



In God's Name: Law as a Religious Category

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In *Real Presences*, George Steiner, the distinguished literary critic, asserts that the basis of all aesthetic appreciation is the assumption that God exists.¹ Without this affirmation, nothing significant can have meaning in the lives of individuals or in society. Human creativity only makes sense, according to Steiner, when it is based on the recognition that we are created in the image of God.

Though neither a theologian nor an exponent of organized religion, as a student of the creative process, Steiner is compelled to take God seriously. He does so, not out of *a priori* premises, but because of inescapable conclusions. He writes that “where God’s presence is no longer a tenable supposition and where His absence is no longer a felt – indeed, overwhelming weight – certain dimensions of thought and creativity are no longer attainable.” The spoken and written word is the primary vehicle for the attainment of these dimensions. For, as Steiner puts it, “it is in sacred texts, in laws, in literature that civilization is housed.”²

Steiner's inductive method, which leads him from the appreciation of artistic creativity to the contemplation of divine essence, is highly conducive to the enterprise that has brought us together today. He suggests that it is possible, indeed inevitable, for human beings who have passed through the ordeal of modernity to affirm God. It is possible, not because we have been programmed to do so by this or that institution or denomination, as was the case in the premodern era, but because we have honestly and carefully sought to understand the texts on which our culture is founded.

The sensitive poet thus becomes a prophet and the sensible lawyer, a priest. I stand here to remind you of your priestly calling. For better or worse, you and I are in the same business. Our encounter in this place of worship today is much more than a mere nod to an archaic custom.

I speak out of a tradition that has always regarded the administration of law as a task rooted in the covenant between humanity and God. In this scheme of things, the practice of law is considered a religious activity. The seemingly plural Hebrew word *Elohim*, means ‘God’ and ‘judges.’ Whenever it is used in Scripture, rabbinic tradition understands it to refer to the divine attribute of

justice. We may, therefore, infer that whenever justice is applied God is present. The practice of law is a religious activity.

The identification of the legal with the divine is, incidentally, one reason why the enemies of Judaism have sought to denigrate the Torah, the body of Jewish teaching, by describing it as “mere law,” and Judaism as a religion of law. What these detractors have failed to recognize is that it is not God’s word that is being reduced to law. It is law that has been elevated to the realm of the sacred.

With this as background, let us now look at a sentence in the Torah that begins: “*Tzedek, tzedek tirdof. . .*,” ‘Justice, justice shall you pursue, that you may thrive and occupy the land that the Lord your God is giving you’ (Deuteronomy 16:20). On the assumption that no word is frivolous or superfluous in Scripture, Jewish sages have asked why the word, *tzedek*, ‘justice,’ is repeated. By recognizing that the same word, *tzedek*, can have two grammatical forms, they concluded that the verse should be read to mean: justice by means of justice shall you pursue. The divine quality of justice is only operative if the humanly created instruments of justice – the laws – are just. In this way, any possible division between the pursuit of justice and the practice of law has been eliminated. The distinction between morality and legality is obliterated. The cleric and the lawyer are not in conflict with each other but are, in fact, the same person. The law as a creation of the human legislative process is only authentic if it is a response to the divine command.

This may sound like a reiteration of the ancient doctrine that sought to make every discipline the handmaiden of theology. However, I am trying to say the opposite. I am admitting the inadequacy of conventional religious institutions by implying that, since the advent of modernity, they have largely ceased to dominate human affairs. Even ritual has been secularized: more people testify to a sense of the sacred and the transcendent in the stadium or the shopping mall than in church or synagogue. A court house inspires a greater sense of awe than a house of worship.

We live in a postmodern world. Modernity caused secularization and distance from conventional religion. The postmodern era has made us realize that God is not dead, although many religious institutions are gasping for breath, but that God is present in everything we do that has meaning. And that most certainly includes the practice of law.

The traditional diploma of a rabbi concludes with the words, “He may teach, he may teach; he may judge, he may judge.” It reflects the premodern age, when law belonged to the realm of religion. The rabbinic seminary in Britain that ordained me has eliminated the words, “He may judge, he may judge.” I make no claim to legal expertise. As a product of the modern era, my only qualification is that of a teacher of Jewish tradition; I accept that the judging is done by others.

My lack of real authority has given me a measure of freedom, but it has also relegated me, as an exponent of organized religion, to the margin of society. I can still study texts and explain them, but I have no power to decide the just course of action. However, instead of waging quixotic battles between religious teachings and legal enactments, I wish to make common cause; to restore the teaching and the judging, if not in the same person, then in a mutually beneficial partnership.

I believe that the postmodern era, with its renewed affirmation of God, may bring us closer to that partnership; that the traditions from which the priest, the imam and the rabbi speak, have something to say to those who shape our society – no longer in impotent prophetic admonition, but in measured priestly guidance and cooperation. We cannot return to the premodern past, and we must not be imprisoned by the modern present. We must go beyond both into the postmodern future in which co-operation replaces competition and strife.

In that future, we are compelled to view our common task not only by what is acceptable and expedient, but by what is eternally valid, however interpreted and administered at any given

moment. Law can neither be subsumed by religion nor divorced from it; its task is to reflect divine truth in human application.

Natural law, in the tradition out of which I speak, is invariably supranatural, even supernatural. "This, indeed, is the distinctive contribution of Israel's thinkers to the discussion of natural law," writes William A. Irwin. "For them, it was not an irresponsible force that in some blind way, however benignly, influenced human impulses." And he continues: "It was God, in his holiness and righteousness, revealing to sinful man his will and their high destiny and only happiness in obedience thereto. From this, there resulted all that is characteristic of Hebrew ethics."³ Just as the literary critic realizes that human discourse is not a matter of word games, but of transcendent meaning, the lawyer acknowledges that the administration of human affairs is not a matter of convention and politics, but of the will of God as revealed in the texts that regulate these affairs. If these texts appear archaic it is because, in the words of Steiner, "they carry in them the pulse of the distant source."⁴

The will of the people through the democratic process remains paramount, of course. Yet with Steiner, we must reject "the American genius that would democratize eternity" and affirm that God speaks to us when we pursue justice with justice.⁵ In this way, we place law, not only outside politics, but in the realm that is above politics, in the same realm as religion. Religion and law must, of course, be subject to the political process, but they become corrupt when they are invaded by political power.

Neither the modern world nor its predecessor has known how to withstand such invasions, and many of the tragedies in history are the result. Will the postmodern world fare better? The prospect of a division of responsibility between teaching God's word and administering God's laws in a democratic state, coupled with the realization that the practitioners of each need each other, may make it legitimate to answer this question with a resounding "Yes." We may, indeed, be entering a new era in which the artificial barrier between the divine and the human, the religious and the secular, will be replaced by a more diffuse, but accurate, differentiation between the holy and the not-yet sanctified.

Notes

1. George Steiner, *Real Presences* (London: Faber and Faber, 1989).
2. *Ibid.*
3. William A. Irwin, *The Old Testament. Keystone of human Culture* (London: Abelard Schuman, 1959), 149.
4. Steiner, 28.
5. *Ibid.*, 33.

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