

RELIGIONS AND LAW: THE ISSUE OF SEXUALITY

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The further back one goes in evolutionary history, the more inseparable and indistinguishable law and religion appear to be. To discover how and why, we have to retrace our steps to the little we know about the earliest form of religion in the most primitive tribes of which we have record. Aboriginal Australia is a good candidate ever since Emile Durkheim gave it so much publicity in his celebrated *ELEMENTARY FORMS OF THE RELIGIOUS LIFE*.

Rules, regulations, taboos, sacrifice and totemism are all indissolubly united in the founding drama of *The Dreaming*, a concept which combines many items which the western mind strictly separates: reality, symbol, body, spirit, totem, spirit-site. It is a "unity of waking life and dream-life" (Stanner, 1972, p.271; Mol, 1979, p.381.)

There is also a strong link here with territoriality. Carpenter (p.245) gives twenty-three reasons why the territorial imperative maximized survival in the animal kingdom. Most of these reasons are just as applicable for the tribal organization of early humans. The more cohesive the group and the more solid the solidarity, the greater its capacity for maintaining itself in a hostile environment (d'Aquili and Mol, p.69-70). The earliest myths in Aboriginal Australia were territorial ones (Berndt, 1970, p.233; Mol, 1979, p.386-8) and through both dramatization and emotional anchorage in the land, tribal identity became sacralized and strengthened. The mountain range became the

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place where the ancestor spirit had thrown their boomerangs and where their dancing feet had touched the ground, there were now waterholes in the creekbed.

Ultimately all rules and regulations could (and can!) be traced back to the contribution they made to the reinforcement of group (tribe, clan) cohesion. And so the individual spirit of aggression, for instance, was encouraged when it came to the defense of one's territory, but discouraged when it endangered tribal order. Healthy sperm production was a prerequisite for perpetuating the species, but its outlet had to be restrained for the sake of orderly social relations.

Yet order was not just a matter of proscriptions and prescriptions. They also depended on commitment, loyalty and emotional attachment to the rules and regulations. Neither could they be arbitrary and whimsical, made up on the spur of the moment. Whimsy and chaos always lurked around the corner. By contrast, permanence, tradition and principles that transcended human mortality, the vicissitudes of nature and man's cussedness were the antidote to the "crackedness of existence" as the Murimbata natives in South-West Arnhem Land in the Northern Territory of Australia aptly called the potential of chaos (Stanner, 1966, p.164; Mol, 1982, p.52). In other words both religion (as a system of 'isness' or meaning) and law (as a system of 'oughtness' or morality) contributed essentially to the cohesion of primitive societies and enhanced the latter's survival. Both also contributed to the integration of the social at the expense of the personal system thereby constraining and relativizing the redoubtable, instinctual, individual urge for procreation and physical survival.

Yet nowadays they are both separated and distinguishable Why?

A first order answer is the increasing division of labour, specialization and professionalization in more complex societies. But then this very complexification is usually (though not always - patterns are not invariably and rigidly 'rational') the result of things being more efficiently done separately. If this is so, what are the separate functions?

Sociologists generally think in terms of functions (whatever contributes to adaptation) versus dysfunctions (whatever leads to lesser adaptation). We can apply this way of thinking to religion and law in modern as over against more primitive societies under four headings.

INTEGRATION.

This is a convenient way of conceptualizing the way religion (or a system of meaning) contributes to (or is functional for) law (or a system of rules and regulations). Any moral system tends to have internal consistency. Vague prescriptions and incongruous expectations are disturbing and religion usually provides the authority, justifying the standards and rules. Or, as Elizabeth Nottingham (p.14) has it: "Religion has accounted in large part for the fact that values in almost all human societies are not a mere hodge-podge but constitute a hierarchy". Or, Thomas Aquinas: "... it was necessary for man to be directed in his proper acts by a law given by God, for it is certain that such a law cannot err". Or, Jesus' statement in Matthew 5:17 that he came to "fulfil the law".

REGIDIFICATION.

Yet the other side of the coin is that sacred legitimation can also stymie change. A sacred meaning system has the tendency to make anything under its wings also holy. The religious legitimation of caste rules and divisions has made the modernization of India more difficult. Or as Herbert Spencer (p.770-1) has it: "...ecclesiastical institutions...strengthen social bonds and so conserve the social aggregate, but they also offer extreme resistance to change".

CONCRETISATION.

The functional/dysfunctional way of thinking can also be approached from the angle of the moral system. The latter can contribute to religion through providing a finite expression to ultimate meaning and thereby preventing it from dying the death of social irrelevance and

sterile isolationism. The New Testament (James 2:17) states "So faith by itself, if it has no works, is dead". Dittes (p.379) similarly says: "for the religious expression in forms, in a body, is necessary", but then goes on to say: "and for the religious spirit, expression in forms, in a body, is defiling".

DISTORTION.

Dittes means that concretization can also distort faith. The latter sums up order and is an abstraction of actual existence which contains a fair amount of disorder, confusion and dissolution. By contrast the relevance of the moral system lies in its capacity to be concrete rather than eternal. John Oman (p.63) expresses a similar dilemma by saying that depth and reality are destroyed when religion and morality are either yoked together or divorced from one another: "... if religion without morality lacks a solid earth to walk on, morality without religion, lacks a wide heaven to breathe in (p.62)" Or, as Feodor Dostoevsky describes it in the story of The Grand Inquisitor in The Brothers Karamazov, the concretization is the church's response to man's need for someone to keep his conscience, for someone to unite him under one authority. The distortion is the transvaluation of "heavenly bread" into "earthly bread".

The congruence as well as the conflict between religion and law or meaning and morality is also expressed in Hinduism, where restoration through union with the divine may negate the elaborate framework of good works by means of which the individual can move up the animal or caste level. In the *Bhavagad-gita*, Krishna tells Arjuna that the dreary round of rebirth is suspended for those who retain the blessed state of union with the eternal Brahman.

The New Testament similarly grapples with the conflict as well as the congruence between morality and meaning. The doctrine of sanctification stresses the importance of good works for salvation. By contrast the doctrine of justification by faith stresses the importance of the relation with God for salvation. The latter heals the breaches of the

moral order through repentance. The former promises salvation or wholeness for conforming with the rules and regulations.

The above can also be put in terms of the paradox between sin and grace. The doctrine of justification by faith lightens the burdens of the past (sins are freely forgiven, the past is decidedly relativized) and provides motivational energy for unimpeded social participation in the future, since God's support can be relied upon, even if it is entirely undeserved. The doctrine of sanctification can be seen as an attempt to minimize the anomic potentiality of grace by its stress on moral fruits as a way of to express one's faith. From the sociological perspective, the paradox between sin and grace is a unique attempt to maximize both social motivation and the validity of values, and to minimize their intrinsic discrepancy. In a viable social environment, an overemphasis on sanctification creates problems of social motivation, and an overemphasis on justification produces problems of value maintenance. It is for this reason that both emphases are necessary and are kept in an uneasy, sociologically eminently sensible, but logically equally repugnant, balance. (For an elaboration of this theme see Mol 1977, p.107 and Mol 1983, p.84).

With this more theoretical exposition in mind, how can we categorize and interpret the wide range of sexual prescriptions and proscriptions in religion? The data appear to fall under the headings of: (a) repression or (b) expression of the sexual instinct. If our assumptions are correct, the data under (a) will contribute to the cohesion/solidarity of the social fabric and those under (b) will either assist the integration of ego or will serve as a symbol of union for clan/tribe/group/community, etc.

Let us first look at the data which deny, restrain or sublimate sexuality.

Those young Indians who live on the Canadian Plains and participate in the Sun dance must refrain from sexual intercourse (Mandelbaum, pp.194-5). On the West coast of Canada Kwakiutl (Boas, 1970, p.502) require sexual abstinence for participants in their winter

Dance, and the Bella Coola (McIlwraith, 1948, I, p.116) practice ceremonial chastity to find favour with the supernatural beings. Young widowers of the Salish in southern British Columbia refrain from sexual intercourse for a full year after their wives have died (Hill-Tout, 107, p.204).

Mennonites regard pre-marital and extra-marital sex as always wrong (Mol, 1985,p.92). The Doukhobors in Transcaucasia refrained from sexual intercourse while they were in trouble with the authorities (*Ibid.*,p.104). Jehovah's Witnesses "abhor adultery, masturbation, homosexuality and pre-marital sex, and it is an embarrassment to them that their first president Russell was rumoured to be an adulterer who divorced his strong-willed wife". (*Ibid.*, p.142). To punish Vosper who has shown too much independence and not enough respect for the rules, Scientologists did not allow him to have sexual intercourse with his wife (*Ibid.*, p.167). Throughout its history the Catholic Church in Quebec bolstered marriage and channelled "man's unruly instincts into the safety of monogamy and fidelity (*Ibid.*,p.196)".

Turning to the history of mainstream Christianity, a whole line of theologians, from St.Paul and St. Augustine to the Reformers, to early Pietists, Puritans and Jansenists, thought of sex as a substitute for God or as an alternative form of commitment. They felt that hedonism in general and sexual indulgence in particular implied an interpretation of life that contrasted sharply with a single minded and simplehearted dedication to divine authority. Asceticism, a capacity to postpone gratification, be it sexual or a general control over any appetite, was seen as proof that the meaning-bestowing order in one's life did not reside in what man could control, but in a God who controlled man. The ultimate criterion was the interpretation of one's existence, and any physically based appetite could easily deny what St.Paul called "pneuma" or spirit, the only aspect of existence which raised man above the animals and provided man's only contact with the divine (Mol, 1979a, pp.21-2).

Celibacy also falls into this category of sexual restraint. However much it created tension for individual priests, monks, and nuns, there is

good reason to believe that it had a beneficial effect on the spiritual and organizational strength of the Catholic Church. And, of course, the individual conflicts caused by the policy of celibacy are evident in the almost weekly reports at the end of the 20th century about ecclesiastical officials unable to keep their vows of sexual restraint. And yet it maximized the priestly role through disallowing the competition with other roles, e.g., parental ones. The strength of the Catholic Church has in no small way been the result of its insisting that its professionals sublimate their sex instinct into spiritual channels (see Simmel, 1955, pp.143-6) and thereby concretely exemplify the quality of wholehearted commitment it has in mind for its entire membership.

The celibacy of Methodist circuit riders on the frontier strengthened Methodist organization (S.D.Clark, 1948, p.149). For the many utopias in American history, sexual abstinence was an important mechanism of sacrifice augmenting allegiance to the group, and therefore its cohesion. In these utopian communities the ban on sexual relations was often enunciated at the very times when energy and attention had to be devoted to group tasks (Kanter, p.78).

Islamic pilgrims to Mecca may not have sexual relations until after sacrifice at Mina (Gibb, p.57). In Hinduism the control of sexual energy is often regarded as having a beneficial effect on spiritual knowledge and higher loyalties (Gandhi, pp.29-32; Erikson, 1969, p.120). Reichel-Dolmatoff (p.145) mentions how the Amazonian tribe he studied thought that one could only be successful in the hunt "in a state of abstinence". On Java, Geertz (1969, p.323) found the belief in the relationship between instinctual deprivation and spiritual power "almost universal".

Sigmund Freud viewed civilization as the product of man's sacrifice of his primitive impulses in general and of sublimation of his sexuality in particular. Culture and whatever was socially valuable, usurped some of man's sexual energy and trapped portions of his libido (Freud, 1972, pp.45-6), Freud's ideas have been echoed and elaborated rather than challenged by scholars in a variety of fields.

Unwin (p.428) surveyed eighty societies over the last, 4,000 years and came to the similar conclusion that the limitation of sexual opportunity had a positive effect on what he calls productive social energy. The anthropologist Elman Service (p.38) made the point that sub-humans differ so notably from humans, because the latter learnt to suppress their sex urges for the sake of cultural advance. The sociologist Pitirim Sorokin (1956, p.124) saw a parallel between the sexual anarchy of Greece from the third century B.C. onwards and the rapid decline of Greek creative genius. The same parallel he observes for other cultures, such as the twentieth century West. Yet he also finds many examples of creative minorities exercising sexual restraint during these periods of decadence (*Ibid.*, p.128).

In any age and culture, man's sexuality has been a potent form of self-affirmation and self-expression and has often structured meaning at the expenses of social cohesion. Here, more than anywhere else, we have good evidence that the relation between personal, group, and social identity is not only one of harmonious interdependence and mutual reinforcement, but also one of competition. The maximization of one also tends to minimize or atrophy the other.

Turning then from religion as the repressor of sexuality to those instances where it functions as the expressor, it is certainly no accident that the examples come primarily from those sources which celebrate the freedom to decide one's own sexual destiny and encourage self-realization and individualism. The Renaissance is a good example (Savramis, 1969,p.50) In the nineteenth century, Feuerbach (p.xii) stressed the relation between sensuousness and integration (or better the cessation of 'doubt and conflict'). To him, the root meaning of alienation was sexual - the whole thinking of alienated man was determined by his repression of sexuality (*Ibid.*, p.130). To Freud and the Freudians, sexual fulfilment is closely bound to personal wholeness. In many surveys a positive correlation is found between self-orientation and sexual permissiveness, or between religious involvement (presumably having a stronger group or social reference) and sexual restraint (Mol, 1971, pp.162-3; de Nenuer, p.385).

Theologians in the West who were worried about the relevance of Christianity for culture in the second half of the twentieth century have expressed corresponding sentiments. Harvey Cox (1965, p.213) wants to protect sexuality against all the principalities and powers (such as cultural conventions and social pressures) that seek to dehumanize it. Savramis (1972, pp.201-2) calls sexual ethics "Christian" only when it has a wholesome effect on the individual and when it liberated him. Cole too blames Christianity "for preserving, if not for creating, the negative fear of sex in western civilization". (p.277) and thinks that the individual should cultivate inner integrity and emotional sincerity by regarding sex as a divine gift (p.322).

Still on sexuality as positively expressing rather than negatively repressing integrity, the uniting aspect of intercourse is often used in many cultures to symbolize reconciliation. In Western societies sexual intercourse generally strengthens the husband-wife relationship alone. In Australian aboriginal society it is used to cement other unions as well.

Elkin (1974, 160ff.) enumerates six of these unions: (1) The unity of a dangerous revenge expedition is sometimes sealed by the temporary exchange of wives. (2) A party about to be attacked sends some of its women to the attackers to indicate that they want to settle peacefully. If the attackers have intercourse with the women, the issue is thereby resolved. (3) In the North- East of South Australia tribal quarrels about debts are settled by a temporary exchange of wives. (4) The same exchange takes place between groups wanting to consolidate peace and friendship, even when this means a temporary suspension of marriage laws. Incest laws, however, are never broken. (5) The effectiveness of some religious rites, expressing unity, is often thought to improve by sexual intercourse in pre-arranged places. (6) Wives are sometimes loaned to visitors as a token of friendship and hospitality. Here, as well as in some Inuit communities, where similar hospitality is practiced, the "sexual act symbolizes commitment, self-giving, and the union of opposites-elements crucial for the cohesion and survival of any social unit" (Mol, 1976. 156). Spencer and Gillen (p.98) describe similar practices of the Urbanna tribe of Central Australia.

Another example of sexuality symbolizing the unity of opposites are the androgynous and hermaphroditic myths. The actual impossibility of unisexuality is minor compared with the unity it represents. Because of its relevant symbolism, Eliade (1967, p.175) relates androgyne to "a general formula signifying autonomy, strength, wholeness; to say of a divinity that it is androgyne is as much as to say that it is the ultimate being, the ultimate reality" (see also Norman O Brown, 1959, p.132).

In conclusion, sexual restraint in religious literature is associated with the attempt to strengthen, reinforce and sacralize group or social identity at the expense of self-affirmation. Sexual intercourse sometimes symbolizes the unity of opposite centers of identity. Sexual expression in religious literature on the other hand generally relate to bolstering self-realization.

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