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# Moral Basis of Human Rights

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## THE MORAL BASIS OF HUMAN RIGHTS

*Harris Wofford, Jr.\**

Recently a friend chose to leave a safe job and turn down even safer ones in order to try something far more difficult where there was a good chance he might fail, where he was certain to learn. In accepting this assignment I am following that self-psychology.



*Mr. Harris Wofford*

Human Rights and the Law is a land any lawyer should know, at least on the surface. But the *moral* basis of human rights and the law — that is where we of the twentieth century, including lawyers, are most likely to get lost. On all sides we are taught, or we teach, that law is merely the command of the sovereign and that legal rights are the result of political or judicial manipulations, reflecting the powers that be and whatever purposes they have in mind, if any. The basis for that kind of law is hard to define or defend. Combining Gertrude Stein and Spiro T. Agnew, it might be: The law is the law is the law. To this cry for law and order, without any clear moral basis, more and more young people are responding today as the student of Socrates did in *The Clouds*: “But I wish to succeed, just enough for my need, and to slip through the clutches of law.” And an alarming number see law as the enemy and consider their opponents pigs, especially policemen wearing gas masks. This epithet *pig* is the modern counterpart of Dickens’, “The Law is a Ass.”

What can we say to them? What case can we make for a necessary connection between law and human rights? What common ground for the very being of law and human rights can we point to? How can we take the ground out from under those who view other men as pigs, and offer a better ground than mere confrontation of power to those who want to promote human rights?

For those who believe in God the Father, the Brotherhood of Man should be clear corollary. For them it should follow that the central purpose of law is to insure that His will be done on earth as it is in heaven or, as President Nixon put it, to insure “that as all are born equal in dignity before God, all are born equal in dignity before man.”

This moral basis exists for a great part of mankind, and for far more men than those who acknowledge any one God. The Supreme Court, in the *Seeger* case<sup>1</sup> defined the American constitutional meaning of “belief in a Supreme Being” as necessarily including all the varieties of religious belief held in this land, and particularly Tillich’s “‘God above God,’ the power of being, which

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\* President, Old Westbury College; former Commissioner, United States Commission on Civil Rights.

1 United States v. Seeger, 380 U.S. 163 (1965).

works through those who have no name for it, not even the name God."<sup>2</sup> Any of these religious beliefs, according to the Court, are constitutionally respectable grounds for conscientious objection. But excluded is conscientious objection based on what Congress calls "a merely personal moral code."

Fortunately, the Law School and the University of Notre Dame do not place personal moral codes beyond the pale.

For we need to seek a ground for the being of law and human rights on which we can stand together with the millions of our fellow citizens and the hundreds of millions or billions of our neighbors in the world who are not graced with any such faith, whose beliefs do not come within even the Supreme Court's generous and ingenious test: belief in a *Supreme Being or the equivalent thereof*.

Even if all the world were believers, we would still need to find a less lofty and distant ground. As the proverb of Polish politics complains: "God is too high and France is too far." To state it another way, one man's divine law is another man's poison. Listen to this dialogue from the Congressional Record between two avowed believers in the same God. Senator Eastland asked: "Is not the segregated way of life . . . the law of nature?" And Senator Thurmond replied, "Well, that is the way God made the races."<sup>3</sup>

Can we agree upon a ground for human rights that is this side of theology, this side of the angels, this side of divine law or the equivalent thereof? Would this leave us with nothing but what Congress calls "a merely personal moral code"?

*Merely* is an intriguing word. Let us try to construe it as the Supreme Court would, so as to fulfill, not abolish, the law. What is a *merely* personal moral code?

A possible example occurred last month at our college. Many of the students and faculty proposed a reservation of fifty per cent of the places in next year's freshman class for non-white students. They called it Operation Catch-up. Others called it a racial quota which they opposed for constitutional and political reasons. A very passionate white girl, with strong roots in religious training and belief, cried out, to considerable applause, "Just for once, let's do something that is morally right and to hell with the consequences — to hell with politics — to hell with the Constitution!"

Her personal moral code demanded that she do something then and there to attest her readiness for racial equality, even if it resulted in no objective steps toward that goal — in fact, even if it were based on an unconstitutional racial principle and were likely to cause a political setback. We can ask what in the world it means to call something morally right if the human consequences are wrong. We can say that her remedy of separating morality from politics is worse than the disease. But we should not take these repeated consignments to the inferno lightly. Why do so many young people see the law as an inhibiting factor, a poor substitute for conscience; the Constitution as a mountain of promises unfulfilled, a monumental hypocrisy; and politics as power manipulation and callous calculation, a dirty business? This century has certainly given some

<sup>2</sup> *Id.* at 180.

<sup>3</sup> 105 CONG. REC. 19484 (1959).

painful evidence for all this, but isn't it likely that she and others with strong moral concerns are desperately trying to measure morality by merely personal codes because we have lost sight of any public measure?

Another example is the romance of so many students with Che Guevara. A dedicated former Peace Corps volunteer, on a panel of inter-American youth leaders, recently explained why he and many North Americans responded to Che. Che was a physician, he said, a member of the Latin American elite, who gave up all that to do something to end human misery and injustice *now*, with his body, with his life. He didn't procrastinate, he didn't calculate, he didn't dally with due process. He chose Revolution. To this an equally dedicated Christian Democratic student leader from Chile said: Yes, Che is appealing, but there is one thing wrong with him, with you North American would-be revolutionaries. It didn't work. He didn't calculate, he didn't make a revolution, he didn't end any misery — in fact he may have added to it — and we see the same thing happening among you North American young people. You have abandoned politics for a purely personal morality. Your confrontations, your angry words, your acts of violence, your threatened guerilla warfare may give you personal psychic satisfaction, but will they cause the social changes the world needs?

That may not be exactly what Congress meant when it disavowed "a merely personal moral code," but perhaps it was something like that.

A final example is the seductive Hippie slogan, "Let everyone do his thing." There is a bright side to this, a respect for persons, a resistance to being programmed, a desire for a community of individuals; it is as if the Technological Society has produced its own antibodies instead of the long-dreaded Organization Man. But the new spirit is so anti-organization, anti-authority, anti-law that it verges on true anarchy.

We in the academic world should not be surprised by this principle now being advanced by student educational reformers, for isn't it the essential principle of most multiversities, most departments, most professors, most college presidents, and of the elective system itself? Some would say it is the essential principle of our economic system, though even Adam Smith posited an Invisible Hand. Anyway, it is an important part of the spirit of our time.

This is not an indictment of the younger generation so much as of this whole twentieth century. Can we forget Adolf Hitler, following his own code, doing his thing, writ large, in fire and blood on the world's stage? So far this century of ours, with only a few exceptions, has given no good answer to the anarchy of everyone merely doing his thing.

There is no better example of our dilemma than the difficulty we have in using or defining the word *moral*. Those who do not treat morality as a deduction from religious dogma tend to equate it with *mores* or with *morale*. This has left our society on shaky ground indeed. If the basis of law is merely the customs, opinions and feelings of the people, if human rights are merely the claims the state must meet in order to respect the mores and keep up the morale of the people, then law is those commands which the sovereign finds necessary to maintain power. Its purpose then is truly, as Mayor Daley would say, to preserve disorder — the disorder of society's division into two cities of rich and poor,

or of white and black, or the world's division into separate, sovereign, warring nation-states. That's not much of a moral base. If this is all lovers of law have to offer, no wonder impatient, sensitive, idealistic men and women of the new generation, born into this modern chaos, reflect and compound it and serve it back to us with vengeance.

So we stand at an impasse. With all due respect for the achievements of the Notre Dame Law School and of American law in the last hundred years, haven't we lost our way? We have certainly left the track of those who brought forth on this continent a new nation conceived in liberty and dedicated to the proposition that all men are created equal. That very language of our founding fathers we have lost. They looked to law with a reverence most of us cannot understand. They paid a decent respect to the opinions of mankind, but founded this nation on a stronger basis, one that could claim the full meaning of the word *moral*: They declared their propositions to be *self-evident* and *true*.

Truth is a word that embarrasses us, not to speak of self-evident truths. Our conventional wisdom acknowledges only one self-evident truth, that there is no such thing as truth — except perhaps in the physical world. In the realm of nuclear energy and space explorations, it takes no Einstein to see how related all truths are, a very different proposition from the claim that all truth is relative. The astronauts with reverence for the laws or truths of nature that carried them so far, with faith in the abstract mathematical truths which took them around the moon said: "We were very ordinary men but we did a miraculous thing."

We lawyers and civilians back on earth are the ones now on the spot. Man's great leap forward into space will end in a tragic fall unless he with all his failings — we ordinary men with all our failings — can succeed in the most miraculous thing of all: self-government. And for this we need a stronger moral basis than anything yet suggested by the legal realism, political pluralism, philosophical pragmatism and technical progress of this century. To find it we may need to take a leap backward, if not to the beginning at Philadelphia, or the *Mayflower*, or the Magna Charta, or Athens, Jerusalem and Mt. Sinai, at least to the ordinary country lawyer who just over a hundred years ago tried to do miraculous things with the idea of self-government, the idea which Abraham Lincoln held to be "right — absolutely and eternally right."

In a time when fanatic separatist forces were tearing the Union apart, when respect for law was at its lowest ebb, when the new industrial corporations were claiming the anarchy of each one doing his thing, when Jefferson's declaration of human equality was publicly proclaimed "a self-evident lie," Lincoln set out to work a miracle: to bring forth a new birth of the public thing he called Freedom — to re-establish the human right to self-government as self-evident and true. It is fitting for us, in much the same plight, to consider Lincoln's case, for no man before or since has done so much to define and defend a moral basis for our law.

It was man's circling of the moon and our vicarious new perspective on the earth that caused me to remember a passage on Lincoln by Carl Sandburg. While his family was moving toward Illinois, pausing in the wilderness at Little Pigeon Creek, Indiana, the young Abe Lincoln late at night left his bed of dry leaves

in a corner of the pole-shed and walked through the clearing in the light of a high quarter moon. "What does the moon see?" the boy asked, and Sandburg listed what that moon might have seen in the winter of 1816: sixteen thousand wagons on the Pennsylvania turnpike, heading West, some of them all the way to the Oregon trail; steamboats for the first time linking Pittsburgh and New Orleans on the Mississippi; an iron horse starting to forge a continent; the Union of eight million people reaching toward the Pacific. He grew to see a nation half-slave, half-free — a house divided against itself — and to see what he called "the whole great family of man" and the "economy of the Universe." It was as if he were already seeing the full earth from the quarter moon.

Reading Shakespeare, Blackstone and the Bible as a young man, learning and practicing law as an apprentice and on circuit, never going to college or professional school but studying the six books of Euclid after he was a member of Congress, and profitably rereading the Bible in the year before his death, Lincoln never ceased listening to the sentiments of the people, nor trying to see law from above, nor seeking a true ground for human rights. And the more complicated the questions became, the simpler his answers grew; the more profound he became, the more he saw the world steady and whole. By 1861 he could say at Independence Hall, on the way to the White House: "I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence" — sentiments "which gave Liberty not alone to the people of this country, but, I hope, to the world, for all future time."

"Liberty," my Lincoln tutor, Eva Brann, reminds us, was the only noun in the Gettysburg Address that Lincoln capitalized besides "God" which was itself an afterthought.<sup>4</sup> Liberty, according to the Declaration, is the inalienable right of all men, an endowment of the Creator; but this essential human right follows from the self-evident truth that all men are created equal and is connected with the next truth which also stands by itself, with no help from the Creator: "That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed." These fundamental human rights are thus based on the *two* grounds stated in the Declaration: "the laws of nature and of nature's God." Since, at best, these laws can only be seen through a glass darkly, we are lucky to have this dual source of light, a double indemnity — the pattern laid up in heaven and the laws self-evident in nature.

Lincoln did his best to illumine these laws of nature and of nature's God. First and last he wrestled with the difficult primary proposition. The equality of man resulting from man's equal creation "did not mean . . . all were equal in color, size, intellect, moral development or social capacity" but did mean "they are equal in their right to 'life, liberty and the pursuit of happiness.'" And it did mean "that no man is good enough to govern another man, *without that other's consent.*"

The second essential stone for the foundation Lincoln was laying anew, "hewn from the solid quarry of sober reason," was the relation between liberty

<sup>4</sup> Brann, *A Reading of the Gettysburg Address* (1968), an expanded version of a lecture at St. John's College and published as a supplement to *The Palaestra*, St. John's College, Annapolis, Maryland. Most of the Lincoln quotations set forth in this address are found, with sources, in Miss Brann's illuminating paper to which this address is greatly indebted.

and law — freedom and union — the Declaration and the Constitution. The birth at which Lincoln hoped to serve as midwife was conceived in the meeting of these two sets of ideas, either one of which alone would have been barren seed. Together the Declaration and the Constitution inextricably joined law and persuasion: government by consent.

DeTocqueville had written that poets in America have difficulty because “In democratic communities, each citizen is habitually engaged in the contemplation of a very puny object: namely, himself.” Perhaps Lincoln was a good poet because he never lost sight of the larger common thing, the Republic. “If ever I feel the soul within me elevate and expand to those dimensions not wholly unworthy of its Almighty Architect,” he said when he was thirty, “it is when I contemplate the cause of my country . . . .”

For Lincoln, law and government were not negative factors, heavy weights to be limited or lifted; they were enabling, empowering, educating, elevating, liberating things — so long as they were derived from the consent of the governed. Through government people do what needs to be done but which they cannot do, or do so well, individually. We the People, in order to establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, had, of necessity, to form a union and to ordain and establish a Constitution. Only public law can do these things. But it has to be We the People who make the law. Then but only then do we owe the “reverence” Lincoln asked, for the Constitution and laws.

A third stone of Lincoln’s foundation for a free society was the vital connection between law and learning, between government and education. The test which Lincoln talked about at Gettysburg was the one presented by those he called “our fathers.” “It seems to have been reserved to the people of this country, by their conduct and example,” says the first *Federalist*, “to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice or whether they are forever destined to depend for their political constitutions on accident and force.” Lincoln’s 1838 version of this called for America to be “a practical demonstration of the truth of a proposition, which had hitherto been considered at best no better than problematical; namely, *the capability of a people to govern themselves.*”

Government by consent self-evidently requires reflection and choice, self-government self-evidently requires education, and vice versa. Montesquieu had given a simple summary of this: The principle of an aristocracy is honor; the principle of a tyranny is fear; the principle of a republic is learning. This was declared as the principle of our republic by Jefferson; then was incorporated by the framers of the Constitution into a legal system based upon and designed to promote reflection and choice.

What Lincoln, the self-taught teacher, most admired in Jefferson was the way he “had the coolness, forecast and capacity to introduce into a merely revolutionary document an abstract truth.” What Lincoln loved most about the Union was the way its highest law kept teaching people to look even higher or probe even deeper; the way the Great Due Process of its federalism, separation

of powers, independent courts and republican elections made persuasion the rule of American law. Human law and human rights for Lincoln were based on reason and truth, or they had no basis at all. If we can agree that reason is the means of self-government and truth the end, then we must see that the ground for the being of human rights and law is an abstract set of truths which may become self-evident through liberal education.<sup>5</sup>

It is the self-evidence of this need for universal liberal education, as the basis for human rights, that I want to argue here. For Lincoln's problem, it turns out, is not so far from ours; it was, as ours is, fundamentally a crisis in education. This crisis can be called educational, however, only if we do not disconnect education and politics; if we do not disconnect education and morality; and if we see that education and morality require for their very being the reflection and choice of self-government.

While the new educators of Lincoln's day increasingly concerned themselves with training technicians to win the war or to build an industrial state, he knew that the fundamental education people needed was not merely training, nor the transmission of facts or imposition of values or indoctrination of dogmas, but the learning that frees a man to choose a good life from a bad life, right from wrong, truth from untruth; that is, the education that gives people the capacity to govern themselves.

Lincoln did not expect this education to come easily, or all to be found in a university or law school curriculum, or to be fool-proof. Man being less than an angel and government reflecting that human nature, his capacity for self-government, even with the best education and the best laws, will naturally be limited. All of the people will be fooled some of the time. Lincoln, at the height of his powers as President of the United States, did "confess plainly that events have controlled me." Yet by his conduct and example he gave a practical demonstration of how men could find the logic of those events, listen to the lessons of that breakdown of law, and learn from the tragedy. He hoped that out of the agony and death of civil war, that terrible return to accident and force, America would recover its vision of "the axioms of free society." But once the axioms of a system of geometry have been challenged, once a self-evident truth has become a debatable proposition, the re-establishment is difficult indeed.<sup>6</sup> It was to bring forth the rebirth of these abstract truths that Lincoln dedicated himself, a most unlikely task for a practical frontier lawyer. A cool reading of the last hundred years would have to conclude that Lincoln failed, as he became our first tragic hero.

What about the next hundred years of American law? Will the present withering of consent in our politics and education, lead inevitably to death, or can we help bring about a new birth? Through our television screens brightly, is it possible that from the comedy of man in space we will now learn what we failed to learn from Lincoln and from tragedy? Looking at the earth seen whole and steady in space, the astronauts laughed and asked, "Is it inhabited?" And

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5 S. BUCHANAN, *SO REASON CAN RULE: THE CONSTITUTION REVISITED* (1967). See also S. BUCHANAN, *ESSAY IN POLITICS* (1953)

6 Brann, *supra* note 4, at 12.



they answered, from the depths of their being, "Yes." They saw the light and the darkness and found it good. They heard words from the green and purple earth and read words from *Genesis* that seemed true. With the new imagination that comes from this new perspective, will the ordinary men inhabiting our lonely planet now know, as our President says all should know, that "they are truly brothers"? Will they finally see what Lincoln saw: "the whole great family of man"? Are we at long last ready to apply the abstract truths of our founding fathers to *all men* in our society and to *all men* inhabiting this one small world?

Lincoln would have enjoyed the Bible reading on United States public property in space. He wanted the principles of the Declaration of Independence to be accepted as the articles of faith of a "political religion" and saw the Bible as a great source book. He read the Declaration in the light of the command, "As your Father in Heaven is perfect, be ye also perfect," noting that "The Saviour, I suppose, did not expect that any human creature could be perfect, as the Father in Heaven . . . . So I say in relation to the principle that all men are created equal, let it be as nearly reached as we can." This analogy with divine incarnation was not meant to demean the Church, but to elevate politics. Far from using religion to serve politics, he saw republican government as a great religious institution, "the only greater institution" being the Church.<sup>7</sup>

But even if the astronauts' moment of grace turns out to be catching, mere grace will not take us far in self-government. A renewed belief in man's meaning in relation to the laws of nature or of nature's God is no more than a ground to stand on, from which to reason and act. The fact that most Americans on both sides read the same Bible and prayed to the same God did not stop civil war; the killers of John Kennedy and Robert Kennedy, of Mahatma Gandhi and Martin Luther King, all no doubt acted in the name of truth. It is not those who say "truth, truth" who are most likely to act truly, but those who seek the truth with all the reason they can muster.

The truth we seek in this world of possibilities is probably not black and white, with a tint of brown, like the moon; but more like the blue, red, purple and green of the earth, and the search for it is infinitely complicated. It will be glimpsed only through good theories and imaginative minds. In the age of the computer the means will increasingly exist to do practically anything. The question will be, what should we choose to do? More and more man's role will become the truly human work the computer cannot do: not collecting facts but above all reflecting upon and choosing ends. For this we all need to be better educated — to be more theoretical, more imaginative, and more intellectual in the true sense.

If it is self-evident that man in his very being is a questioning, reflecting, choosing, self-governing animal, that all men by nature want to know, then liberal education is as necessary for every man's mind or soul as bread, wine or water are for his body. It should always be true that in a republic where We the People are ordained the guardians and lawmakers, we must all learn all we can. But as the New England Town Meeting dwindled in power and the sim-

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7 *Id.* at 35-36.

plicity of the frontier disappeared, this truth was lost; frontier amateurs like Lincoln or Mark Twain's Connecticut Yankee, "born with the idea of a republic in his head," seemed to give way to a technical elite. But the logic of events — the compulsion of our technological society — is now throwing up the old republican truths again. One accident can turn off the lights over a vast metropolitan grid; one act of force might destroy the human race. If we are to survive on the earth, universal understanding — universal higher education — universal liberal education — must be as nearly reached as we can.

There are, of course, other fundamental matters of life, liberty and the pursuit of happiness that all men have a right to claim: decent food, clothing, housing, work; clean air and water; the conservation of the earth; safety in the streets; an end to racial and other arbitrary public discriminations; peace in the world. But just as freedom of speech in the First Amendment is our primary guarantee of government by consent, so liberal education is the foundation for all other human rights. What is at stake is not the individual liberty of everyone saying or doing his thing, which under the Fifth Amendment may be denied by due process, but the body politic's need to hear anything relevant to its self-government.<sup>8</sup> Based on the central American mystery of the rulers also being the ruled, this is the political equivalent of a primary religious proposition: In the beginning was the Word. Speech — which in the fullest sense means liberal education — is the primary human right which *shall not be abridged*. And that negative proposition requires an affirmative reading: The liberal education needed for freedom *shall be provided*.

How far we are from applying this abstract truth in our own society, let alone in the world community! Let us try to map in our minds the educating forces in a child's or a man's life and consider the gaps. Our formal school system is only a part, perhaps a minor part, of the education of an American. Our higher education is nine-tenths the training of technicians and one-tenth liberal learning. Colleges and universities enroll about forty out of every 100 young people. But half of these are turned off or otherwise turned out of school without graduation; and most of the priorities, rewards and resources are concentrated on the production of the eight-tenths of one person out of a hundred who goes on to get a Ph.D. or the equivalent advanced degree. Do these sixteen or twenty years of continuous classroom education give many Americans an education one-tenth as good as Lincoln's? If we really do believe that all men have a right to govern themselves, we will need to turn our present education system upside down, and concentrate on providing liberal education for the other ninety-nine and two-tenths per cent of the people.

Look at some of the other gaps in our educating society. Television and radio may be better than a wasteland, but what a waste of these miraculous new ways of reaching and moving ordinary people, perhaps including some mute, illiterate Lincolns. Technology teaches; technology in all of its fantastic forms is the great new common thing whose true purposes still need to be discovered. Yet because we dare not think about ends we leave these new means running loose, with no

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<sup>8</sup> See generally A. MEIKLEJOHN, *FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT* (1948).

rhyme or reason. Technology, galloping ungoverned and seemingly ungovernable, is the real spectre of anarchy haunting our world.<sup>9</sup>

Law, the greatest teacher of all, the discoverer of means to ends, should be the tamer of technology. But because we lawyers and citizens do not think very often or very well about ends, our laws have not been inventive enough with new means. For example, the principles of the Declaration of Independence have not been extended very far into the world of corporations, the chief carriers of technology. Most business corporations and other corporations like colleges and universities, and the mother of corporations herself, the Church of the Lady under whose golden shadow we meet today, have too long or too often followed in their own management the old law, the idea that law is a command of the sovereign, to be unquestionably obeyed. If republican self-government, deriving its just powers from the consent of the governed, is so late in coming to these bodies politic dedicated to the common good, it is no wonder that General Motors has been a little slow. The long sporadic civil war of labor unions and management and the rise of the law of labor-management relations, the recent awakening of students to their rights and responsibilities in a community of learning, and the ecumenical explosion within the Church are signs that government by consent may yet become the principle of the great forces in our public life which now govern us without our consent.

If this sketch in any way approaches the truth, then the future of Notre Dame Law School should at least be lively. A strong and good law school like Notre Dame, as it becomes a great one, will work to replace the idea of law as a command, seek to combine law with consent as the moral basis for all public power. Seeing law as the principle of dialogue in the body politic, like reason in a man, the school will help lawyers become dialecticians; that is, become liberal artists of the architectonic art that deals with public purposes. Students of law will learn to respect each law as an important statement of public purpose, and they will take it as a question even though it lacks a literal question mark. The fact that sanctions are attached to the answer makes the question more, not less important. In requiring a response, law forces men to think about purposes or ends. Each law is inherently asking: Is this a rule of reason? Is it good, just, true? Does it deserve consent — or dissent? Should it be changed? Can it in conscience be obeyed?

The future student of law will see self-government as the Great Due Process to which he and his profession are dedicated, and he will understand this in the large sense. What a lawyer does above all, day after day, in a hundred ways, is to make law. He and his clients are making law and governing themselves as they negotiate contracts, invent institutions, form corporations, draft constitutions, enact legislation, elect representatives, seek administrative relief, bring litigation, defend suits, get injunctions, appeal cases and perhaps on rare and serious occasions practice civil disobedience. And if they practice civil disobedience it will, in word and deed, be civil: peaceful, open opposition to a particular law, done with respect for the process of law and with readiness to accept the consequences;

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<sup>9</sup> See *Natural Law and Teleology*, in S. BUCHANAN, *NATURAL LAW AND MODERN SOCIETY* (1962).

they will not ask amnesty, but hope the penalty they pay will persuade their fellow citizens. If they press this theory far enough, they will see even divine law, or any pope's, bishop's or priest's interpretation of it, as questions. They will then find themselves carrying on the dialogue with God that does indeed begin with the words of *Genesis* and with man's first act, and woman's, too, of civil disobedience. The Jews were in this high dialogue with God, treating each of His commands as a question, making covenants based on consent and reasonably registering their dissent while the Anglo-Saxon savages of Britain — should I add Ireland? — were still roaming the forests and painting their bodies blue. The lawyer who joins this ancient conversation can take some courage from that original connection between man's fall and his subsequent enlightenment if not redemption.

In any case, the lawyers of the future, as they seek to free all men from dependence on accident and force, as they bring the rule of reason to the relations between the races, to the anarchic world society of nation states, and to the whole new world of technology, will be working in a wilderness thicker than any Lincoln knew. In all these arenas they will need to be practitioners of a new politics that never yields to the temptation of regarding people as pigs — that always tries to convert angry protest into reasonable dialectic, confrontation into negotiation, heat into light. Hopefully they will rediscover the moral basis of the law and politics Lincoln practiced. But at least they will need to reject the immoral basis which is the manipulation of public power for merely private purposes.

The mystic chords of memory Lincoln played did not prevent the bonds of affection from breaking, but he did somehow touch the better angels of our nature. In our century, only Gandhi on a world stage, and Martin Luther King in this country, and I would add John and Robert Kennedy and Pope John, have given practical demonstrations of this art. Reaching the better angels in the nature of all men — another way of saying teaching — is the moral operating principle of politics. Law is man's public statement of that purpose; the best means this self-governing animal has yet discovered to that end.

In summary, truth as a question can make man free. Law is the body politic's strongest way of asking all men that question. Liberal education for all, and other human rights, are the necessary conditions for carrying on the search.

Lincoln's music may not be exactly the music of the spheres, and for some it may sound too mystical to serve as the ground for the very being of the rights of man, but for the time being, perhaps it can serve as the equivalent thereof.