The myth that whatever is legal is moral

By Erwin W. Lutzer

After Hitler was defeated, war crime trials were held in Nuremberg to judge the guilt of Hitler's henchmen. But a dispute arose as to what laws should be used to try the accused. After all, Hitler's cronies argued—quite plausibly—they had not broken any laws; their actions were done within the protection of their own legal system. They could not be accused of murder because personhood had been defined to exclude Jews and other minorities who were standing in the way of the advancement of the Third Reich. These men were simply following the laws made by the courts of the day. As Eichmann protested before his execution, "I had to obey the laws of war and my flag."

In our own country, a group of protesters who picketed an abortion clinic were charged with slander because they called abortionists murderers. The abortionists argued, just as Hilter's emissaries had done, that they could not be called murderers since they were not breaking any laws—you can't call someone who isn't breaking a law a murderer.

But the experience of Nuremberg and the silent holocaust perpetrated in our abortion clinics all bear eloquent witness to the fact that when a state believes it is accountable to no one except itself, it assumes a hidden premise, namely, whatever is legal is moral.

How shall we resolve a dispute between conflicting legal standards? Robert H. Jackson, chief counsel for the United States in the Nuremburg trials, was forced to appeal to permanent values, to moral standards transcending the life-styles of a particular society. In effect, he argued that there is "a law beyond the law" that stood in judgment on the arbitrary changing opinions of men.[1]

Whether or not such a law can be found will be discussed at the end of this chapter. For now, it is sufficient to remember that Hitler changed Germany by changing its laws. Today the shape of America is being altered by using the same strategy. America is, as John Whitehead has pointed out, being stolen. If the present trends continue, it will no longer be the land of the free; secular humanism will rewrite this country's laws and impose its ideology on us all. The

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Supreme Court has helped brainwash our people to believe that whatever is legal is moral. They would arrogantly agree with George W. F. Hegel that "the state is God walking on earth."

In order to understand how America is being stolen, let us trace the history of law in the United States.

Early law in America

When the Pilgrims came to the United States they had some definite ideas about God, law, and politics. They came from England where freedom of worship was severly restricted. Reacting against formality and the strictures of the state church, they firmly intended to establish a country based upon principles of freedom. But where could such principles be found? They understood that belief in God was necessary if freedom were to survive. If the state were absolute, it would replace God as the supreme lawgiver. When the Pilgrims signed the Mayflower compact on November 11, 1620, they pledged themselves in the name of God and for the glory of God to advance the Christian faith.

Later when the Declaration of Independence and subsequently the Constitution were written, our founding fathers emphasized their faith in God. Deist Benjamin Franklin gave what is now a famous acknowledgement of God's sovereignty in the affairs of men.

I have lived, sir, a long time, and the longer I live, the more convincing proof I see of this truth—that God governs in the affairs of men. And if a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without His aid? We have been assured, sir, in the sacred writings, "that except the Lord build the house, they labor in vain that build it." I firmly believe this; and I also believe that without His concurring aid we shall succeed in this political building no better than the builders of Babel.

Today there is a debate as to how Christian the founding fathers were. But whether they were individually Christian or not, there was a general consensus of theism, the belief that God existed. And the new republic was based upon this foundation.

This understanding profoundly affected their view of law. Since man was responsible to his Creator, there were absolute standards by which moral judgments could be measured.

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A theistic view of law was passed on to the American Colonies through Samuel Rutherford's book *Lex Rex*, or *The Law and the Prince*, written in 1644. This book was an attack against the divine right of kings; it insisted that even princes should be subject to the law.[2]

The eighteenth-century jurist William Blackstone also influenced early American understanding of law. He believed there were two sources of revelation, the Bible and nature (such as the relationship between parents and their children). No law should be passed that would be contrary to the law of God.

This understanding of law emphasized that (1) God is the source of all laws and (2) all men are created equal. Rutherford had reasoned that since all men are sinners, no man is superior to any other. This meant that even the king had to be subject to law—there were no exceptions. Notice how these two suppositions were embodied in the Declaration of Independence: "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights."

These "unalienable" rights were considered as absolute rights that stemmed from man's creation by God. He did not have to prove his worthiness; his value was conferred upon him at creation. As a result, man is accountable to a higher authority other than men. All men must recognize that they are under the law of God.

This Christian view of the world so influenced the founding of this nation that in the words of C. Gregg Singer, it "so permeated the Colonial mind that it continued to guide even those who had come to regard the gospel with indifference or hostility. The currents of this orthodoxy were too strong to be easily set aside by those who in their own thinking had come to a different conception of religion and hence of government also."[3]

In years to come substantial changes would arise in the American understanding of law. With the erosion of a theistic base, law would no longer be based on an absolute view of morality; values would become relative and human worth devalued.

The strong influence of Christianity in law in America was weakened by several powerful influences.

First, there was evolution. Though Darwin continued to make references to the Creator, he later suggested that man might not have been created at all. Obviously if life had begun by a fortuitous combination of atoms in a distant "warm pond," man would have no obligation toward a deity.

But Darwinism was applied to other disciplines as well. Some argued that morals were constantly evolving and that ethics itself was based on "the survival of the fittest." This led to the belief that "might makes right."

Evolutionary theory was also applied to law. In 1870 Christopher Langdell, dean of Harvard School of Law, began to teach that the principles of evolution must be applied to the written opinion of judges. the conclusion was inescapable: Law was not what the constitution said it was, but what the judges said it was. In other words there was no longer an objective base; the absolutes dissolved along with the supposed demise of the Creator.[4]

The implications of this new understanding of law were later echoed by Justice Holmes when he said that laws are "beliefs that have triumphed and no more."[5] And again he said, "Truth is the majority vote of that nation that could lick all the others."[6] And again, "When it comes to a development of a *corpus juris* (or body of law) the ultimate question is what do the dominant forces of the community want and do they want it hard enough to disregard whatever inhibitions may stand in the way."[7] This evoluntionary view of law eroded man's dignity and made the arbitrary taking of human life legally possible.

Second, Christianity was weakened by the introduction of liberal theology. The Bible was stripped of the miraculous and considered as one book among many. No longer was it generally believed that we have in our hands an objective revelation of God. In the end liberalism was reduced to humanism in theological dress.

All of these changes profoundly influenced the way law was understood. No longer was it true that man had certain "unalienable" rights derived from creation. Rather, he was free to make up his own laws as the situation dictated. John Warwick Montgomery summarizes how this sad state of affairs came about by pointing out that in the eighteenth century the Bible was killed by unwarranted destructive criticism; in the nineteenth century God was killed; and in our twentieth century inevitably man has been killed. Montgomery adds, "this degeneration is not accidental; each step logically follows from what had preceded: The loss of the Bible leads to the loss of God, for in the Bible God is most clearly revealed; the loss of God leaves Man at the naked mercy of his fellows, where might makes right."[8]

A student of the history of law in the United States should have been able to predict that human life would soon be reclassified as unworthy of special protection. Abortion, infanticide, and euthanasia are the inevitable result of secular humanism's world view. When God dies, so does man.

Law in modern America

With the fading of the Christian world view, man now was king and able to make whatever laws he wanted. This has led to what Francis Schaeffer called "sociological law"—the belief that there are no absolutes but rather a relative, evolutionary morality. Law is what the majority wants or what the judges say it is. There is no higher court of appeal; no longer can one challenge a ruling on the basis of absolutes derived from a creator. Man, not God, is the source of laws.

As such, it is no longer possible to believe that all men were created equal. Since there was no creation, and we are but an evolving mass of chemicals, it was obvious that man would soon treat his fellows as animals treat their kin. Francis Crick, who won the Nobel Prize for his work in unraveling the DNA code, speaks for many when he says:

You must realize that much of the political thinking of this country is very difficult to justify biologically. It was valid to say in the period of the American Revolution, when people were oppressed by priest and kings, that all men were created equal. But it doesn't have biological validity. It may have some mystic validity in a religious context, but...it's not only biologically not true, it's also biologically undesirable... We all know, I think, or are beginning to realize, that the future is in our hands, that we can, to some extent do what we want.[9]

Obviously Baby Doe, an infant who starved to death in Indiana because the parents refused to sign a treatment order, was hardly thought of as having been created equal. Because of his handicap he was considered unfit to live. He was not believed to be endowed by his Creator with certain unalienable rights. As we weed out weaker animals, so we now do with mankind. A court in New York ruled that the New York state legislature must determine which human beings are actually persons who are entitled to live.[10]

In 1973 the Supreme Court invalidated the abortion laws of fifty states and legalized, in effect, abortion on demand. Where did the Court get the notion that a woman has a right to an abortion? Since such a right is not found in the Constitution, the Court made it up. Remember, the Constitution is whatever the judges say it is. Thus the Court, like Napoleon, has crowned itself emperor and is answerable to no one except itself.

Although parental consent is needed for the prescribing of most medications, and especially for minor surgery, in 1976 the Court ruled that a girl under the age of eighteen has the right to have an abortion without parental consent. This exception was granted because the Court is intent on encouraging abortion for our nation's young people. And since it creates laws arbitrarily, it can make abortion an absolute right.

In some states young people under sixteen have the right to buy contraceptives without parental consent. If the parents do intervene, they could be prosecuted for standing in the way of a child's "rights." Certainly children have rights—the right to be loved, taught, and nourished. Also, the state has the right to interfere if a child is being abused. But if children's rights are enlarged, parental rights are

Pressure to bow to Caesar can be expected to escalate. Secularism will move inch by inch along its relentless way, smashing any opposition that it may encounter.

proportionately diminished. There is an ominous tendency of the state to take away the parents' rights in favor of the children's rights. Thus, the state can interfere more readily in the life of the American family.

State rights, children's rights, and parental rights must be held in balance. Whenever anyone insists on his "rights," a right is usually taken away from someone else. The right of a woman to have an abortion takes away the right of a child to live; the right of children to live immorally takes away the right of parents to discipline them. This is consistent with life in a secular state where the children belong to the government, not the parents. In communist countries the children are carefully educated by the state. Women are encouraged to work, assuring the fact that the children will not be trained at home. Only thus can the state be sure that its children will be "properly educated."

If the state has the right to take children away from parents who interfere with their child's freedom of expression, the influence of Christianity in our homes will be jeopardized. In all secular states Christianity is regarded as hindering self-expression. Hence, as the state encroaches on parent-child relationships, teaching Christianity to children could become illegal.

In 1963 the Supreme Court outlawed corporate prayer in public school classrooms, and it is no longer constitutional to teach creationism alongside evolution. Academic interest can no longer be pursued in freedom. Teachers must teach the official state doctrine or else be dismissed for meddling in religion. Thus the right of every child to have a purely secular education is now promoted. Actually, the restrictions in our classrooms today resemble those in communist countries.

Jacques Ellul has pointed out that the whole point of learning in communist countries is to absorb the system's values. Chairman Mao of China, for example, simplified the script in his battle with illiteracy