

WHY LAW, WHY RELIGION?—A CONVERSATION BETWEEN A LAWYER AND A THEOLOGIAN

*Douglas Sturm**

I. A METHODOLOGICAL CAUTION

Categories such as religion and law are social constructs, proposed for some purpose or other, good or ill, but whose use is worthy of serious question. Consider, e.g., Karl Barth's insistence that Christianity is not a religion or Dietrich Bonhoeffer's coinage of "religionless Christianity." I will later offer a way of delineating how I use these categories of religion and law, but I am mindful in doing so that there are many ways these, and allied terms, are invoked. We should acknowledge, for instance, that there are many Christianities; many forms of Buddhism; and differing kinds of Islam. We should take note of the serious question whether "customary law" is really "law." How about "natural law"—is it really law or a "brooding omnipresence in the sky"? Are Torah, Shari'a, Dharma, and Tao cognate terms in some sense? Are they simultaneously "religion" and "law"? In what respect are canon law and common law both "lawful"? Should we adopt Wittgenstein's proposal that words, after all, are but tools embracing a "family of meanings"?¹

In order to respond meaningfully to the questions posed to us, I must reveal certain salient features of my personal intellectual history.

II. AUTOBIOGRAPHICAL DISCLOSURE

I embarked in the late 1940s rather suddenly as a Christian on a turn toward religious studies following a brief time devoted to a career in music. But, please note, I was motivated in this turn not by religious

* Founder, Journal of Law and Religion; first Editorial Board Chairperson. Professor Emeritus, Bucknell University, Lewisburg, Pennsylvania. Douglas Sturm, Presentation, *Why Law, Why Religion?—A Conversation between A Lawyer and A Theologian* (Luncheon, Journal of Law and Religion 25th Anniversary Celebration, Oct. 24, 2008).

1. See Ludwig Wittgenstein's *Philosophical Investigations* (G.E.M. Anscombe trans., Basil Blackwell Oxford 1968) (originally published Macmillan 1953) where, reflecting about the status of language, he suggests that in pursuing the meaning of words we seek not an inner essence, but instead look at their usage in varying contexts. Hence the same word may have multiple meanings, even though those meanings may resemble each other.

conversion in the usual sense, but by a political awakening. The War against Fascism was over (so it was claimed), but through the intervention of my gadfly brother, I was brought to confront the ugly realities of suffering that persisted throughout the world, and to the failings of our own nation in causing these sufferings even during the “Good War.” As a result, within a very short time, on his urging I joined two national associations: YPSL and FOR²—I identified myself as a socialist and a pacifist, and I did so on Christian grounds, hence determining to pursue the study of religion. This new identity was reinforced by a cluster of college mates who shared similar sympathies. We took our socialism and pacifism seriously. And we met almost every morning for a brief time of silent mediation followed often with song . . . one of my favorites was James Russell Lowell’s “Once to every man [sic] & nation, comes the moment to decide, In the strife of truth with falsehood, For the good or evil side. . . .”³ I began to call myself a “mystical humanist” as the ground of my socialist and pacifist commitments.

This tripartite commitment to mystical humanism, socialism and pacifism manifested a conviction of the centrality of The Social Question in my religious understanding, which question constituted, in effect, a criterion for acceptable forms of faith. Without having available to me the language to name it, I was, I suppose, becoming versed in a kind of “hermeneutics of suspicion,” an “ideological critique” of religious practice.

III. AN ONTOLOGICAL AWAKENING

When I embarked on graduate studies, I was introduced to the inner workings of Process Theology, especially through two routes: a study of social ethics under the tutelage of James Luther Adams and a study of constructive theology under the tutelage of Bernard Eugene Meland. I came to realize that undergirding my tripartite commitment was an ontological principle, a way of comprehending what it means to be within the context of life’s adventure, namely, the principle of internal relations. Or as I have put it in more ordinary language, “We Belong

2. YPSL is the acronym of the Young People’s Socialist League, a part of the Socialist Party of America which at the time was under the leadership of Norman Thomas. FOR is an acronym for the Fellowship of Reconciliation, the oldest interfaith peace association in the United States, initiated in Great Britain in 1914.

3. These words, set to the melody of a Welch hymn, were drawn from a longer poem by James Russell Lowell, *The Present Crisis*, composed in 1844. That poem later became an inspiration to founders of the National Association for the Advancement of Colored People and was the origin of the name of its central publication, *The Crisis*.

Together.”

Consider this brief paragraph by Meland on the “structure of experience.”

The structure of experience

is a depth in our natures that connects all that we are with all that has been within the context of actuality that defines our culture. It is a depth in our nature that relates us as events to all existent events. It is a depth that relates us to God, a sensitive nature within the vast context of nature, winning the creative passage for qualitative attainment.⁴

In simpler terms, we are inheritors of the waters of the seas, the minerals of the soil, the tragedies and triumphs of human history, the languages of the peoples. But we are also agents contributing to the shaping of the future—its enhancement or its detriment. We depend on the world; but just so the world’s future also depends on us.

IV. ROOT-METAPHOR OF THE JUDAIC-CHRISTIAN HERITAGE

At the heart and center of the narratives of ancient Judaism and primitive Christianity is, I would say, the imagery of a covenantal relationship between God and humankind, an imagery that can be discerned as reflective of the principle of internal relations.

The paradigmatic story of the Exodus portrays a struggle for liberation. A people enslaved is led to a promised land where they are pledged to create a new nation characterized by qualities of justice, faithfulness, and peace—cast in rules of interaction that embody those qualities in response to the challenges they confront. In the course of time, sad to say, that pledge is violated, the covenant is broken. The prophetic tradition is a movement that emerges on such occasions to recall the people to their original selves, to transform their ways, and so to fulfill their vocation to be a light to all nations.

The story of Jesus—the paramount focus of primitive Christianity—is similar in its dramatic form and force. Jesus and his company are committed to an emerging reign of God characterized by love and justice, mutuality and servanthood in sharp contrast to and over against an inhumane system of domination in the form of the Roman Empire. Indeed, the primitive Christians are committed to engage in the very formation of that reign as citizens of a New Creation, that promises a sharp contrast to that Empire.

4. Bernard Eugene Meland, *Faith and Culture* 111-112 (Oxford U. Press 1953).

I am not here, of course, claiming that all Jews or all Christians follow this reading of these ancient texts. Nor am I claiming that this reading is to be taken as a dogmatic measure of alternative readings. But I am claiming that it is a plausible reading and that it can function as a way of representing the implications of the principle of internal relations. Moreover, I would claim that its pattern concurs with many modern representations of these forms of faith, e.g., in the work of Gustavo Gutierrez, Martin Luther King, Jr., Rosemary Radford Ruether, Michael Lerner⁵ among many others.

As I would put this pattern, we belong together but, alas, that belonging together all too readily takes on forms of alienation—of domination, oppression, violence, exploitation—in which masses of people are entangled in structures of interaction through which they are forced to participate in ways contradictory to their own best interests, if not their sheer survival. The antithesis of alienation is covenantal community, a form of interaction through which the lives of all, respecting our differences, are enriched. That is the governing purpose of our common life.

V. ON SPECIFYING “RELIGION” AND “LAW”

Against this background, I would specify “religion” and “law” as disciplines responsive to fundamental questions that, given who we are, emerge in the course of life. That there are many forms of religion and of law, not all compatible with each other, is evident. That forms of religion and law have histories, shifting and changing in content over time, is evident. That forms of religion and law may be fiercely antagonistic to each other is evident. But I am proposing that it is useful and intelligible to cluster these varying forms under the generic classifications of “religion” and “law” as efforts to grapple in each case

5. Gustavo Gutierrez, a Peruvian priest, is among the founders of Latin American liberation theology, devoting much of his life to living among the poor in Lima. His text, *A Theology of Liberation: History, Politics, and Salvation* (Orbis Books 1973), is a classic statement of the fundamental principles of that continuing theological tradition. Martin Luther King, Jr., a Baptist cleric, was prominent in the civil rights struggle during the late 1950s and the 1960s in the United States. His call for a global revolution of values culminating in an encompassing “beloved community” persists among his devotees among many forms of faith. Rosemary Radford Ruether, a Roman Catholic theologian and activist, considers herself an eco-feminist. She is a critic of the patriarchy of the Roman Catholic tradition, a vigorous opponent of military violence, and a radical progressive in political philosophy. Michael Lerner is a rabbi and political progressive who, throughout his activist life, founded a magazine, *Tikkun*, and an associated community dedicated to the transformation of the world. He collaborated with like-minded activists among other forms of faith in developing a Network of Spiritual Progressives to promote a “politics of meaning” whose basic principles are affirmed in a “Spiritual Covenant” setting it over against prevailing forms of both liberalism and conservatism.

with the same question. Moreover, I would propose that these two questions are intimately linked with each other. Finally, I would propose that all forms of religion and law are susceptible to critical scrutiny about their relative adequacy to the ongoing adventure of life.

Religions are responses to the most comprehensive question of meaning: What is our place within the context of the structure and dynamics of the world? What is it that matters more than anything else in the living of our lives? Religions, in short, are ways of responding to the critical question of our fundamental identity and ultimate destiny.

Laws, in turn, are responses to a somewhat more specific, but not unrelated question of social ordering: What is the optimal shape of our interactions with one another and with the world within the context of the historical process? What fundamental forms of interrelationship are worthy of institutionalizing to facilitate our common life, protecting us against threats to our being and providing us with ways of directing our creative energies in pursuing our lives with each other?

In this approach, I do not intend to assume that only one form of religion and of law is, in the final analysis, desirable. But I do assume that mutuality of respect and openness to dialogic discourse across the boundaries of difference are of utmost value. That is why I define the categories as responses to questions that retain their valence as questions.

VI. "RULE OF LAW" AS A CRITICAL PRINCIPLE OF LAWYERING

Given my response to the religious question, I stand with those who, over recent decades, have declared that we live at a critical moment in the human adventure. We have inherited a set of crises causing intense suffering to the community of life through structures of exploitation, domination, violence, oppression: structures of neo-colonialism, white supremacy, patriarchy, corporate capitalism, ecocide and homophobia. Those of us in the professions of religion and law have an obligation to collaborate in the struggle to create new ways of living together—for the sake of our own souls as well as for the future of all our fellow creatures.

If "rule of law" is a guiding principle of lawyering, it is insufficient to define that role merely as serving as advocates for clients or officers of the court. These are honorable roles, but they must be accompanied by and constituted within the frame of a higher purpose. Law, as a principle of social ordering, is I suggest, a function of justice—justice as solidarity. That's a point at which, I like to believe, the disciplines of religion and law converge.