

GOD AND GADAMER: POLITICS AND CONFLICT IN THE HEAVENLY FAMILY

Recent scholarship has applied the insights of the law-and-economics school to such diverse areas as torts,¹ property,² divorce law,³ and medical,⁴ dental,⁵ and clerical-theological practice and malpractice.⁶ The fecundity of such research has seemed almost unlimited. It was no surprise to learn, therefore, that after years of analysis scholars at this university will soon announce that God was almost surely an economist. Their conclusion has followed an intensive examination of the Ten Commandments as they embody a desire on the part of the Almighty to promote Allocative Efficiency.

The originators of this theory (whose last work examined the role of transaction costs in the Garden of Eden) are expected to make their work available to the public in the form of a book entitled "Optimality and the Almighty" to be published in July by the University of Chicago Press. The flavor can be imparted, however, by reviewing a few of the book's principal findings.

Chapter Two demonstrates that the Eighth Commandment (Thou Shalt Not Steal) is a potent maximizer of efficiency. Theft is easily shown to be inefficient, and prohibitions of theft are consistent with and almost certainly the product of a recognition that the production of scarce resources will be maximized if theft is punished and deterred. Similarly, Chapter Four establishes the case for discouraging the coveting of neighbor's wives, manservants, or oxen. Coveting is not only time-consuming and nonproductive in itself, but may lead to actual stealing, which has already been shown to be grossly inefficient (see above). In the same fashion, time spent worshipping the true God is shown to lead to substantial benefits, both present and future, while time invested in building and worshipping false graven images and other false gods is wasted; efficiency requires that a maximizer invest time and effort in endeavors that are likely to produce optimal returns.

1. Cf. G. CALABRESI, *THE COSTS OF ACCIDENTS: A LEGAL AND ECONOMIC ANALYSIS* (1970).

2. See R. POSNER, *ECONOMIC ANALYSIS OF LAW* 10-41 (1972).

3. *Id.* at 62-64.

4. *Id.* at 72.

5. See Farber, *Post-Modern Dental Studies*, 4 CONST. COMM. 219 (1987).

6. Hoppe, *The Great God Buyout*, San Francisco Chron., April 17, 1987, at 67, col. 1.

By Chapter Nine it is clear that none of the Commandments is incapable of being explained in law and economics terms. For example, the Commandment not to take the Lord's name in vain (treated in Chapter Six) might at first glance appear to express non-utilitarian principles. Yet the purpose of the prohibition is manifestly to avoid time-wasting and futile calls, imprecations, and curses. A secondary, but still Pareto optimal, purpose, is to avoid wasting the time and energy of the Deity himself. For whenever God's name is called, He must perk his ears and may lose track of whatever He is doing at the time—such as noting a sparrow's fall. Since God is a maximizer, such interferences are prohibited as inefficient.

Those familiar with law and economics literature might be unsurprised by the work we have just summarized. The purpose of this Comment, however, is to outline the case for a proposition more surprising than that God is a Posnerian. We posit that Jesus was a Crit, a member of the Critical Legal Studies school that has risen to prominence in the last ten years. In Part I we outline our case for this proposition. In Part II we speculate on some of the possible reasons for the split in philosophy between God and His Son, concluding with some of the possible ramifications of this surprising revelation.

I. CRITICAL THOUGHT AND THE LAMB

Recent work at the University of Wisconsin Law School has resulted in the conclusion that Jesus Christ, son of God, was a Crit. The case for Jesus's membership in this loose-knit coalition of legal scholars and left-leaning lawyers rests on several grounds, and is no less compelling than that advanced by the Chicago scholars as to God's philosophical affiliation.⁷

Jesus, as everyone knows, was an anti-hierarchist⁸ who is well known for authoring such attacks on the existing order as "the meek shall inherit the earth" and "blessed are the peacemakers." He urged His followers to question illegitimate hierarchy and to "render unto Caesar only that which was Caesar's." Abjuring professionalism, Jesus broke down barriers between the church and organized medicine, for example. His healing of lepers, cripples, the

7. A forthcoming work will examine the possibility that the Devil was the progenitor of classical legal thought. See J. KIDWELL & R. DELGADO, *THE FIEND AND FORMALISM: WAS LUCIFER A LANGDELLIAN?* (1989, unpublished). The book explores the sordid truth revealed in the phrase, "To play the Devil's Advocate."

8. See generally, *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* (D. Kairys ed. 1982).

halt and the blind are good examples of this aspect of his anti-hegemonic philosophy. He gave short shrift to capitalism and capitalists, casting money-lenders out of the temple. His teaching echoed the irrationalists' emphasis on indeterminacy as well—note, for example His insistence that salvation cannot be guaranteed by the performance of a specified quota of good works, but rather is rooted in the highly nonformal, subjectivist experience of grace and redemption.

Jesus also prefigured CLS's use of word-play, irony, puns and satire as deconstructionist devices.⁹ We have an excellent example of this in his allegorical remark that "it is as difficult for a rich man to reach the kingdom of heaven as it is for a camel to pass through the eye of a needle." Imagine the discomfort of a wealthy industrialist or money-lender being compared to a large, bloated camel, humps and all, trying to squeeze through that tiny aperture. The remark is pointed as well; it was undoubtedly advertent that Jesus chose the metaphor of the needle to drive home His point.

For these and other reasons to be adduced in later writing the members of our research team conclude that Jesus was indeed a member of CLS. The final section explores the possible reasons for this rather interesting split in the high theological family, together with the possibility of eventual reconciliation.

II. REASONS FOR, AND IMPLICATIONS OF, THE LAW-AND-ECONOMICS/CRITICAL-LEGAL-STUDIES SPLIT BETWEEN THE HEAVENLY ACTORS

The evidence convincingly demonstrates that God is a member of the law and economics school while his son, Jesus, is a Crit. How did this come to pass?

There are a number of possibilities. The simplest answer is offered by psychological science: intergenerational conflict among members of a family is one of the most widely experienced phenomena in the Universe. Jesus may have opted for the Critical movement simply for the reason that His Father did not.

A second reason may be found by the application of structural historical analysis. Although we are quick to note that one must not fall into the trap of overdeterminism, it seems to us that the explanation for the God/Jesus split may lie in the different eras and

9. We hasten to add that these approaches are not entirely without risk, see S. RUSHDIE, *SATANIC VERSES* (1989, out of print).

social conditions prevailing during the periods when the subjects of our study were most active. God's principal work, as everyone knows, was to build the world and Universe. It may be that law and economics has a powerful intellectual hold on those who are active during times of early industrialist activity. Jesus, by contrast, came upon the scene several eons later, when societies and nations were already established and were, from the perspective at least of the hunter-gatherers, post-modern societies. Consequently it would be natural that He might see Himself and His environment in different terms. In particular, it may have seemed to Him that His principal challenge lay in helping humanity overcome the barriers of alienation and individualism that previous eras had built up and in achieving a more cooperative, communal world based on love and reciprocity. God, by contrast, may have been more concerned with getting things to run right, thus His insistence on efficient arrangements and bright-line rules, such as *Thou Shalt Not Steal*.

What are some of the implications of the divergence in philosophy between these giant figures? It seems to us that the solution must be found in general principles of Family Law, and thus we defer any answer until we hear from our colleagues who work in this area: We have provided them with the result of our own work, and are eagerly awaiting their analysis. But a couple of preliminary observations may be in order. First, it seems to us that both God and Jesus must learn to live with each other despite their differences in philosophy. These differences seem rooted in deeply held world views and, if history teaches us anything, are unlikely to change. The family members must overcome their urge to proselytize and instead pursue a higher synthesis, which we can only hope they will reach soon. Second, Family Law theory holds that most conflict within families, including Governing ones like God and Jesus, is best resolved within that institution, that is without calling upon outside authority, even if such exists.

Our basic thrust is thus, ultimately hopeful. Although God and Jesus view the world through quite different prisms, those views may ultimately be reconcilable. And to the extent that they are not, the two principals may nevertheless determine to transcend their differences in the name of familial harmony. Perhaps family ther-

apy and mediation will provide the structure within which an accommodation can be reached.¹⁰

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Editors' Note: In our view, this breakthrough work raises many significant questions. We are flattered that the authors chose to publish with us, rather than work their thesis up as a sixty-page article in the *Yale Law Journal*. Among the intriguing issues raised by the work are the following:

1. Is the Holy Ghost a Legal Process theorist?
2. Should Jesus have gotten tenure?
3. Does publication of this article violate the establishment clause? Would it help if we added a picture of Santa?¹³

10. See generally, S. GOLDBERG, E. GREEN, & F. SANDER, *DISPUTE RESOLUTION* (1985). A role for the Holy Ghost remains a shadowy, but tantalizing, possibility. Could an incorporeal being serve as a mediator? We leave this question for later treatment by other scholars. See Delgado, et al., *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WISC. L. REV. 1359 (implying that disembodied third-party facilitators might be fairer than other kinds).

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13. See *Lynch v. Donnelly*, 465 U.S. 668 (1984).