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LOVE AND LAW

The seemingly irreconcilable opposition between the dimension of law and the dimension of love in human experience is rooted in a variety of factors.

One of these is the way that law has come to be understood in the liberal West. According to this tradition, the function of law is to protect us from one another¹. All values, it is argued, are individual and subjective. They are ultimately rooted in the various and conflicting interests that different individuals bring to a situation. Since the means available for fulfilling these interests are limited, their pursuit would inevitably generate strife unless it were carried on in accordance with general rules. Law is that system of rules. For the sake of order and stability, which ensure our relative safety and independence from one another in the pursuit of our goals, we limit our freedom and submit to restraint. But if this is the case, then the root of law is fear. It is because we fear one another that we institute the rule of law. And we fear one another because we are, each of us, ultimately ruled by self-interest rather than by love. Thus, were love to dominate, so it is thought, there would be no need for law.

Another and perhaps more obvious reason for seeing law and love as opposed to one another is the inevitable opposition between duty and inclination in our ordinary experience. Our duty presents itself precisely as obliging us to do it regardless of how we feel. It is a matter of what ought to be done, however much it goes against the grain. This is the basis of our experience of moral conflict. We find ourselves inclined to any number of things which we know it is our duty to avoid. On the other hand, we are subject to any number of obligations which run counter to our natural bent. And since law is simply the articulation of duty, whereas love is one with the heart's inclinations, there could be no such thing as moral conflict unless these

1. Cf. John Macmurray, *Persons in Relation* (London: Faber, 1961), esp. Chs. VI and VII. On p. 150, he writes: "The Hobbesian society is based on force; Rousseau's on consent; but both are aimed only at the protection of the individual associates in the pursuit of their private interests."

dimensions were not only distinct from one another, but also radically opposed.

Despite all this, however, opposition is really not the last word. For it is possible, I think,—and the purpose of this paper will be to show just how—so to conceive love and law that the difference between them will be seen as less significant than their ultimate and profound unity.

The basic difficulty blocking an adequate understanding of the relation between love and law is the common misconception of man's nature according to which reason is divorced from appetite.² In this view, reason is essentially theoretical, a purely cognitive faculty. It is concerned with the realm of fact, not value; with reflection, not action. This is not to deny that reason can be accidentally practical. Given the desires and aims that stem from man's appetitive side, reason is able to explore how these are interconnected and determine the conditions for their fulfilment. With no aims of its own to serve as standards of appraisal, it cannot, to be sure, evaluate these desires. But it can ascertain the requirements for their accomplishment.

This means that there can be no such thing as rational appreciation or love. Appreciation, which looks to the importance of things in themselves and not merely in their relationships, is an affair of the heart, the conative side of man. Reason, by contrast, is abstractive and calculating. It presupposes ends, supplied either by nature or society, and is wholly preoccupied with means, *i.e.*, with things, not for themselves, but for what they can do. Insofar as it is practical, its task is to regulate these means in favour of whatever goals happen to be desired—whence the emergence of law. But reason itself remains blind to worth. Thus the accepted chasm between law and love simply reflects the supposed divorce between their respective seats, the ordering mind and the appreciative heart, reason and appetite.

If we want to correct this mistake, a different conception of reason is called for. It will be one which conforms to the classical notion of practical reason, but with this difference that reason's practicality will be viewed as not only essential, but primary. In other words, reason—or more precisely, the rational subject—is not first of all

2. For a brilliant exposition of this misconception and the antinomies it generates, see Roberto M. Unger, *Knowledge and Politics* (New York: Free Press, 1975), esp. Ch. I.

a knower but a doer, an agent. Already, prior to the inclinations and aversions of its empirical embodiment, it has an aim of its own and is bent on its accomplishment. Instead of being divorced from appetite, reason is itself appetitive. Instead of being essentially disinterested, it is itself an interest structure. For reason is man's capacity, not for mere knowledge, but for action (which includes knowledge). And it can be this only if it finds within itself, as part of its own nature and not as something borrowed, the norm and basis of choice. Where the norm for choice is an appetite which is extrinsic to reason, then its adoption as a norm is at best contingent, and reason's venture into the practical is something accidental and secondary.

I say "at best". Actually, unless reason is itself an appetite, all genuine action (as distinct from indeliberate and unintentional activity) would be impossible. For even the agent's adoption, as norm, of an appetite extrinsic to reason is something the agent does and presupposes an interest on his part. If the rational agent as rational were wholly disinterested, it not only would not, but could not, do anything. For all doing (as distinct from mere reaction to a stimulus) involves the direction of activity in view of an end. Without an end-in-view intrinsic to himself as such, the rational agent would have no basis for ratifying any of the appetites of his empirical nature nor for regulating himself accordingly. Thus, even contingently rational behaviour would be out of the question. Unless reason is essentially and primarily practical, therefore, it cannot be accidentally and derivatively practical. Unless it is itself an interest and has an end of its own, it cannot borrow any to serve as practical norms.

The question then is: How are we to conceive this practical interest of the rational subject? Since it belongs to the subject independently of the subject's empirical status, it must be an interest that is not tailored to any specific situation but can appropriately be pursued in any and all circumstances. This means that the interest of reason can only be "to act reasonably", to do in any and every situation that which it makes sense to do. Its ideal can only be the transformation of every situation in which it finds itself in the direction of "concrete reasonableness", the re-making of the world in its own image, the fashioning of a reasonable abode in which to be at home. What this comes down to is this: The practical aim of reason is to have, whatever world it inhabits, one that makes sense. In its own nature and unqualified by its empirical realization, it is an unrestricted

intention of sense.³ It is, if you like, at the core of its being an appreciative "yes" to wholeness, coherence, intelligibility, and the more firmly so the more these are unrestricted and unqualified. In short, being itself an unrestricted intention of sense, its final orientation can only be to whatever is had or experienced as correspondingly making unrestricted sense.

The picture of man that emerges, then, is quite different from the one that has become traditional in the western world. Man is not a combination of infra-rational, or at best non-rational, interests on the one hand, and a disinterested, purely calculative reason on the other. In the "traditional" conception, it is the non-rational side that provides the ends of action, while reason, incapable of appraising them, is reduced to supplying technology. Here, however, we not only have reason supplying a distinct level of interest, but also, since it is the root and basis of all rational activity, an interest in whose light all other interests can be evaluated. As intrinsic to the very process of rational inquiry and presupposed in every question, the end of reason is itself beyond inquiry, beyond question. It is the final end, the norm for all norms.

That is why, contrary to the view commonly accepted today, the concept of rationality *can* provide an adequate basis for the concept of moral rightness.⁴ When all of reason's standards are borrowed, then, to be sure, no course of action can be more than conditionally rational (or right). Something can be the right thing for a person to do, given his aims and interests—but the rightness of these is left up in the air. However, when reason is essentially practical, then a course of action consistent with reason's essential aim will be unconditionally rational or right. It will be the right thing for anyone insofar as he is rational, for the rational subject as such. But to be in accord with the subject's rational nature, *i.e.*, categorically rational, is, I submit, precisely what it means to be morally right.

3. I have developed this idea in "Lonergan and Dewey on Judgment," *International Philosophical Quarterly* XI, 4 (Dec., 1971), 461-474. For a commentary on Peirce's conception of the *summum bonum* as "concrete reasonableness," see V. Potter, *Charles S. Peirce on Norms and Ideals* (Worcester: Univ. of Mass. Press, 1967), pp. 33-35 and *passim*.

4. Among those who claim that a concept of rationality cannot ground a concept of moral rightness, and precisely because of a purely cognitive view of reason, a notable recent example is John Rawls in his *Theory of Justice* (Cambridge: Harvard Univ. Press, 1972); see esp. p. 403.

This point, which is closely connected with our main theme, will become clearer as that theme is developed. Let us, therefore, in the light of the preceding, begin to explore the nature of love and law, and the connection between them. Starting with love, the first thing to be noted is that man's rational nature, at least as I have described it, is already a kind of love. If to love something is to *be for* it, promotive and cherishing of it, then, by his very rationality, man is a lover of sense, a promoter and cherisher of concrete reasonableness. However, more than this can be said. For even that special experience between persons, to which we normally refer when we use such terms as "friendship" and "love", is also rooted in man's rationality. Let me explain how this is so.

I have said that the rational subject is, by its very nature, an unrestricted intention of sense. The point I want to make now is that to be such an intention of sense is, at the same time, to be an intention of community, the reciprocity of persons. For the intention of sense is the basis of all rational, *i.e.*, distinctively human, activity. The rational subject is able to act only on the basis of a judgment of what it makes sense to do, and all of its actions imply such a judgment. Such a judgment, however, has two parts, corresponding to the two ways that an action must be seen to make sense if an agent is to give himself to it⁵. One part concerns the action insofar as it is the "becoming" of an empirical state of affairs. As such, an action will be considered to make sense if the state of affairs it is bringing about is the one that the agent intends. But every action is more than such a process of becoming. It is also, precisely as an action, an act of self-position. In every action, the agent commits himself to some goal and so positively defines himself, posits himself as a certain kind of person. The question then is: What are the conditions for an action, precisely as an act of self-position, to make sense? Part, at least, of the answer is clear. An act of self-position can make sense only in a context in which it is relevant or makes a difference. But the only context in which an act of self-position can make any difference at all is the context of other persons. For the self as such, with its aims, intentions and commitments, only exists within the horizon of other selves. If its actions are relevant to the empirical order, they are so, not precisely as meant, as proceeding from and defining a metempirical source, but only as bringing about certain observable

5. See my "Person, Community, and Moral Commitment" in *Person and Community*, ed. R. Roth (New York: Fordham Univ. Press, 1971), 155-175, esp. p. 168.

changes. As matters of intention, on the other hand, they have significance only within the interpersonal order and so presuppose the communicative relation as their necessary context.⁶

These two dimensions of action and the two ways a given act can make sense correspond to the two levels of rationality and rightness, the technological and the moral. An act is technologically right if it is the becoming of that state of affairs which the agent intends. It will be morally right, however, only if it conforms to the requirements of personal agency itself, *i.e.*, only if it is consistent with the maintenance and development of the communicative context. Any act at odds with these is at odds with the agent's own being. For it will be counter to that unrestricted intention of sense by which he is first of all constituted as agent. An act inconsistent with this radical intention is inherently self-defeating. It undermines the self in the very act of positing it.

What this means is that the person or rational agent is internally and necessarily related to the "other-as-you". You and I are essentially correlative and our relationship to one another is what grounds the intelligibility of each of us.⁷ Here is the basis for the profoundly moving character of deep friendship and love. In love we experience the other person as ground of our own being. The other becomes experientially for us that in terms of which our very lives as persons make sense. A relation is given in experience that corresponds to the most fundamental need of our nature, the need for a context within which *I* matter.

It might be helpful here to point out the difference between the way one's personhood matters in the moral and religious realms. Our personhood, as we have seen, is our capacity to act, to dispose of ourselves. It is thus rooted in freedom, our transcendence of determinate nature. Because we are not simply parts of a natural order, but wholes in ourselves, we need a context in which we can function as wholes, a context in which our status as being beyond determinate nature acquires significance. This, we have seen, is supplied by the order of persons in communication with one another. What we are saying now is that it is possible to participate and be included in this

6. See my "Freedom and Morality from the Standpoint of Communication" in *Freedom and Value*, ed. R. Johann (New York: Fordham Univ. Press, 1976), pp. 45-60, esp. p. 52.

7. Cf. John Macmurray, *Op. cit.*, p. 24.

order in two ways.⁸ One way is simply as a rational agent, as someone. This is my involvement in the moral order, an order of general meanings enabling me to distinguish right from wrong and so to act. Here I am included as someone, but not as *the one* who I am. My identity as a person is relevant, but not my personal (*i.e.*, individual) identity.

A second way to participate in the order of persons is to participate precisely in terms of who I am. In this case, it is not merely someone; it is *I* who am intended and taken into account. What was irrelevant in the first instance is now of the essence. Instead of being simply a member of a group, responsive with others to general rules, here I exist as a *response to you*, which is to say precisely as I. In the first way I am respected as a free and equal rational being. In this case I am loved as myself. If you, lovingly turned towards me, are a fellow human, then what we have is human friendship or love. But if the you in question is the One present in every encounter and transcending all particular encounters—if, that is, it is the universal and absolute You who are the implicit term of the unrestricted intention of sense that defines me as person—then the love is divine and we are dealing with religion.

The difference between morality and religion, therefore, is ultimately the difference between justice and love. And the different ways my personhood matters in the moral and religious realms comes down to the difference between being intended by one who would do justice and being intended by one who loves. Both ways are ultimately rooted in the universal intention of sense that defines the order of persons. To intend sense is at least to intend a common life in which one participates equally with others, *i.e.*, it is an intention to do justice and to be treated justly. But the intention of sense looks to more. As unrestricted, it aims at an all-inclusive wholeness, a wholeness in which no aspect of myself (nor of anything else, for that matter) is left out of account. To intend sense is thus to intend being in relation with a universal and loving You. It is to be implicitly in love with a Transcendent Lover.

The connection between love and the moral law should now be clear. The order of love and the order of morality are not just two distinct realms. They are related to one another as the more and

8. An analogous point is made by Aldo Tassi in "*Communitas and Polis*," *Person and Community*, pp. 133-140.

less inclusive. For love is not fusion. It is a union of wholes, a conspiracy of freedoms. The independence of the parties in love has to be preserved, and morality (in the sense of justice) is what preserves it.⁹ Therefore, although justice is less than love and does not involve it,¹⁰ there can be no love without justice. Love presupposes respect for the other's autonomy and moves beyond it. It is an intimacy of genuine others. But justice and the moral order are the safeguards of the other's otherness, and so are essentially ingredient in love.

But *law* in the title of this paper is not restricted to moral law. In fact, that is not what is chiefly meant. The law contrasted with love is positive, institutional law. It is the juridical order. And so our task now must be to show how this too is involved in love.

The first step in this direction is to spell out the connection between morality and the legal order. By morality or the moral order we mean, as should be clear from the above, that order of exigencies to which persons are categorically subject by their very nature as rational, *i.e.*, by the fact that they are practical and unrestricted intentions of sense. Making sense out of life, integrating human experience and transforming it into something coherent and whole, something concretely reasonable, all this can be achieved only if certain necessary steps are taken. These necessary steps make up the moral order. Their determination is the work of rational inquiry. In a sense, therefore, the moral order is both made and discovered. First of all, to the extent that it does not pre-exist its elaboration by reason, it is something made. On the other hand, this elaboration is not a free synthesis. It is the progressive determination by rational agents of those rules of action that are consistent with their own natures *as rational*. In this sense, the moral order is antecedent to any particular individual or group. It comprises all of (and only) what rational agents will discover to be required of them when they view the situation rationally, *i.e.*, in the light of that unrestricted intention of sense that defines them.

So conceived, the moral order is also antecedent to, and normative for, all actual bodies of custom and law. First of all, a look at custom.

9. John Macmurray (*op. cit.*, p. 188) conceives the relation between love and justice as an instance of the form of the personal, *i.e.*, of a positive (love) which is constituted by, includes and subordinates its own negative (justice).
10. Except insofar as the pursuit of justice presupposes that "love of sense" described above. See my "Love and Justice" in *Ethics and Society*, ed. R. T. De George (New York: Anchor Books, 1966), pp. 25-47, esp. p. 46.

If we take custom as the working system of social habits by which the cooperative life of a group is structured, it is clear that, without custom, there could be no group. Custom is, as it were, the organising form of group life. On the other hand, since the horizon of group life is the indispensable context for all agency, *i.e.*, for doing anything intentionally, the emergence of custom cannot be something directly intended, the product of deliberate rationality. Thus, if custom presupposes reason (since it is directive of persons), it results from its unreflective and uncritical exercise. Because it is required for community and so for agency, custom is normative for the members of a group. However, because it can be reflectively justified only through the critical use of reason, *i.e.*, by its discerned consistency with the moral order, its normativeness remains secondary and derivative, with the moral order providing norms for it.

Now law emerges in the process of criticizing custom. Law is the formulation and reflective ratification, or modification, of custom. Just as there can be no social life (and no agency) without custom, so there can be no reflective development of social life without law. In this sense, law may be described as the reflective rationalization of society, its deliberate organization along reasonable lines. The legal order thus presupposes the moral order since it can be had as justified only to the extent it embodies its enforceable elements. On the other hand, since the measure in which it does this is always open to question, its own normativeness, like that of custom, is derivative and dependent on that of the moral order.

The achievement of a just legal order is thus the achievement of concrete reasonableness in the inclusive context of our social life. As such, its worth is not that of a mere means, providing a stable setting for the pursuit of our separate interests. It has the value, rather, of an end and is a genuine work of love—of that love of sense which, as we have seen, defines us as persons. But law is also the work of love in another way. If our final fulfilment as persons looks to the realization of a universal fellowship of persons in the world in response to God's initiative,¹¹ this fellowship itself will still stand in need of law. For how is a universal love or fellowship possible? How can I include within the range of my love the whole domain of persons, the vast majority of whom are connected with me only by the fact

11. Cf. Teilhard de Chardin, *The Phenomenon of Man* (New York: Harper, 1959), p. 267; also my *Pragmatic Meaning of God* (Milwaukee: Marquette Univ. Press, 1966), pp. 43-55.

that we act in the same world? One indispensable way, I submit, is by conforming my every action to a universal legal order, one designed to do justice to every person. In my obedience to a comprehensive order of law, I would in my actions be taking everyone else into account and doing right by them.

This repeats a point made earlier, *viz.*, there can be no love without justice. But the only way to do justice to persons with whom I am only indirectly related is through legal institutions. In other words, the law need not be simply a matter of restraints to which I submit for the sake of pursuing my own interests with a measure of peace and stability. When, out of love, I want to do right by every "you", even by those with whom I am not in direct communication, law provides the way. It is not just a matter of limits, but also of light—and enlightenment. It does not only restrict; it also guides. Thus, if love is more than law, a love that in response to the Transcendent You aspires to genuine universality, cannot do without it. The institution of universal justice would be a work of such love, and also one of its highest realisations.