

Kirk: “Rights & Duties”: 5th Century BC’s Dionysus v. Apollo cf. 21st Century AD’s Progressives v. Traditionalists; Religion’s Impact on Culture & Law; True Justice

Kirk, Russell. “The Christian Postulates of English and American Law.” Chap. 11 in *Rights and Duties: Reflections on Our Conservative Constitution*. Edited by Mitchell S. Muncy. (Dallas: Spence Publishing Co., 1997), 139-43; 145-49:

Story’s and Kent’s decisions, and their arguments in their commentaries, remained powerful influences upon later important federal and state decisions that touched upon questions of morals. Even though weakened by the ambiguity of a series of Supreme Court decisions during the past half-century, the opinions of Story and Kent continue in some degree to affect court rulings on public morality.

In effect, Story and Kent tell us that Christianity is not the “law of the land” in the sense that Christian teachings might be enforced upon the general public as if they were articles in a code. Rather, the two great American commentators point out that Christian moral postulates are intricately woven into the fabric of the common law, and cannot be dispensed with, there being no substitute for them in ethical matters. (p. 145)

Story and Kent affirmed their belief in the Christian connection with common law, and their belief in the need for separation of church and state, without lack of consistency.

What we call law does not exist in an intellectual and social vacuum. To cut off law from its ethical sources is to strike a terrible blow at the rule of law. Yet many such blows are inflicted upon the law today—and ordinarily in the names of liberation and modernity.

The wisest brief treatise on the present plights of the law with which I am acquainted is the Cardozo Lecture delivered in 1962 by Huntington Cairns entitled *Law and Its Premises* (p. 10). Cairns emphasizes that the forces of order, symbolized in ancient times by the god Apollo *la-pä’-lō* [the most widely revered and influential of all the Greek gods], are attacked in every age by the forces of license, symbolized by the god Dionysus *di-a-nī’-sas* [the Greek god of wine and of ecstatic liberation]. In our time that struggle affects the whole of the Law. Cairns put the matter in this fashion: (p. 146)

From the beginnings of Western thought law has been a field of knowledge derived from a larger whole, the understanding of which has been held to be indispensable to any effort to reach the standards applicable to human affairs. At the same time, there has been a volitional element in the legal process stemming from the contrary view that law is not derived from a larger whole; man devises his own standards and law need not be understood in terms of any ultimate order. These two ways of seeing law are in conflict today, and the consequences of this conflict in the long run could be fatal. (pp. 146-47)

In this contest during the present century, the Dionysian powers are those influences that would sweep away altogether any influence of Christian postulates—along with classical wisdom—upon modern law; and the Apollonian powers set their faces against this emasculation of the law. Christian belief is not the only source of ethical principle behind law, but it is the most powerful and popular source. If all connection between the Christian religion and the verdicts of courts of law is severed in this country, the law will become erratic and unpredictable at best. (p. 147)

Educated persons understand nowadays, better than before, that all culture arises out of the cult. At the dawn of civilization, people unite in search of communion with a transcendent power, and from that religious community, all other aspects of a culture flow—including, and indeed especially, a civilization’s laws. So it is contrary to the character of civilization, and indeed contrary to human nature, that there should come to pass a great gulf yawning between a country’s religion and its laws. (pp. 147-48)

Some moral convictions must be the foundation of any system of law. In this country, were the Christian postulates swept away, by what moral principles might they be supplanted? Not by the amorphous notions labeled "liberalism." No, the Christian moral understanding presumably could give way, in the long run, only to the commandments of the Savage God—enforced by some Rough Beast, his hour come round at last. (p. 148)

In the domain of the law today, as in all other realms of human endeavor, there is waged a battle between those who believe that we human creatures are made in the image of a Creator, and those who believe that we are not much more than fleshy computers. Even within the courts of law, created to help keep the peace, this war is fought to the knife. How will this struggle over the nature of law, with the followers of Apollo on one side and votaries of Dionysus on the other, be terminated? Will the Christian sources of the law be effaced in America—or will the Christian moral imagination and right reason rise up again in strength in our courts of law? I inquire whether our Constitution demands of us that we accept "the inevitability of gradualism," the steady diminishing of religious remnants and the steady advance of the Dionysians. (pp. 148-49)

1. It may be observed from history that law and order, justice and freedom always emerge within societies that at least subscribe to natural law – client nations adding to this the invisible impact of divine viewpoint.
2. Basic morality, or natural law, can be seen as the foundation of a civilized society. Accumulated within the souls of its citizens, basic morality becomes incorporated into the society's common law producing a system of justice. Basic morality plus positive law equals justice: impartial and fair dealing resulting in right action.
3. True justice must regard positive law established through right reason as the absolute standard by which right and wrong are determined.
4. A system of justice which is consistently loyal to such a legal code produces an environment of freedom for the people. Justice plus loyalty to positive law equals maximum freedom.
5. Basic morality infused into positive law drawn from biblical standards form the foundation from which justice and freedom emerge.
6. The legal code has as its foundation a system of enforced humility based on the laws of divine establishment: principles ordained by God for the protection, orderly function, survival, and blessing of the human race.
7. These laws are subdivided into four major areas of function called the divine institutions:
 - 1) Volition: Within the environment of freedom, all individuals are endowed with certain rights at physical birth: life, liberty, ownership of property, religion, its free exercise, speech, self-preservation, assumed innocence, just to name a few. Free will means that all people have the right to organize and carry on their own lives within the boundaries of publicly established law. When he makes the choice to submit to the law while respecting the rights possessed by all others, he is said to be moral.