Ethics of Law—Ethics of Freedom

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There are, generally speaking, two ways of thinking about how human life is meant to be lived. One is the way of order and law. The other is the way of creativity and freedom. Both ways may be true, of course. If both are true, as I suspect they are, the test of our hold on truth may lie in the way we keep both ways in proper balance or tension.

The way we perceive the dominant design in life shapes the way we think about how we ought to live. We tend to suppose that we ought to live in harmony with the way things really are. We fashion theories of how to go about deciding what we ought to do out of some vision we have of what life is really like. And, going more deeply, our vision of what life is really like is determined (or can be and ought to be determined) by our vision of what God is like and how he relates to human life. So our ethics depends on our metaphysics and our metaphysics depends on our theology.

James Gustafson of the University of Chicago—the Christian ethicist Christian ethicists listen to the most these days—has written a splendid book for us about the ways that Catholics and Protestants tend to tie together their ethics and their perception of the “way things really are.” The upshot is that, as Gustafson sees it, Catholic and Protestant ethicists are drawing their perceptions close enough together for us to speak of a rapprochement. The significance of this conclusion is not ecumenical serendipity but the offering of a chance for Christian ethicists to work more faithfully together at our shared agenda, free from uncritical commitment to or biased alienation from any tradition.

The modern Protestant, as Gustafson typifies him, tends to see life more as a movement than as a structure. He sees it as a network of physical and spiritual dynamics moving human life and history into ever new and changing patterns. Looking for words that suggest the “way things really are,” he tends to like the dynamic ones: change, movement, freedom, possibility, unpredictability, uncertainty. If this is the “way things really are,” we may suppose that our moral response to life ought to be one that fits: we ought to be innovative, creative, ready for change, untied to the ways of the past, unbound to any universal law that is supposed to reflect a stable order or design for life. Protestant ethics, then, tends to be relativistic, forward looking, ready to judge human behavior in terms of its results rather than its conformity to a natural law or sacred order.

Modern Protestant theology has blended well with its philosophical background. God is no longer described and felt as the creator of a world order to whose design he wills his free human creatures to adapt their lives. He is no longer felt and described as a God whose rational plan for life issues in the revelation of a moral law that reflects both the mind of God and the “way things really are” in the world. He is felt and described, rather, as a God who freely decides and freely acts in ways that may be surprising and offensive to the human mind, but are ways we may respond to and participate in to our salvation. Words that fit well into the theology of the free God are “grace,” “good news,” “new creation,” “freedom in Christ.”

Any ethic that fits the theology of freedom is likely to stress a morality of freedom. Its key phrases will be selected from a list like freedom, responsibility, obedience to the Lord’s command, acting in love, care for persons, following the Lord’s guidance, and making one’s own decisions. Protestant ethics, says Gustafson, has tended to be ethics of freedom as opposed to ethics of law. Barth’s doctrine of God’s freedom in grace gave him an ethic of free response to new and surprising commands of God that we intuit (as we open our believing hearts to him) along life’s unchartered way. Reinhold Niebuhr’s view of conflict and tension as basic to life led to an ethic in which conduct can be judged only by its consequences for the future. H. Richard Niebuhr created an ethic in which responsibility was the key to morality, the criterion of judgment being, not conformity to moral law, but the fittingness of the act to all the
ingredients that come together to create the new situation. And, of course, the bad boy of Protestant ethics, Joseph Fletcher, simplified everything by saying that the right and wrong of acts was always something that depended wholly on whether they contributed to love. The names of many others could be called. But they would only blend into the chorus. Our knowledge of what to do is not a result of consulting a law and deducing its application to life. We learn what to do by intuiting the will of God in each situation, or by calculating the odds for useful consequences, or by deciding to do what seems to be the responsible thing to do in a concrete situation.

Catholic ethics has been different. It is rooted in philosophical and theological perspectives that see the world in terms of order and law. The natural order and the natural tendency of things are the embodiment of God's rational design for human life. Moral law is a mirror of that design in terms of how we ought to live. That is, the law summons us to bend our lives to the shape of God's design. God's design, built into the energies of life, is not only the plan we shape of God's design. God's design, built into the energies of life, is not only the plan we ought to follow, it is the goal toward which we are naturally inclined to move. We tend by nature to follow certain channels or grooves that lead us to our ultimate happiness. Further, our minds are tuned into these channels and into the goal of life; that is, we recognize God's design and call it "natural law." We can see the "way things really are"—not as they are at any moment, because any given situation may oppose God's design, but as they really are meant to be in God's plan.

The Bible also tells us what to do. For the most part, however, the Bible reaffirms what we already know (in part and sometimes confusedly) from nature. Tradition does the same; when the pope speaks authoritatively on morals, he almost always appeals to natural law, or the way we would all see it if we were using our heads well. The teachings of Jesus may add on special ways for those with a vocation to be moral heroes, but on the whole Jesus too confirms the law woven into the "way things really are." The whole system rests on the premise that there is indeed, in reality, a "way that things really are" intended to be.

Perhaps the clearest examples of change, as well as the most touchy and most needed, fall in the area of sexual morality. A traditional route (blazed by Ulpian) took us from the transparently natural ways of animal sexuality to the normative ways for human sexuality. If we want to know the built-in tendency of sexuality, the place to look is where sex is practiced without the continued intervention of human techniques. Look to animal sex, then, and we find that the natural tendency for sex is toward inserting a male phallus into a female vagina, there to inject male sperm to be left alone for nature and God to determine whether offspring will germinate. This is nature, the "way things really are." Natural law dictates, therefore, that we follow the course—intending sex only for this same end and purpose. Modern Catholics, like Charles Curran (Issues in Sexual and Medical Ethics, 1976), are not at all sure that we can know how things really are with human sexuality by watching how they usually are with animal sexuality. In human morality the spirit is paramount; a person's relation to a person is what sexual relations are, or ought to be, about. So we need personal criteria for sexual morality. And if we have this, we probably will not automatically veto masturbation, or the pill, or a lot of other things, merely because they block the trend of physical nature. This does not mean Curran is jettisoning natural law. He just wants the personal, and there-with the particular and relativistic aspects of life, to be significant elements in our ethical deliberations along with natural law.

The Catholics exerting most influence in Christian ethics are locating their base in the Bible, particularly in the New Testament and its invitation to freedom in Christ. (Bernard Haring's The Law of Christ is a prime example.) The few Catholics who write books to champion natural law work hard at biblical sources to show that the Bible itself teaches natural law. (Josef Fuchs's Natural Law is an example.) A Protestant reads Catholic ethicists these days and feels at home with them. They do not let the manuals tell them what is right or wrong. They don't move in a straight line from a definition of general principles to their application. Problems are discussed in the light of the importance of persons in their situation, of the meaning of grace to them, of the possibilities for creating a better life for them. The contest for Christian morality seems now to be the body of Christ together working out a humane way to live. The burden seems to come, not from nature, but from a sense that we are called to a life of love together in Christ.

Gustafson relates with transparent sympathies several instances of this new Catholic openness to a more personalistic, biblical, flexible ethic. His instances of Protestant movement toward moral law and order are less impressive. For instance, he notes that great German existentialist theologians like Brunner, Bonhoeffer and Barth relied, when the chips were down, on some sort of structure to provide ethics with a rational base. Actually, it seems to me that these theologians only discovered that they could not talk ethically unless they could also draw on general moral principles about how we ought to live.
Brunner laid the foundation for his ethics on existentialist ground: The will of God is known only in I-Thou commands. But he worked out human duties in real life mostly on the basis of created orders that did, in fact, embody a generally firm and consistent divine design. The result was that much of our moral duty becomes fairly predictable. Bonhoeffer began his ethics with a grand dismissal of laws and principles. But when he got down to discussing human duty with respect to such matters as abortion, suicide, and respect for authority, his appeal was to divine mandates that we are hard put to distinguish from moral law. Barth began his ethics with a dogmatic declaration that God’s will is never known as law, but only as direct, personal command. But he, too, conceded our need for some sort of structure, some kind of pattern to help keep the moral life from being totally dependent on ad hoc, unpredictable, divine words that come to us de novo as we wait for them in each new situation. He found the structure, he thought, in the covenant of God’s free grace for life. How the covenant gave rational predictability to God’s new commands was never clear, at least not to me. In any case, when Barth actually turned to the Decalogue and how it tells us what to do, he is different from old-fashioned moral law people only in the massive excellence of his treatment.

These great German theologians, then, did not make a deliberate move away from their existentialist base. I, at least, do not hear them saying: “Well now, there is something to that old notion of law after all.” What they illustrate is not so much a Protestant return to moral law as their own confrontation with the ethical emptiness of existentialist theology. The only existentialist theologian who faced this ethical emptiness and accepted it fully was Bultmann. The others drew back, without admitting they were moving in an ethical direction they had rejected in their theology.

There are Protestants, however, who are scouting out an ethic of law. There is Princeton’s Paul Ramsey, whose toughly intelligent work in medical ethics, to mention but one area, reveals a persistent respect for moral law within the flesh of love. There is David Little, who has tried to coordinate a Protestant (Calvinist) theology of natural law with cross-cultural surveys of how people feel about moral issues, hoping thus to support natural law with the reality of universal moral convictions. But the best example is Gustafson himself.

Gustafson has a theology of God that embraces both order and freedom. God is he who establishes a continuous pattern for human history. God is also he who creatively responds to human need with improvised and creative answers to unexpected questions. Out of this God-concept Gustafson has rejected the antithesis between principle and freedom, law and love, that some situational ethics seemed to foist on us. He has, instead, been on the hunt for normative principles to follow as he works with the moral problems of our time that require from us imagination and freedom as much as fidelity to principle. I suspect that Gustafson’s own via media is the personal background for his joy in discovering common ground with many notable Catholic moralists.

Gustafson’s superb survey supports my own conviction that there are two ways in which life comes together, not just two ways of perceiving how it does. Human life has both order and freedom. There is design and accident in nature. Human beings have both an abiding nature and a changing history, though we cannot be dogmatic about where to draw lines between them. The moral life is created in harmony with moral law and through improvisation in response to historical change.

God is both the creator of an ordered world with an end that is implicit in its nature and, at the same time, the free improviser who engages in ongoing response to the creative acts of his free creatures. Protestant ethics has not been able to shake itself free from the reality and the need of order. Catholic ethics has not been able to avoid the moral importance of God’s call to freedom. Awareness of this puts us in a position, as Gustafson concludes, to see that we share a common set of premises from which to face the common set of questions that provide the agenda for Christian ethics.

Gustafson concludes his survey of the Catholic-Protestant rapprochement with some guidelines for testing future discussions. What is needed is a comprehensive and coherent account of Christian ethics. We cannot afford to limit ethics to wrestling with every new problem that emerges; we need to do something bigger and more systematic than is possible if we focus forever on concrete answers to concrete problems. We need a fundamental ethic whose theological roots are clearly exposed, whose main trunk stems organically from those roots, and whose branches are all of a piece with the trunk. And if such an ethic is to provide Christian consensus, we will need more agreement than we have yet managed on “the basic outlook, principle, or metaphor that is appropriate to Christian theological ethics.” What this seems to mean is that we need consensus on our doctrine of God. Gustafson has his idea of the essential components of a doctrine of God: “a gracious ordering dynamic presence and power....” It may be a view that needs a lot of enrichment, but it does stress this truth: We need an ethics that is drawn from the doctrine of God.

I have tried, in my own words, to reconstruct some of the main parts of Gustafson’s superb face-off of modern Protestant and Catholic ethics. I think that his thesis is expressed more convincingly in the Catholic portions than in the Protestant. My own hunch is that Protestant ethics on the grass roots level was never as existentialist and relativist as academic ethics was. There has been, I think, through the last half-century a large remnant of Protestant, especially Lutheran and Calvinist, ethics that works out of traditional molds, that believes in fundamental orders, and assumes some sort of moral law, but which never made academic headlines. And, as far as I can tell, the move back from relativism on the part of Protestant academic ethics is not decisive enough to warrant as much common ground as Gustafson suggests. But, no matter, Gustafson’s work gives us a most useful panorama, as well as an insight into the inner structure of the important work being done in ethics in our time.