

Authority: law and religion: The Rt Hon Lord Justice Laws

In this lecture I am concerned with the nature of authority, and therefore with the nature of obedience. Obedience is a more complicated idea than first appears. How does a duty to obey arise? Is it an absolute or a qualified duty? If its fulfilment may clash with the fulfilment of other duties, how is the clash to be resolved?

The answers to these questions are intertwined with the nature of the person or institution which claims obedience. In particular the realms of God and the State, divine and secular authority, are illuminated by the contrasting nature of the duties of obedience which are said to be owed to them. This contrast is the overall theme of the lecture.

The First Question: How does a duty to obey arise?

My emphasis is first on the word duty. Thus an obedience which is born only from fear or favour is not owed or given out of any duty. It is by contrast given for entirely self-centred reasons. And in this case the logic is just the same whether it is given to God or man. The differences between fear of a supernatural hell and fear of earthly torture, or between hope of eternal bliss in the next world and hope of an abundance of wealth and pleasure in this, are merely differences of degree, not of kind. This is not to say that a duty to obey properly so called may not be accompanied by fears and hopes, and the fears and hopes - fear of punishment, hope of reward - may be deliberately induced; they may be the means of enforcing the duty to obey. But they are not, they cannot be, the source of the duty.

The only sense in which obedience motivated by fear or hope could be said to arise from a duty is by the acceptance of an overriding "duty" not to the God or ruler in question, but to oneself - a duty to see to one's own good. Perhaps one can speak of such a duty without mortal affront to the language. I seem to remember an Oxford philosophy examination question: "Is there a duty to be happy?" Given the abhorrent nature of self-pity, which I think is underrated as a vice, a duty to be happy may not, I suppose, be entirely self-centred. But however that may be, a possible duty to oneself is not the sort of duty with which I am concerned.

I return then to the question: how does a duty to obey arise? Now, so far I have placed emphasis on the word duty. At this stage I will emphasise the word obey. You might obey an order - secular or divine - simply because you think it is the right thing to do. Thus an order which forbids unprovoked assaults may command general obedience without contest or argument, simply because most people disapprove of such violence. In that case, the reason, at least the primary reason, why you obey the order is because you accept that such assaults are wrong. This, however, has nothing to do with a duty of obedience. You would decline to take part in any such violence whether or not it was forbidden by authority.

I am concerned with the idea of a duty to obey as such: a duty which arises irrespective of the subject-matter of any particular command. Such a self-standing duty of obedience must surely arise out of the relationship between the authority to whom the duty is said to be owed and the person or persons said to owe it. But on its own that tells us nothing. What is it about the relationship between the dominant authority and the servient individuals which gives the duty to obey?

It cannot arise out of the authority's own claim or demand for obedience. This is a function of a simple logical truth: the fact that X commands you to do Y cannot of itself entail that you should do it. It is an instance of Hume's Law: you cannot derive an ought from an is [1]. The proposition that X commands you to do Y is a synthetic proposition, a proposition of fact; no normative proposition can be deduced from it. The bare existence of a master's command is thus of itself no basis whatever to require the servant's obedience. There must always be a higher premise. The higher premise is that the commands of X are generally to be obeyed. It consists in an established prior obligation to obey the orders of X. There must be such an obligation if there is to be any question of a duty to obey any particular command issued by X. This is true whatever the identity of X. X cannot himself provide the premise. It must lie outside him, and is

logically prior to him. Here again the logic is the same whether X is God or man.

Thus in every case where it is claimed that an order issued by X ought to be obeyed, unless there is some separate reason for doing so (such as an acceptance that it is anyway a good thing to do, on its own merits) the claim only has force if there is to be found an established prior obligation to obey the orders of X. In every case, the question must be: what is the basis of this prior obligation, this higher premise? And in every case, as I have said, it will concern the relationship between the authority to whom the duty is said to be owed and the person or persons said to owe it.

Let me first take a simple case, where the relevant actors are parties to an agreement. A member of the club agrees to obey the rules of the club. A member of a profession agrees to abide by the rules of his profession. A soldier in a volunteer army agrees to obey the commands of his officer. Now, in these simple cases the relationship between the authority to whom the duty is said to be owed and the person or persons said to owe it is conditioned by the agreement or promise of the latter to obey the orders of the former; and so the higher premise which yields the duty of obedience is the moral precept that you should keep your promises. One can of course envisage intricate philosophical discussions about the validity of this precept, its correctness or otherwise. But once accepted, there can surely be no doubt but that it serves as the higher premise for the duty of obedience in these cases. The duty is compulsory - the soldier cannot properly choose whether or not to obey his officer's order - but it is a compulsion to which the duty-ower has voluntarily brought himself.

There may be a very different question: what justifies the soldier - or any other duty-ower - in disobeying orders, in departing from his duty? This engages my last question: how is a clash between conflicting duties to be resolved? I shall be coming to that. But it will be obvious that these issues may arise in any instance of duty to obey, not merely those where the duty is constituted by agreement or promise. And it is perhaps worth noticing now, for it will be material in particular to my discussion of a duty to obey God, that the fact that circumstances may arise which would justify disobedience does not of itself undermine the existence of the duty to obey, assuming always that the higher premise, the prior obligation, is established.

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Duty to obey the laws of the State

Now I will turn to another instance of a duty to obey, which is one of my principal themes: the duty to obey the laws of the State. Here the major premise cannot be found in promise-keeping, for the plain reason that the citizens of a State are not volunteers, unless perhaps they are founding fathers: but I am considering the case of a mature State such as our own. In this case, then, the relationship between the authority to whom the duty is said to be owed and the person or persons said to owe it cannot be characterised by compact or agreement. The duty is compulsory in a sense different from the compulsory duty of the volunteer soldier: not only must the citizen obey the law; he has no choice in his subjection to the law. He cannot say *Non in haec foedera veni*.

Where, then, do we find the higher premise, the prior obligation that gives the duty to obey the law - and to justify the punishment of law-breakers? Its identification has over time been a deep question of legal and political philosophy. It goes back at least to Plato's dialogue the *Crito*, set in 399 BC. Socrates had been convicted of impiety and was condemned to death. But his execution was delayed by a month, out of respect for a religious festival during which executions were forbidden. During this time, he was visited in jail by his friend *Crito*, who tried to persuade him to escape: which was a real enough possibility. Socrates refused. His reasons, given in the dialogue, are contained in a long exposition about the force of a solemn contract between himself and the State. And of course the notion of a social contract has resonated through the writings of Hobbes [2], Locke [3], Rousseau [4] and Rawls [5]. In contrast to our earlier simple case, such a contract is obviously fictional, since not every citizen agrees to obey the law. The fiction is developed, however, to show that rational people would consent to political rule if they were confronted with the alternative: anarchy, and the brutish power of the strongest.

I do not propose to argue the merits or demerits of social contract theory. For whatever the philosophical niceties, we can surely discover a higher premise, which will justify a duty to obey the laws of the State. I

would describe it in the following way. First we must recognise the nature of the exercise that is involved in the search for the higher premise. It will consist in a principle - a moral principle, or principles. What other candidate is there? It cannot consist in any expression of a desire or a command on the part of the ruler of the State, the maker of the laws. The ruler of the State in this instance has the role of X: the person whose commands are putatively to be obeyed. But as we have seen, X cannot himself provide the premise. It must lie outside him, and is logically prior to him. Nor, plainly, can the higher premise consist in a desire or a command on the part of anyone else. It must rest in a principle or principles whose acceptance is demanded by the force of reason.

Here I must develop two parallel themes. The first is about the nature of moral principles. Moral principles are forged not by evidence, not by logic, though both come into it. They are forged by arguments; and only by arguments: arguments about how we ought to behave. Such arguments must take account of the state of factual knowledge at the time the arguments are deployed. And they must be true to logic, in the sense that a self-contradictory argument has no persuasive force.

How are we to decide what is a good argument and what is a bad argument? Here is my second theme. These arguments are not forged in a vacuum. They are conditioned by three signal features of man's condition, of which I have written before [6]. (1) Man is a rational being. (2) He is possessed of free will. (3) He lives in community with others of his kind. The first of these - reason - is manifestly not true of every human being, but it may be regarded for present purposes as the default or paradigm position. The second - free will - is a philosophical claim which assumes that the theory of determinism is false; and for present purposes I am going to have to take this for granted. The third - community - is, in the developed world, simply a factual truth. These conditions require us to come to terms with each other. It is an inevitable confrontation. At every turn the individual is faced with choices which affect his fellows, who will judge him, and make their own choices. Such judgments and choices define the culture in which their makers live. They - we - must face cruelty and selfishness, in ourselves and others. Unless we build our culture on such ideals as self-restraint, honesty, mutual respect, and fair treatment, we have no hope of being at peace with each other or ourselves. We cannot live in a free society without these values, save at the price of endless insecurity; each person would fear his stronger neighbour; the currency of all our dealings would be brutality and distrust.

These ideals are the very condition upon which human community is tolerable. They take their place as primary moral principles. They are the touchstones, at least they are among the touchstones, upon which other principles are honed and sharpened. They are critical to the principles which govern civic or political society. As such they require an acceptance of compulsory law. The citizen must be subject to the general law, which is made and enforced for the general good. Otherwise the conditions upon which society is tolerable, in which humanity can flourish, are writ in water. Here, however it is precisely expressed, rests the higher premise, the prior obligation, which gives rise to the duty of obedience to the particular laws which are made by the State, and which the State is entitled to enforce. I would express it as the need for constitutional rule, the need for an ordered State.

This sketch of a fundamental political imperative - for that is what it is - will seem trite. That is because, like everything that seems trite, it commands a very general acceptance, though the way I have formulated it may not. It depends, however, on some large assumptions and implies unspoken complexities. These largely lie beyond the scope of this lecture, but I must touch on them. In particular, it is inherent in what I have said that the law is essentially benign. A good government will sometimes make bad laws. But even they are generally to be obeyed, because the need for an ordered State, the higher premise giving rise to the duty of obedience to the law, generally outweighs the harm which bad laws do. More pointedly, it is inherent in what I have said that the State's ruler or rulers fulfil their role as trustees for the people, and not as profiteers for themselves. The ultimate justification of democracy, for all its faults as a political philosophy, is that it builds into the State a vital self-correcting device: an overweening government, let alone a corrupt one, must face the nemesis of the ballot-box. The courts may go a long way to provide such corrections through the mechanisms of public law, but they are limited by two factors. The first is that under our present constitutional arrangements, by force of the doctrine of Parliamentary sovereignty, the elected legislature must always have the last word. The second is that law is smaller than virtue: that is to say, the legality of government acts, which is all that the courts can guarantee, does not ensure that they are wise or just or moderate.

The higher premise for the duty of obedience to the law, the need for an ordered State, thus raises important questions which of itself it does not answer. How bad does a law have to be before the citizen is justified in disobeying it? What is the true relationship between the twin mantra of the modern western State, democracy and the rule of law? And there will be many others. Here I assert only that the higher premise is true. The need for an ordered State justifies an enforceable duty of obedience to the law.

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Duty to obey the laws of God

Now I turn to my second principal theme: the duty to obey the laws of God. Here I can find no higher premise. There is no analogue to the need for an ordered State, and the need for an ordered State cannot serve as the higher premise for a duty to obey the laws of God. An ordered State, based on the ideals I have described, self-restraint and the rest, may be fulfilled without any reference to God whatever, or any religious position being taken. This is a position which can cause discomfort to the devout, because it seems to claim that their God is an irrelevancy to the great issues about what makes a healthy polity. If so, so be it; but I do not think it is as stark as that. Let it be supposed that man is created in God's image, so that his freedom, his reason, and his social nature are god-given. In that case God is to thank for the state of affairs that is humankind; the existence of that state of affairs has been brought about by Him. But the truth or falsity of this proposition does not itself touch what is implied by the need for an ordered State. Nor does it provide a higher premise to justify a duty of obedience to God's commands.

The view that the laws of God do in fact command compulsory acceptance rests on a logical mistake. The mistake is that the attributes of God himself supply what I have called the higher premise requiring obedience to his laws. They do no such thing. The attributes of God are quite incapable of supplying the higher premise. The mistake is exemplified by texts such as this:

" If there be indeed a single and all-powerful creator of the universe, this divine being cannot but be sovereign over people and all living things. Sentient creatures such as human beings therefore seek to know whether this being makes any demands upon them. When such demands are discovered, whether through prophets or other channels of revelation, those demands necessarily constitute the law by which creatures are ultimately to be governed." [7]

This reasoning is flawed by a simple non sequitur. The fact (if it be such) of a single all-powerful creator does not imply that he is sovereign over his creation, unless that means merely that he can do what he likes with it. But this is merely an assertion of absolute power. It says nothing of what his people ought to do. It provides no principled basis for the acceptance of a general enforceable duty to obey the creator's commands. If the divine creator exercises such absolute power by promises of bliss or threats of torment, the due responses of his slavish people are merely self-centred, as I have said. They certainly have nothing to do with duty or principle. And they have nothing to do with goodness.

It is not a coincidence that no higher premise can be found to substantiate a duty to obey the commands of God, at least if the God we are discussing is an all-powerful creator. It is a necessary truth: the assertion of such a higher premise is self-contradictory. As we have seen, such a premise must lie outside X, who gives the orders that are putatively to be obeyed. It is logically prior to X. But there is, surely, nothing beyond an all-powerful creator; nothing that is logically prior to him. Accordingly the existence of such a creator, and the existence of a higher premise which justifies or requires a duty of obedience to his commands, are mutually inconsistent propositions.

It follows that if we are to speak coherently of a duty to obey God's commands, we must mean something different from duty as I have discussed it. It cannot be an enforceable duty, given by a higher premise which justifies compulsory law. It can only be a duty voluntarily undertaken: logically, though perhaps not spiritually, similar to the case of a duty arising by compact or agreement to which I referred earlier. This distinction, between a compulsory duty to obey the laws of the State, and a voluntary duty to obey the laws of God, is of the first importance. It shows, for example, that the notion of a theocratic State is always tyrannous, because it involves the exaction of compulsory obedience with no objective justification. And it

calls up my next question.

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The Second Question: Is a duty to obey an absolute or a qualified duty?

The duty to obey the laws of the State is surely a qualified duty. To employ a familiar *reductio ad absurdum*: if the State made a law requiring the police to kill all blue-eyed babies, it would be the duty of the police to disobey.

However there is an obvious but much more difficult question, about which I will say a little, because it throws light on the contrast between a duty to obey God and a duty to obey the State. The question is: how bad does a law have to be before disobedience is justified or even required? There is no single answer. That is because, as it seems to me, a range of factors will be in play. Whenever the question arises, the duty-owner affected by it is faced with a moral dilemma. He has a duty to obey the law. If the particular law seems to him to be repugnant to other principles - especially if it is repugnant to those primary ideals of self-restraint, honesty, mutual respect, and fair treatment which form the very basis for the higher premise which alone justifies a compulsory duty of obedience - the duty-owner may feel strong reason to disobey. There are I think two guidelines in this situation, though they certainly provide no snap answers. In this lecture I can only deal with them superficially.

The first is that disobedience will be much more difficult to justify where the State in question contains the self-correcting mechanisms implied by democracy and the rule of law. There are two reasons for this. First, the law of a democracy may be said to carry greater moral authority than that of an autocracy, because it is the result, however indirect, of a consensus. Secondly, in a democratic State subject to the rule of law there is a considerable potential for getting the law changed in response to public opinion. Accordingly, in a political democracy whose institutions are incorrupt or relatively incorrupt, and which also observes fundamental liberties which guarantee, for example, a free press, disobedience to the law will require especially strong justification. In a State which lacks these characteristics - examples, alas, are all too easy to find - the duty-owner will be more readily entitled to decide for himself.

The second guideline may be more shortly stated. It is that in general disobedience will not be justified by mere self-interest. The duty-owner must show a compelling public interest to justify disobedience. But this precept is not quite as straightforward as it seems. It is possible to envisage a law which bears upon a particular group or even a single individual with especial injustice. In such a case the moral pressure to disobey arises, not from the bare fact of the sufferer's hardship, but from its injustice; but in that case, this is really another instance of the public interest, because it is in the public interest that every law be just.

These considerations throw light on the nature of a duty to obey God. We have seen that an acceptance of an enforceable duty to obey God arising from God's own attributes, typically the attribute of an all-powerful creator, is logically mistaken, for want of a higher premise to justify such a duty. But the acceptance of such a duty is subject also to another flaw. A duty so accepted tends to possess what I regard as a potentially sinister characteristic. It is that such a duty is thought of as an absolute duty to obey. By this I mean that the duty always overrides all other considerations, so that there is never a case where conscience requires disobedience. Indeed the religious duty-owner who owns to such a duty would hold that the idea of an obligation to disobey could never logically arise, because following one's conscience and obeying the divine command are one and the same thing. Thus to contemplate that one might be obliged to disobey God is simply to contradict oneself. The duty-owner has given up all judgment of his own upon any moral questions upon which his God has issued commands.

How does such an absolute position arise? It is no coincidence that it arises in a situation where there is no objective higher premise to justify an enforceable duty of obedience. Such a premise not only gives a foundation for the duty; it also limits and qualifies it. If the duty is based on such ideals as self-restraint and the others, then in any case where the order or command in question is seen to frustrate or undermine such ideals, the justification of obedience is at once, to say the least, rendered fragile. The duty is not open-ended. It is limited by the very values which justify it. But if there is no such premise, and the duty to obey depends - or is thought, however misguidedly, to depend - only on the stated authority of X to whom

the duty is said to be owed, there is no such limiting factor. Whatever X commands is to be done, whatever the content or quality of the command.

Such an absolute position, I would suggest, has little to do with morality. It displaces all judgment. It denies any role to the faculty of human reason. It has nothing to do with pity or compassion. If it involves courage or sacrifice, it is not because these qualities possess any goodness of their own, but only because they are mandated by the commander. Such a duty has no intrinsic worth, because it is merely slavish. If this is the true nature of the duty to obey God, it should be utterly repudiated. As free and rational and social beings, we have no business kow-towing to a God who would make us slaves, any more than we should bow to an earthly tyrant. But as I shall show, an accepted duty of obedience to God does not have to be like this.

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Duty to the State and duty to God contrasted

Now by way of summary I will contrast the ideas of a duty to obey the State and a duty to obey God. A duty to obey the laws of the State may properly be imposed on those who do not voluntarily accept it. A duty to obey the laws of God may not. A duty to obey the laws of the State takes its place alongside other duties, which may sometimes take precedence over it: that is to say, there is sometimes an obligation to disobey a bad law. A duty to obey the laws of God does not automatically possess this self-correcting mechanism. These considerations reveal the true over-arching contrast between the laws of God and the laws of man. Duty to the former is, or should be, always and only a matter of faith and love, undertaken as a personal commitment. But duty to the latter is a public requirement, not merely owed by, but exacted from, every citizen.

Accordingly, the individual may not choose for himself the laws of the State which he accepts he must obey. But the individual who acknowledges a religious allegiance has a far richer choice. I have said that the absence of a higher premise to justify a duty of obedience to the laws of God creates the danger of absolutism, of a blind obedience to the Book, and so it does. But its very absence creates also the opportunity for a reasoned, conscientious decision not only of what laws of God are to be obeyed, but of what those laws are. He may - must - decide for himself what his religion requires of him. Ultimately this is not a matter of subjection to the law, but of commitment to a creed or a way of life. The language of a compulsory duty to God, of enforced obedience, is a false language. It secularises religion.

This contrast between the imposed duty to obey the State's law and the accepted duty to obey God's law is reflected in a distinction recognised by scholars of the Emperor Augustus. It is the distinction between imperium and auctoritas: between legal enforceable power, and the force of personal authority. God has no imperium; if it is claimed, it is a false claim. But he may have an authority - an auctoritas - that is beyond the ambitions of the grandest earthly ruler. As I have said, duty to God - or, as I would prefer, commitment to God - is, or should be, always and only a matter of faith and love. It is a cardinal principle of a civilised religion that the people are as free to disbelieve as to believe. To deny this is to cross a line that has to be held; it is the line between the secular and the divine, between God and Caesar.

The nature of religious authority as auctoritas, based on faith and love, and not imperium, based on compulsory rule, must mean no blind obedience to the Book, no slavery to a putative sacred text. Writing in the Times a couple of Saturdays ago the Chief Rabbi reminded us of a saying of Aquinas: "Beware the man who has only one book". But how is a religious moral philosophy to be constructed, if not from the Book?

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Religious Authority: Reason and the Book

Let me turn then to this question of religious authority, of Reason and the Book. There is a powerful English tradition which has much to say on the subject. It is the threefold appeal to Scripture, tradition and reason. Its chief author may have been John Jewel, Bishop of Salisbury from 1559, who gave his chance in life to

the young Richard Hooker. Jewel's Apology for the Church of England was published in 1562. But it was Hooker, appointed Master of the Temple in 1585 and perhaps the greatest of English theologians [8], who brought this tri-partite philosophy to its flourishing. His great work, The Laws of Ecclesiastical Polity, is "a carefully worked answer to seven Puritan propositions" [9]. Of these, a foremost Puritan principle was that Scripture alone is the "rule of all things which in this life may be done by men" [10]. But this is the jackboot of the single book, the cold command. Hooker's appeal to tradition and reason, alongside Scripture, begins a journey down a road where far greater rewards are to be found. His view of the Bible was, of course, a sixteenth-century view; he affirmed "the absolute perfection of Scripture"; but this was by no means the same as the Puritan principle. For Hooker, reason was a vital guide to the understanding and the use of Scripture. "For whatsoever we believe concerning salvation by Christ, although the Scripture be therein the ground of our belief; yet the authority of man is, if we mark it, the key which openeth the door of entrance into the knowledge of the Scripture" [11]. As Henry McAdoo says:

" To sum it up: Hooker gives the primacy of value to Scripture and to reason in his hermeneutics and a secondary value to tradition which also has authority but only in so far as it is consonant with Scripture and with reason. In other words, Scriptural interpretation involves maintaining a balance between reason and grace, 'the special grace of the Holy Ghost' concurring 'to the enlightening of our minds'; a balance between private and personal conclusions on the one hand and the corporate wisdom of the Church on the other." [12]

There remain - how could there not? - deep questions and difficulties about this tri-partite relation between Scripture, tradition and reason. Is not Scripture merely a species of the genus that is tradition? If not, is that because Scripture claims a special infallibility? If that is so, are we not reduced again to the extremist code of Puritanism, the repressive, illogical dictatorship of the single Book? But Hooker was a shining light. He fed religion the royal jelly of reason, but left it still wonderful and mysterious.

The auctoritas of Augustus, and Richard Hooker's devout reason: but there is a third figure also to throw light on the nature of divine authority. It comes again from the ancient world, from Plutarch's Moralia. Plutarch, born about AD 50, came from Chaeronea in Central Greece, where Philip of Macedon had defeated the Greek city-States in 338 BC. The collection of his writings known to us as the Moralia is a series of essays and dialogues on all sorts of subjects. The one I am concerned with is the essay on Superstition. Plutarch held that atheism and superstition were at two extremes, and the mean between the two was piety, or as we might describe it, decent religion. Here is the flavour of his views of superstition:

" Polycrates was a dreaded tyrant on Samos, as Periander was at Corinth; yet nobody continued in fear of them who migrated to a free and democratic city. But if a man fears the rule of the gods as a grim, inexorable tyranny, whither shall he migrate, whither shall he flee? What land, what sea can he find that has no gods? In what corner of the world, poor wretch, can you sink and hide yourself, confident that you have escaped god? The law permits slaves who despair of winning their freedom to apply to be sold and pass to a kinder master; but superstition; but superstition offers no change of gods, there is no way of finding a god who will not be feared by the man who fears the gods of his ancestors and his family, who shudders at the powers of salvation and beneficence, who goes in fear and trembling at the thought of those from whom we ask wealth, prosperity, peace, concord, and the success of our noblest words and actions... The slave has his altar of refuge, the robber his sanctuary in many a temple, escapers from battle feel safe if they can touch a statue: but the superstitious man goes in fear and terror of these very aids in which men place their hopes when they fear the worst."

Plutarch's superstition is like the tyranny of the Book. The superstitious man is a slave; a slave with no escape. If God required us to be slaves, we ought to disobey him; just as if he commanded us to slaughter the innocent, or people who happen not to believe in him, so also we ought to disobey him.

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Conclusions

Now I will draw some conclusions. I have set out an over-arching contrast between two empires of authority, religious and secular. The idea of a duty of obedience to God is secularised - some might say

debased - if it is assimilated to a compulsory duty of obedience to the State. The duty of obedience to the State is necessarily and justifiably compulsory, by force of the higher premise which rests in the need for an ordered polity. To liken the duty of obedience to God to this secular imperative is to turn devotion into tyranny: tyranny, for there is no higher premise that justifies it. In fact the duty to God is, for the religious, altogether greater and more glorious. But such devotion fits in the free world at a price. The price is that it is always and only a matter of choice.

However - and here is the over-arching contrast - just as religious duty must not be secularised by assimilation to the law of the State, so the law of the State must not be individualised by assimilation to religious duty. Just as you are free to accept or reject - to choose - any religious precept, so you are required to obey the law of the State. But there is another parallel, or another contrast. Your choice of religious precept ought to be subject to the voice of reason; your duty to the State ought to be subject to the voice of conscience. Reason and conscience, of course, touch both these realms or territories. But in the choice of religious precept, the believer's conscience may be assumed: it is an axiom of free religion; and in the panoply of compulsory law, the lawgiver's reason may likewise be assumed: it is an axiom of civilised law. And these axioms have to be enriched by each other. So it is that the force which the free individual must distinctly bring to bear is reason in the case of religious precept, and conscience in the case of compulsory law.

These two territories, of God and the State, are separate but complementary. They may colour and inform each other. The injunction in the synoptic gospels, "Render to Caesar the things that are Caesar's, and to God the things that are God's", is nothing to the contrary. But the principles by which we occupy these territories, the categories of obedience which apply to them, and the kinds of authority which they respectively possess, are utterly different. If we confuse the two, we have the potential for tyranny or anarchy. Neither God nor State has the right to impose either.

Much of the modern writing about religion and the State is in the context of fundamental rights, against the background of our incorporation into English law of the European Convention on Human Rights by the Human Rights Act 1998. As is well known, Article 9 of the Convention guarantees the protection of religious freedom. I have not been concerned with human rights law in this lecture. But I hope it is consistent with my theme of two territories, two authorities, to say that religious freedom takes its place in both realms. A religion may claim a monopoly of truth, but cannot justifiably enforce it: that would be to claim the power of compulsory law, which as I have argued religion altogether lacks. Other religious claims must have their say. Religion may be worth dying for, but it is never worth killing for. Likewise the State cannot justifiably suppress religious faith, for that is never vouchsafed by the higher premise which supports the need for an ordered polity: its roots as I have argued are in the ideals of self-restraint, honesty, mutual respect, and fair treatment. They allow at least for a plurality of beliefs.

I have said that the territories of God and the State may colour and inform each other. But that is a pretty bloodless regimen. Certainly it is given life, as is the very division of these territories, by Article 37 of the Articles of Religion of the Church of England:

" Where we attribute to the King's Majesty the chief government, by which Titles we understand the minds of some slanderous folks to be offended; we give not to our Princes the ministering either of God's Word, or of the Sacraments, the which thing the Injunctions also lately set forth by Elizabeth our Queen do most plainly testify; but that only prerogative, which we see to have been given always to all godly Princes in holy Scriptures by God himself; that is, that they should rule all estates and degrees committed to their charge by God, whether they be Ecclesiastical or Temporal, and restrain with the civil sword the stubborn and evildoers."

I have said - I have implied - that the unity of Church and State is a perilous unity; and if the rules of one become the rules of the other, that is true. But both may at once and together command our love and loyalty. So they could in ancient Rome:

" For how can man die better
Than facing fearful odds,
For the ashes of his fathers

And the temples of his gods.”

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Footnotes

1. See Hume, Treatise of Human Nature, III i. 1. See also K. R. Popper, The Open Society, vol. I pp. 50 – 53, and compare G. E. Moore’s “naturalistic fallacy”: Principia Ethica, Cambridge 1903.
2. Leviathan (1651).
3. Two Treatises of Government (1690).
4. The Social Contract (1762).
5. A Theory of Justice (1971).
6. The Constitution: Morals and Rights, [1996] Public Law 622.
7. Religion and Law: Biblical-Judaic and Islamic Perspectives (Winona Lake, Ind., 1990, eds. Firmage, Weiss and Welch) p. vii; quoted by Calum Carmichael in The Divine in the Law, published in Law and Religion (Current Legal Issues 2001 vol. 4, OUP), which was kindly lent to me by Mark Hill.
8. For this and much of what follows I am indebted to Henry McAdoo’s essay on Richard Hooker, published in The English Religious Tradition and the Genius of Anglicanism (IKON, 1992).
9. McAdoo: The English Religious Tradition p. 111.
10. Ibid.
11. Ecclesiastical Polity, II, vii, 3.
12. The English Religious Tradition p. 116.

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