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Interaction of Spiritual and Secular Law: The Sixteenth-Century and Today

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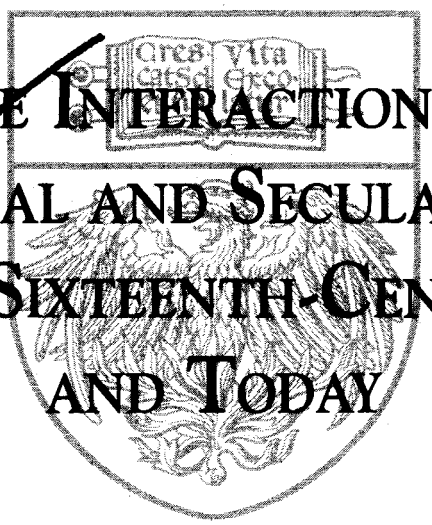

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*By Harold J. Berman**

The dialectical opposition and interaction of the secular and the spiritual realms of life has deep roots in Christian thought. Jesus enjoined his challengers to "render unto Caesar the things which are Caesar's and unto God the things that are God's"; and to his disciples he said, "That which is born of the flesh is flesh, and that which is born of the Spirit is spirit", and "Except a man be born of . . . .the Spirit, he cannot enter the kingdom of God." St. Paul, in turn, contrasted "the inward man" who delights in "the law of God" with one who is "in the flesh," the law of whose "members" wars against "the law of the spirit." "To be carnally minded," he wrote, "is death, but to be spiritually minded is life and peace." He listed among the "spiritual gifts" implanted by God in followers of Christ the gifts of wisdom, of knowledge, of faith, of healing, of miracles, and of prophecy.

Four centuries later St. Augustine applied this concept to the society in which he lived, drawing a sharp contrast between the sinful and, indeed, Satanic character of the temporal "earthly city" and the purity of the eternal "city of God." For St. Augustine, both the church and the empire lived in an evil age, a "city of the devil," in which the true Christian, whether priest or layman, was, in effect, an alien. In Peter Brown's words, "For Augustine, this *saeculum* is a profoundly sinister thing. It is a penal existence . . . it wobbles up and down without rhyme or reason. . . ." In the City of God, on the other hand, Christian spirituality was effectuated through what St. Augustine called the "vestiges" of the tri-une God implanted in human memory and imagination, human reason and understanding, and human desire and love.

A quite different concept of the relationship of the secular to the spiritual was introduced in the Papal Revolution of the late eleventh and early twelfth centuries, when the Western church established its transnational and transterritorial corporate legal identity and its freedom from imperial, royal, and feudal domination. Now the spiritual realm came to be identified with the

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visible, Roman Catholic hierarchy; the entire priesthood was called for the first time "spirituals" (*spirituales*), and the newly unified Western ecclesiastical hierarchy, under the papacy, was said to wield the "spiritual sword," as contrasted with the tribal and feudal and urban laity, including emperor and kings, who wielded the "secular sword." The papal hierarchy did not, however, despair, as Augustine had done, of the possibility of spiritual progress in the secular city. On the contrary, the newly centralized, organized, independent church had great hope for the *saeculum*, so long as it would accept the tutelage of the "spirituals," who came to constitute not only the officials of the Church but also a large part of the civil service of the secular rulers.

In the period from 1100 to 1500—usually called in Western historiography the High Middle Ages, but which may more properly be called the First Modern Age—the Church of Rome created the first modern Western legal system, the canon law, which it called "spiritual law" (*jus spirituale*), as contrasted with newly emerging separate systems of royal, feudal, urban, mercantile, and local law, which were called, collectively, "temporal law" or "secular law." "Spiritual law," promulgated and administered by ecclesiastical authorities, included the law relating not only to purely ecclesiastical matters but also to many matters involving the laity, such as marriage, education, certain types of crimes committed by laymen, and poor relief, as well as the numerous property, contract, and other civil disputes between laymen which the parties voluntarily submitted to ecclesiastical adjudication or arbitration. Royal, feudal, urban, and local secular law, on the other hand, was considerably more restricted in scope as well as less systematized and more formalistic. The title "spiritual law" was justified by the canonists not only on the ground that canon law had its source in the legislative, administrative, and judicial powers of the church but also on the ground that it was "higher" than secular law, being more directly guided, they contended, by divine law and by natural law.

Under the impact of the German Revolution of 1517 to 1555—which was not only a reformation of the church but also a reformation of the state and of society—the words "secular" and "spiritual" acquired new meanings. This was the inauguration of what in contemporary Western historiography is usually called Modern History, but which may more properly be called the Second Modern Age. In Protestant territories, the Roman Catholic "two swords" doctrine was now replaced by the Lutheran doctrines of "two kingdoms" and "three estates." The "two kingdoms" doctrine placed the institutional church, within the earthly kingdom. Similarly, the "three estates" doctrine characterized the clergy as a secular estate, alongside the high magistracy, and the family. What in Roman Catholic terminology were called "spirituals," now became, in Protestant terminology, ecclesiastical officers, part of the earthly kingdom of human frailty and sin. According to Lutheran theology, only faithful members of the invisible church, the spiritual

priesthood of all believers, lived in the heavenly kingdom of faith and grace.

The Lutheran secular kingdom, however, was quite different from St. Augustine's earthly "city of the devil." Like the Roman Catholicism against which it revolted but in which it was originally nurtured, Lutheran theology was far more optimistic than Augustinian theology about secular law. On the one hand, not only canon law but all law, including the divine positive law of the Decalogue, was, for Luther, secular, *weltlich*, and of the flesh, *leiblich*. Even the moral law of the Decalogue was intended by God not as a means of salvation but only to punish and deter and correct sinful human conduct. Though divinely instituted, it was not "of the spirit," it could not bring Christians into communion with God; and the Evangelical Church, whose whole purpose was to do just that, was not, in Luther's view, a legal entity and had no business creating or administering law. To rule by law, and, indeed, to rule the church by law, was exclusively the task of the secular political authority, the prince and the high magistracy, the *Obrigkeit*. On the other hand, the Protestant prince, educated by Evangelical Christian teachers and inspired by the preaching of the Gospel, should and could assist the invisible church in its mission by enacting and administering appropriate laws to regulate religious activities in the earthly kingdom. Such secular religious law, promulgated by the secular prince and enforced by the secular *Obrigkeit*, including the secular courts, was the work of the "powers that be," which, in St. Paul's words, often quoted by Luther, were "ordained by God."

Indeed, it is a basic postulate of Lutheran theology that God is present, though hidden, *abscondita*, in the secular kingdom, and that the invisible church is present, though hidden, in the visible church. Secular human law, though tainted by human egoism, greed, pride, and lust for power, nevertheless can and should reflect God's will. It is necessary to stress this point, since in later centuries Lutheranism has often been interpreted as creating a total disjuncture between Law and Gospel, works and faith, outer and inner, secular and spiritual, the temporal and the eternal, whereas in fact the great Lutheran jurists of the sixteenth century, and Luther himself, fully accepted the traditional Roman Catholic hierarchy of divine law, natural law, and human law, although they gave new meanings to those concepts. They also accepted, though—again—with some qualifications, the traditional Roman Catholic view that a human law which violates divine law or natural law is not a valid law in the sight of God and should even in some circumstances be resisted. They did not deny the morality and rationality of law but rather its spirituality.

The dialectical interaction of the spiritual and the secular in Lutheran Germany is graphically illustrated in the hundreds of new laws dealing with what I would call—despite Luther, and despite contemporary German usage—"spiritual" responsibilities and rights, promulgated by German Lutheran princes and city councils in the sixteenth century. These were almost always called

Ordnungen, "orderings;" each was a comprehensive set of regulations giving *Ordnung*, "order," to a broad sphere of activities and relationships. The word *Ordnung*, in this particular context, is usually translated into English as "ordinance," but it should be understood that these "ordinances" constituted comprehensive statutes purporting to cover entire branches of the law.

The new spiritual *Ordnungen*, promulgated by the secular authority, were called by a variety of names, including marriage ordinances (*Eheordnungen*), school ordinances (*Schulordnungen*), disciplinary ordinances (*Zuchtordnungen*), and literally, poor people's ordinances, that is, poor laws (*Armenordnungen*). Often their subject matter was included in more comprehensive statutes called church ordinances (*Kirchenordnungen*), which also regulated liturgy, the sacraments, and ecclesiastical affairs generally. These various types of spiritual ordinances were drafted by leading Protestant theologians, including in some instances Luther and Melanchthon themselves, many of whom—like Luther and Melanchthon—were also trained in law. They combined theological and legal doctrines concerning matters that were considered to be most closely connected with Christian faith, and in that sense spiritual.

They were revolutionary in four respects. First, they were promulgated by the secular ruler, the prince, in his capacity as chief officer, *summus episcopus*, in the church. Second, violations of them were not only subject to spiritual sanctions administered by local congregations and ecclesiastical tribunals but also, in more serious cases, were criminally punishable in the secular courts. Third, they contained and implemented Protestant theology, which differed in important respects from the earlier Roman Catholic theology. And fourth, they reflected a new legal science, which combined the previously co-existing separate systems of canon law and Roman law, drawing also on the previously co-existing separate systems of royal, urban, and feudal law. They also reflected the new legal science in their comprehensive coverage of particular branches of the law.

* * *

I turn now to these four types of spiritual ordinances—regulating marriage, schooling, moral discipline, and poor relief.

Marriage—Like the Roman Catholic canon law of marriage, the Lutheran marriage ordinances declared that monogamous marriage was instituted by God and that it was intended to be a lifelong union of the spouses and the foundation of the family. Nevertheless, the Lutheran marriage was not a sacrament since, unlike baptism and the Last Supper, it was not intended to be an effective symbol of divine grace and of membership in the heavenly kingdom but was essentially, in Luther's words, "an outward, physical, and worldly

station." Thus if, due to human sinfulness, one spouse betrayed his or her promise of fidelity by committing adultery or by desertion, the marriage—under Lutheran marriage law, and contrary to Roman Catholic marriage law—could be dissolved. At the same time, however, whereas the Roman Catholic concept of marriage placed it at a lower level of spirituality than priestly celibacy, the Lutheran concept raised it to the level of a sacred calling, instituted by God as the foundation of the family, which in turn was one of the three divinely instituted estates.

Contrary to the earlier Roman Catholic canon law, parental consent was required in order to enter into a valid marriage. Also two good and honorable witnesses were required to be present at the wedding ceremony, which had to be solemnized by a church ceremony and recorded in the church registry with signatures of the spouses, the witnesses, and others. At the wedding ceremony the pastor was to instruct the couple concerning their responsibilities, and if they violated their responsibilities they were to be disciplined and in extreme cases excommunicated.

Luther's strong view of the "worldly" character of marriage led him to advocate not only the exclusive competence of secular political authorities to legislate the conditions of marriage but also the exclusive jurisdiction of secular courts to adjudicate marital causes. Other Lutheran reformers, however, including Melanchthon, advocated a less extreme position, leaving to the ecclesiastical tribunals the adjudication of marital causes. Different principalities and different cities went in different directions in the matter. The differences were reduced by the fact that in some places pastors were co-opted to sit on secular courts in marital cases, and in other places jurists and theologians were co-opted to sit on ecclesiastical courts in such cases.

School laws—Like the marriage ordinances, so the numerous school ordinances promulgated in Lutheran territories and cities in the sixteenth century were both theological proclamations, on the one hand, and, on the other hand, systematic statements of a particular branch of the law.

Luther and his followers grounded their educational reforms on the doctrine of the two kingdoms and, more particularly, on the belief that in the propagation of knowledge of the Gospel and of the Christian faith, and hence in the fulfillment of the task of the earthly kingdom to prepare Christians to live also in the heavenly kingdom, education (as Luther put it) is "second only to the church in importance."

Roman Catholics certainly shared the Lutheran belief that education has a spiritual purpose. Principal differences lay in the Lutheran belief, first, that all persons should be educated, and second, that it is primarily the responsibility of the political authority, the *Obrigkeit*, and not of the visible church, to secure universal public schooling. These two interrelated beliefs rested, in turn, on the

Lutheran theological concept that not only the priestly calling but every calling is sacred; and further, that the partnership of the three divinely ordained secular estates—the visible church, the political authority, and the family—are responsible for preparing persons of faith to live in the heavenly kingdom.

Luther and his friends—especially his Wittenberg University colleague Melanchthon and his Wittenberg pastor Johannes Bugenhagen—constructed elaborate detailed curricula for public schools, which, together with statements of the theology embedded in them, were incorporated in many of the more than 100 school ordinances that were adopted by various cities and principalities between 1523 and 1600. Both Latin schools and vernacular schools were to be established. In those cities and territories that accepted the Luther-Melanchthon plan, children in the Latin schools, starting at the first level, were to be taught reading, Latin grammar, and various prayers; at the second level, they were to study more advanced grammar in various classical and humanist authors, religious instruction from the Psalms and the Gospels, the Lord's Prayer, the Ten Commandments, the Creed, and also humanist instruction through the verses of Terence, Plautus, and Erasmus, and *Aesop's Fables* (which Luther himself translated); at the third level, advanced students were to study the works of Ovid, Cicero, and Virgil, and to learn dialectics, rhetoric, and poetics. At all three levels music, mathematics, science, and history were to be taught, as time allowed.

For the vernacular schools, Bugenhagen devised a less complex and more practical curriculum. Pupils were to memorize the Decalogue, the Lord's Prayer, and the Apostle's Creed, and to read Psalms, sing hymns, and learn Biblical history, but thereafter they were to learn practical skills of agriculture, commerce, household duties, and the like. Instruction was to be primarily in German, according to the local dialect, though students with special aptitude and interests might also study Greek, Latin, and Hebrew.

In Lutheran principalities schools were not subject to ecclesiastical control. The teachers were hired not by the Church but by the local city or village authorities. All children able to walk to a school were invited to attend, and warnings and reprimands were to be issued to parents whose children did not register or who were seen on the street in school hours. In John Witte's words, "The general calling of all Christians was to replace the special calling of the clergy as the *raison d'être* of education."

Moral discipline—As in the case of marriage and schooling, so in the case of morals, the Lutheran civil authorities replaced the Roman Catholic papal hierarchy as the ultimate source and the ultimate enforcer of the new disciplinary ordinances; but again, it was Lutheran theologians, often law-trained, who not only inspired but also drafted that legislation and presented it to the civil authorities for enactment.

The types of moral offenses proscribed by the Lutheran disciplinary ordinances were, for the most part, the same as those that were proscribed by the Roman Catholic canon law. To quote Professor Witte again, "New Sabbath-day laws . . . required faithful attendance at [church] services. New laws prohibited blasphemy, sacrilege, witchcraft, sorcery, magic, alchemy, false oaths, and similar offenses. New sumptuary laws proscribed immodest apparel, wasteful living, and extravagant feasts and funerals. New sexuality laws forbade 'unnatural' sexual relationships . . . ."

Although Lutheran theology agreed with Roman Catholic theology that what made these acts sinful was that the commission of them alienated the sinner from God, the two theologies differed sharply as to the responses that should be made to them by the ecclesiastical and civil authorities. Lutheran theology denounced the Roman Catholic requirement of confession and absolution by a priest, followed by the sacrament of penance, as an unconscionable interference by the priesthood in the relationship of the penitent believer to God. According to Lutheran theology, the visible church should discipline the sinner, but only in order to punish and deter sins in the earthly kingdom and not for the sake of ultimate reconciliation with God.

Moreover, Roman Catholic canon law divided enforcement of moral discipline between the "internal forum," of which the jurisdiction of the priest in confession was the chief example, and the "external forum" of the ecclesiastical court of the bishop or archbishop or pope. The Lutheran disciplinary ordinances, on the other hand, established a quite different regime for punishment of moral offenses. The most severe ecclesiastical sanction that could be imposed for violation of moral discipline was the "small ban," that is, exclusion from the Lord's Supper. The sinner was still invited to worship in the church and to listen to the preaching of God's Word. The key to the Lutheran disciplinary ordinances was "discipline before the church," that is, justice and reconciliation within the congregation.

Lutheran theology also placed rather strict limits on the criminal jurisdiction of the ecclesiastical tribunal within each bishopric, the consistory. It could indeed hear cases of minor moral offenses and could impose small fines and some forms of corporal punishment such as whippings and the pillory. Unlike the Roman Catholic ecclesiastical courts, however, the Lutheran consistories were not part of an official hierarchy of courts operating under a formal centralized system of substantive and procedural law. Thus a sharp distinction was made between (moral) sin and (legal) crime, and those moral offenses that also constituted crimes were subject to criminal penalties only in the secular courts.

Poor laws—The Church of Rome had not only regulated, through the canon law, the marital, educational, and moral life of the peoples of Europe but

had also played a large part in the care of the needy. Christianity, in all its forms, like Judaism from which it was derived, has from the earliest times emphasized the obligation of all believers to care for the poor, the sick, the homeless, widows and orphans, and others in distress. In the period prior to the Lutheran Reformation, the Church had fulfilled this obligation in large part through the establishment of monastic institutions to which such persons could resort for food and shelter and medical treatment. With the Reformation, these institutions were abolished in Protestant lands, and the need to find new methods of relief of the poor was heightened by the great increase in poverty, homelessness, and vagabondage that had occurred in the late 1400s and early 1500s, especially in and around the cities.

At the same time, the Lutheran theology of poor relief differed from Roman Catholic theology in three respects: first, it placed more emphasis on the responsibility of individuals and families to help the needy, and less emphasis on the responsibility of the institutional church; second, it placed on the secular political authorities the primary moral responsibility to establish and regulate poor relief; and third, it was less tolerant of the sins of sloth and greed that it identified with various forms of poverty, including especially those forms that were associated with the rising incidence of begging and of vagrancy.

It was, once again, Lutheran law-trained theologians who took the initiative in drafting the many poor laws that were adopted by city councils and by princes in Germany from the 1520s on. These laws denounced and punished begging and vagrancy, but at the same time established substantial relief for "the deserving poor," especially through various kinds of poorhouses, workhouses, and hospitals. Moreover, the new laws enjoined every Christian to "follow divine command, Holy Scripture, and brotherly love" in doing all he could to enable the beggar, "his neighbor," to engage in industrious labor or, if he is too sick to work, to find other relief for him.

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Since the sixteenth century the meaning of the term "spiritual" has changed radically. I use it here to refer not only to ecclesiastical and not only to theological matters but also to certain qualities of the mind and character of persons, to their passionate convictions and loyalties, their most intimate personal associations, their deepest inner concerns and relationships. It is in this broad sense that I would call Lutheran marriage laws, school laws, moral laws, and poor laws "spiritual law."

The meaning of the term "secular" has also changed radically, having come to be associated with political, economic, and social institutions and theories that are thought to be not only not ecclesiastical and not religious in character but also not spiritual in any sense of that word. As early as 1918 Max Weber

spoke of the "disenchantment of the world," which he saw as the end-product of the "modern age" of rationalism, individualism, and bureaucratic law. In 1906 his colleague Ernst Troeltsch had traced the historical origins of the secularization of society to the Protestant Reformation, which introduced, he said, a religious individualism that ultimately itself had become secularized. These early prophecies have been taken up by hosts of sociologists, theologians, historians, philosophers, political scientists, and others, who in recent decades have published literally scores of books and hundreds of articles on the impact of secularism on modern society.

As Hans Blumenberg has written, the concept of secularization has itself become secularized. God is no longer thought to be hidden, *abscondita*, in the secular world. Like Luther, we define the laws handed down by state agencies as secular law, partly because they are handed down by the secular state and partly because we do not believe that obedience to them can save souls; but we have broken with Lutheran thought by denying to the law of the state the function of expressly supporting religion through adoption of theologically determined and theologically formulated laws relating to marriage, education, moral discipline, and relief of poverty, and conversely, by denying to religious authorities the function of expressly guiding the secular state in its regulation of those essentially spiritual—in the broad sense of that word—activities. We have increasingly privatized the spiritual aspects of social life, on the one hand, and, on the other hand, we have increasingly politicized the secular aspects.

These tendencies have strongly influenced—and I believe distorted—conventional historiography. We have characterized the sixteenth century, Luther's time, as the beginning of "the Modern Age," as Luther's followers themselves did; but we have given entirely new meaning to that term. Today we speak of "modernity" not as Lutheran theologians did, to refer to a new time of Biblical faith, but on the contrary, to refer to the rise of secularism—and not Luther's or Melanchthon's secularism, in which God is present, but a secularism that is identified with the predominance of political, economic, and social powers, a secularism that exalts freedom from tradition and authority in the name of rationality and pragmatism. And we still speak of "the Middle Ages"—a term invented by the Reformers to characterize the interval between their own "modern" time and the early Christianity to which they proposed to return—although it has now become entirely unclear what the Middle Ages are in the middle of!

The use of the term "modernity" to signify secularism has, I believe, led contemporary historians to underestimate the importance of the spiritual aspects of the Lutheran laws which I have discussed in this paper. They have characterized the Lutheran spiritual laws as instruments of rising absolute monarchies and of new ruling economic classes. The truth that they ignore is that the power of the Lutheran princes and city councils that enacted these laws

was shared equally with the Lutheran theologians who drafted them. It is true that the Lutheran state used the Lutheran church to enhance its own political power; but it is also true that the Luther church used the Lutheran state to enhance its own spiritual mission. Luther made the point dramatically: God is present in the office of the secular magistracy, he said, in order to combat sin and the devil.

I return again to the crucial question of periodization of European history. Political historians have treated the Protestant Reformation as the beginning of the Modern Age, and have interpreted the Reformation primarily as a transfer of the powers and functions of the Church of Rome to the secular princes. Social theorists have accepted this interpretation and have in addition developed a theory of secularization—that secular modernity has its own world outlook, wholly independent of theology. I would suggest that a different theory of secularization emerges from a study of the spiritual ordinances of the sixteenth century, namely, that the interaction of the secular and the spiritual, which took one form in the First Modern Age, introduced by the Papal Revolution, was preserved but transformed in the Second Modern Age, introduced by the Lutheran Reformation; and that such interaction was effectively symbolized in Germany by the pervasive influence of Lutheran theology in civil legislation concerning the church itself, concerning marriage and the family, and concerning public education, morals, and care of the poor.

Finally, the recognition of these as spiritual causes, and of the law regulating them as spiritual law—regardless of whether it is enacted by "state" or by "church"—adds an important perspective, I believe, not only to the widespread debate about the impact of secularism on society in the twentieth century but also to the less widespread but no less important discussion of the interaction of law and religion in the ongoing history of Western civilization.

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English Parallels—Readers who are familiar with the impact of the Protestant Reformation on English law in the sixteenth century will have noted similarities between German and English legal developments relating to marriage, schooling, moral offenses, and poor relief.

As in Lutheran Germany, so in Anglican England, marriage became not a "sacrament of the Gospel" but a social estate, although divorce was not generally permitted in England until the mid-nineteenth century. As in Germany, English public schools were made available for all children, and the teachers were mostly laymen, but in contrast to Germany, all teachers in England were required to have a license from the bishop. As in Germany, moral offenses were identified and defined by royal law; sanctions, however, were left largely, though not entirely, to the Anglican ecclesiastical courts. English poor

laws, like the German, denounced mendicancy and established workhouses for "the deserving poor"; to support them the parish clergy and churchwardens collected alms, but in so doing they acted under the supervision of justices of the peace.

In general, Anglican bishops and Anglican church parishes played a greater role than Lutheran clergy and Lutheran congregations in administering spiritual law. The English Reformation differed from the German Reformation in other respects as well. Yet both established regimes in which monarchical authority was supreme in spiritual as well as secular causes, and in exercising that authority the rulers of both countries produced bodies of law which strongly reflected and implemented the new Protestant theology. It was a theology that emphasized the salvation of souls by faith, but the faith that was required for salvation itself produced works of the law—a law of the state governing spiritual matters that for more than four centuries had been part of the law of the church. From one point of view, this may be called a process of secularization of spiritual law. From another point of view, it may be called a process of spiritualization of secular law.

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Implications for today—It is important, I believe, to revive in our jurisprudence the word "spiritual" to identify certain types of our own laws, including our laws of marriage, schooling of children, certain moral offenses, and relief of poverty: "spiritual" not in the older Roman Catholic sense of "ecclesiastical," and not in the sixteenth-century Protestant sense of "theological" or the contemporary sense of "religious," but in a broader sense that would be acceptable also to many contemporary humanists, including many who are deists, agnostics, or atheists.

In the broadest sense of the word, to be sure, virtually all our laws may be said to have a spiritual aspect. Virtually all our laws are intended to promote right conduct; virtually all have a moral dimension; virtually all purport, at least, to foster right relations among people. Yet some laws are so much more spiritual than others that the difference in degree becomes a difference in kind. Thus laws regulating the marriage relationship differ in kind from laws regulating, for example, a commercial partnership—because marriage is much more closely connected than forms of business organization with the ultimate values, the ultimate purposes, of human life. The laws of business organization are, indeed, important from an economic viewpoint, from a utilitarian viewpoint, from what in traditional Western terminology is called a secular viewpoint. But laws regulating marriage, or the rights and obligations of parents in bringing up their children, affect much more profoundly the human psyche, the human heart, the human spirit. The same may be said

of school laws and of laws forbidding certain types of outrageous moral offenses. The same may be said of laws giving succor to those in direst need. These laws touch what we hold most sacred in our relationships with others and in our nature and destiny as human beings.

In the theistic religions of Judaism, Christianity, and Islam, the human spirit is closely related to the heart. "Create in me a pure heart and a right spirit," says the Psalmist (Psalm 51), and the prophet Ezekiel extends this petition to the whole people: "A new heart will I give to you," he proclaims, "and a new spirit will I put within you. . . . I will put my spirit within you and cause you to walk in my statutes and keep my judgments and do them. . . ." (Ezekiel 36: 26-28).

Especially in the twentieth century, many have denied a disjunction between what Tocqueville called "the habits of the heart," and Abraham Lincoln, in his Second Inaugural, "the better angels of our nature," on the one hand, and the practical, the utilitarian, the quantifiable, on the other; between the sacred and the profane, the spirit and the flesh. For Karl Marx everything was ultimately material, and for Sigmund Freud everything was ultimately psychological. But for the sixteenth-century Protestant Reformers, as we have seen, and for the Roman Catholics before them, the material and the psychological, the secular and the spiritual, were in dialectical tension.

As we enter the twenty-first century of the Christian Era, I believe that we can learn not only something of value about the historical roots of our own law, but also something of value for the development of law in the future, from the interaction of spiritual and secular law in the sixteenth century, and especially from what I have called the spiritualization of secular law.