jurisprudence* 1 (1978); Rushdoony, *The Institutes of Biblical Law* (1973).

²Luke 11:23.

³47 Ohio St.2d 181, 351 N.E.2d 750 (1976).

⁴William Ball, counsel for Whisner and a leading advocate for parental rights in education, wrote as follows regarding the courageous stand taken by the defendants: "I salute Pastor Whisner and his associates...I believe they could have made, in the long run, some sort of dishonest peace with the state. They could have agreed to go along, and the state would have been willing to temporize, undoubtedly, in leading them through the endless maze of the chartering process. Pastor Whisner refused to make a corrupt bargain. Without understanding all of the legal ramifications of the 600 'Minimum Standards' of the State Board of Education, he was perceptive enough to realize that these impinged upon the religious, educational, parental, and economic liberties of his people. He did not, therefore, quail at being presented with the state's 'standard brand' of regulation. He did not knuckle under, sighing, 'Well, it's the law'. And so he successfully resisted." Ball, *Litigation in Education: In Defense of Freedom* 12 (1977).

⁵Grover, *Ohio's Trojan Horse* 5, 6 (1977) (quoting Transcript of Testimony at 282).

⁶Sheed, *Society and Sanity* 7 (1953).

⁷Quoted in Blum, *Freedom of Choice in Education* 86 (1958).

⁸This is reflected, among other ways, in the type of litigation that is now emerging in the courts. See, generally, Rice, "Conscientious Objection to Public Education: The Grievance and the Remedies," 1978 *Brigham Young University Law Review* 847; Whitehead and Conlon, "The Establishment of the Religion of Secular Humanism and its First Amendment Implications," 10 *Texas Tech Law Review* 1 (1978); Goodell and Lee, *Government's Golden Image: Kentucky* (1980).

⁹Dewey, *A Common Faith* 84 (1934). For a perceptive treatment of the philosophies of those who were most influential in shaping public education in this country, see Rushdoony, *The Messianic Character of American Education* (1963).

¹⁰Quoted in Rice, *supra* note 8 at 859.

¹¹Rushdoony, "The State as an Establishment of Religion," *Freedom and Education: Pierce v. Society of Sisters Reconsidered* 43, 44 (D. Kommers and M. Wahoske, eds. 1978).

¹²Rice, *supra* note 8 at 883.

¹³Sertillanges, *The Intellectual Life* 30 (1959).

¹⁴Pius XI, *Encyclical on Christian Education* (1929).

¹⁵I Kings 18:21.

