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John Kuhn Bleimaier

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# A CHRISTIAN JURISPRUDENCE

JOHN KUHN BLEIMAIER\*

In seeking out the sources of Christian jurisprudence, it is necessary to look to the Old Testament for a scriptural foundation. The books of the law are found in the Old Testament. You will look in vain for a specific code of laws in the New Testament. The New Covenant embodied in the teachings of Jesus is almost the antithesis of the law found in the Mosaic Law. This New Covenant, characterized by the primacy of faith over works, of forgiveness over retribution, lacks the inflexibility associated with the law. Based on the paucity of legal thinking in the New Testament, are we justified in interpreting the New Covenant as the abrogation of the Mosaic Law?

We need only look to the New Testament proclamation that "Christ is the end of the law,"<sup>1</sup> to justify the position that Christian teaching calls for an end to the legalistic approach to man's relation to God and man's relation to his fellow man. From a theological point of view, the New Testament position that Christ has terminated the law signifies that salvation is no longer premised on the Old Testament Covenant of the strict observation of ecclesiastical ritual. With Christ, the door to salvation is opened to all peoples premised upon faith. From the point of view of Christian doctrine, this Covenant of faith sealed by the Holy Spirit abrogates the old law, the old religious law.

But what of the civil law? What of the law governing the relations of men toward one another in the context of society? Does the teaching that Christ is the end of the law have any relation to this area of jurisprudence? Those who would answer this question in the negative and affirm the undiminished authority of Mosaic Law as it relates to the operation of the social unit can justify their position on two different grounds. First, they may argue that Christ's termination of the law applies only to ecclesiastical law, and is a dramatic formulation of the New Covenant of faith superseding works as the basis of spiritual salvation. Secondly, one may

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\* B.A., Columbia College; M.A., Columbia University School of International Affairs; J.D., St. John's University School of Law.

<sup>1</sup> *Romans* 9:4

argue that Christ as the end of the law signifies Christ as the objective of the law.

If one argues that Christ and His teaching have only terminated the ecclesiastic law and have left the temporal law unaffected, one is failing to take cognizance of the essential nature of law itself. Law is inextricably intertwined with societal morality and societal morality is equally inextricably intertwined with religion. This is nowhere so obvious as in the Mosaic Law itself. The Mosaic Law is not merely the law of religious observation but is and was from its inception a complete way of life. To the lawyers and jurists with whom Jesus had dialogue in the First Century, it would have been inconceivable that the ecclesiastic and the civil or temporal law could be viewed as anything other than an integrated whole. Those who lived by the law lived by its entirety in their spiritual and their public lives. Furthermore, the admonitions of the Mosaic Law have direct relevance to everyday life, not only to religious observance. In the final analysis, all law is the establishment of basic principles of what is right and what is wrong. We may call it ethics or morality but, in its fundamental form, we must recognize that it is based on the precepts of religion. Thus, if religious law and temporal law share a common root, it seems impossible that a Covenant which strikes down the religious law should leave the basis of the temporal unaffected. If the New Testament Covenant strikes down the stricture of the Mosaic Law as it relates to salvation and ecclesiastical observation, it must impact the validity of the Mosaic Law as a basis for civil order. Those who would say that the proclamation that Christ is the end of the law has significance exclusively in the religious realm, fail to take cognizance of the unity of our religio-temporal jurisprudence.

The argument that we should interpret "Christ is the end of the law" as "Christ is the objective of the law" is on equally shaky ground. A fundamental premise of the New Testament is that man cannot reach God by means of the law, that all persons are guilty of sin and incapable of affecting their own redemption in the absence of faith which is a gift by grace. Christ can be seen as the fulfillment of the Old Testament prophecy but not as the objective of a law with continuing validity because the objective is concededly unattainable by means of the law. The Mosaic Law in its original application does not inescapably lead to Christ, nor does any present day application of the Mosaic Law lead to redemption.

We are thus faced with the radical conclusion that the New Testament not only fails to give legal guidance to Christians in the organization of society, it undercuts the basis for a legal system. The backbone of social organization is disqualified by fundamental Christian teaching. This conclusion should really come as no surprise. The radical nature of Christianity, its seeming unattainability, are obvious to anyone who has made the most casual study of Jesus' teachings. What could be more difficult to

achieve than loving one's neighbor as one's self? Is not turning the other cheek inimical of fundamental human nature? The answer must be yes.

On the other hand, it must be equally obvious that, if members of the society love each other as they love themselves, there is truly no need for the law. This once again illustrates the relationship of law and religion. Just as all law is at base premised on a "religious" conception of right and wrong, only a religious conception can abolish the law. The teachings of Christ abrogate the law, and render the law unnecessary.

Christians can accept the abrogation of the law by faith and strive for its fulfillment in their own lives. The obligation to love one's neighbor is a heavy one indeed and can only be taken on, let alone achieved, by faith. It is only possible on the level of the individual as distinguished from a societal commitment. Society is imposed order. The society may not impose faith. For this reason, the society is incapable of abrogating the law. Individuals may recognize Christ's abrogation of the law and strive to live by the golden rule with which He has replaced it. However, as is made plain in the New Testament prophecy, temporal society will not achieve the Kingdom of God on its own. This in itself is consistent with the statement that Christ is the end of the law. As temporal society is an organization based upon laws, laws cannot achieve Christ.

The realization that Christianity does not establish a jurisprudence, but on the contrary displaces the law, does not mean that Christianity has not had a fundamental impact upon the evolution of jurisprudence and the enactment of laws in society. Temporal society, of necessity a creature of laws, is shaped by the religious influences that shape the individual members of the society. Therefore, the presence of Christians within society, and the general dissemination of Christian ideas among the populous, even among those not possessed of Christian faith, has had dramatic impact on the evolution of western jurisprudence.

By defining society as an organization based upon law, we can see that Christian abrogation of the law is incompatible with organized society. This is consistent with the realization that redemption cannot be achieved through societal action any more than it could be achieved by means of the law. The quest for redemption, for salvation of the soul, is possible only at the level of the individual. However, the Christian individual, as well as the person who, while not a Christian by faith, has been influenced by Christian concepts will, of necessity approach questions of law within the social unit with a new and altered perspective.

The Mosaic concept that the object of the law is to ensure that each person receives his just deserts has been alloyed with the Christian tenet that mercy is a virtue in its own right in the relations of man. Thus western jurisprudence has come to view penal justice as rehabilitation rather than retribution. Instead of punishment we see the evolution of the concept of correction of the wrongdoer.

Of necessity, there exists a deeply rooted schizophrenia in western jurisprudence that is the result of the amalgamation of a strict Mosaic Code with the antilegal teachings of Christ. As we have seen, the amalgam came about as a matter of necessity. Since there cannot be a society without law, a society influenced by Christianity naturally looks to the law of the Old Testament as a source of guidance. That Old Testament law is radically changed by the Christian point of view. This results in a very dynamic jurisprudence indeed. There is no possibility for inflexibility because, in promulgation as in enforcement, there is a constant balancing of firmness versus forgiveness. In our jurisprudence, the quest for justice is always a matter of compromise. Societal expediency cries out for the application of a strict Mosaic Code, while Christian teaching engenders a moral consciousness that is offended by harshness. The two forces at work in the history of jurisprudence of countries influenced by Christianity result in a pendulum effect over time. The law is never static; it is always either becoming more rigid in response to the greater lawlessness or, on the other hand, the law is liberalized in response to the moral outcry generated by an excessively harsh application of firmness. As it becomes more firm, the moral sensitivities are ever more offended evoking an ever greater clamor for liberalization.

When we recognize this pendulum effect in western jurisprudence, are we in effect uncovering a hopeless condition that dictates an endless process of action and reaction with no real progress possible? The answer is no. While the pendulum does swing, its motion was caused by the influence of Christ's teaching. The strength of the Christian influence in the society can alter the position of the pendulum's central axis. Obviously, a community, consisting exclusively of the faithful and of those unremittingly applying the Golden Rule, would not require social organization or law. Short of this seemingly unattainable community, the expanded influence of Christian doctrine in any society will inevitably lead to less reliance upon the rigidity of the law.

Thus, the role of the believing Christian in the society is to work for the change of society based upon the expansion of the influence of Christ. While there is reason to believe that the Kingdom of God cannot be achieved on earth in the absence of Divine intervention, it is the obligation of all Christians to work toward its achievement.

The ideal of the Christian society represents the attainment of a level of mutual harmony among men and between man and God that is in conformity with the natural law and exists in the absence of the strictures of law. At the ideal, law becomes nature. Christ has terminated the law.

It is, therefore, incorrect to term western jurisprudence a Christian jurisprudence. There is no Christian jurisprudence, only a Christian faith which has the potential to render the concepts of all jurisprudence obsolete. The identification of Christianity with sovereigns and states in the

historic past has done much to distort the image of Christ's teaching. Because, in the temporal setting, actions seem to speak louder than words, the political acts and doctrines of rulers and societies identifying themselves with Christianity have established a body of concepts and traditions of jurisprudence purportedly Christian yet standing in no relation to Christ's teachings.

Nevertheless, the practical, pragmatic jurisprudence of secular polity in the western world has been influenced by Christ's teaching. The alloy which has been forged by the mix of forces at work in our culture is what we call western jurisprudence.