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THINGS NOT NICE: AN ESSAY ON CIVIL GOVERNMENT*

CRAIG A. STERN**

Long ago, a certain king and his people were known for their dedication to the true God. God blessed them, and gave them victory, prosperity, and success.

It came to pass that this king and his people conceived a great and beautiful venture, a venture to honor God, to welcome His presence among them, and to celebrate His glory and goodness. They knew God would be pleased.

The day for the venture arrived. The king and all his people gathered. They all worshipped God with worthy music. In procession, they began their grand and holy venture.

But disaster halted the procession. Anger and terror supplanted joy. For God Himself had suddenly destroyed a chief actor in the venture, just as he seemed to rescue the whole*project from a debacle that would have brought dishonor to God's name. Uzza steadied the Ark as the oxen

* Copyright 1997 Craig A. Stern. All rights reserved. Much of this essay was inspired by the work of Dean Herbert W. Titus, a brilliant and profound thinker. The conclusions are my own, however, and for these and any (other?) errors, he bears no responsibility.

** Associate Professor, Regent University Law School; B.A., Yale University, 1975; J.D., University of Virginia, 1978.

stumbled, God struck him dead, and the Ark of the Covenant would be left with a Philistine.¹

A friend of mine -- law professor, counsel to a United States Senate judiciary subcommittee, later to become judge, and then federal government attorney -- once tagged the contemporary mainstream of constitutional jurisprudence as "The Not-Nice School of Constitutional Law." He meant that the Constitution is taken simply to prohibit any state or federal action that is not nice. Whatever the text may actually provide, this school transforms it into an engine of political wish-fulfillment. What we don't like in government, the Constitution outlaws.²

The Constitution is not the only text to receive such ministrations. The Bible has long been irresistible. The endorsement of God Almighty dwarfs even that of the American people. (Sometimes, the relative risks of faking endorsements escape us.)

The Gospels are not silent on the temptations and dangers of the Not-Nice School of Biblical Hermeneutics. The Hedge Around the Law that the Pharisees raised to deter violations of the Law itself supplied a chief target for the Messiah's excoriation.³ God's Law is not to be enlarged by human beings, even human beings bent on helping others to obey God's Law. Pharisees outlawed actions as not nice for threatening a violation of God's Law. God Himself, however, was supplying His own Way of obedience to the Law.

1. See 2 Samuel 6; 1 Chronicles 13.

2. The difference between the Not-Nice School and a more faithful approach to the Constitution has not escaped every member of the United States Supreme Court. See, e.g., *Bennis v. Michigan*, 116 S.Ct. 994, 1001-02 (1996) (Thomas, J., concurring) ("This case is ultimately a reminder that the Federal Constitution does not prohibit everything that is intensely undesirable."); *Cruzan v. Director, Missouri Dep't. of Health*, 497 U.S. 261, 300-01 (1990) (Scalia, J., concurring) ("Are there . . . no reasonable and humane limits that ought not to be exceeded in requiring an individual to preserve his own life? There obviously are, but they are not set forth in the Due Process Clause. . . . This Court need not, and has no authority to, inject itself into every field of human activity where irrationality and oppression may theoretically occur, and if it tries to do so it will destroy itself.")

3. See, e.g., *Matthew* 15:1-20; *Mark* 7:1-23; *Luke* 11:37-54.

These days, the Not-Nice School of Biblical Hermeneutics probably most often strikes in the direction of tolerance. It is not nice to consider drunkenness, fornication, sodomy, and apostasy, as worthy of eternal damnation, so the Bible really does not let us consider them so. It is not nice in a pluralistic, multi-cultural society to affirm that one possesses actual objective truth, so the Bible prevents us. It is not nice to insist that the Bible itself is God's Word Written, so the Bible itself blocks that insistence. Thus the Not-Nice School of Christian liberalism and the neo-orthodoxy of the mainstream.

But the orthodox, too, have their Not-Nice School. Among some, drinking wine is not nice. Among others, institutional diversity within the one true Church is not nice. Among many, for the state not to punish drug abuse or pornography sales -- let alone sodomy -- is not nice, and so the Bible must condemn such laxity. But if the Bible really does not support such civil laws, if it is merely a case of "it's not nice not to punish acts that are harmful and not nice," and especially if the Bible actually prohibits such laws, the Not-Nice School has spawned a costly error.

The precise question to be answered is what, biblically, is the scope of civil authority. The question is not whether certain deeds are evil, or harmful, or even harmful to society, unless the answer to these questions in turn answers the question of authority. Most orthodox Christians would agree that the Bible plainly condemns the three not-nice acts listed above. Most would agree the three harm the actors and probably their fellows as well. In this they find the plain warrant of Scripture and the traditional understanding of the Church. For most, these premises suffice to argue their illegality under civil law. It is in this last conclusion that Not-Niceism may overshadow the Bible.

The heritage of the West, as God's providence has worked it, is an amalgam of the classical and the biblical. This amalgam is often a happy mixture, with the classical fleshing out, or supplying tools to mine and apply, the fundamental biblical deposit. Done carefully, the classical is a subservient handmaiden to the authoritative Word of God that is the Holy Bible.

Sometimes, however, things go awry. One such instance is the issue of the authority of civil government. The classical tradition held the polity supreme and total. The state, no mere agent of retributive justice, was family, cult, and school. It took Christian martyrs to affirm Jesus as Lord, before Caesars would acknowledge that they were lords only as Jesus' ministers and only as the Lord Jesus allowed.

While individuals, and especially the Church, claimed warrant from God Himself to obey Him and perform the acts due Him, civil authorities continued to exercise whatever power they could, focusing eventually on civil justice as the core of their mission. The Bible casts kings as wreaking God's vengeance on evildoers for the peace and order of the realm,⁴ and so they did. But the classical heritage, even in the context of feudal and covenantal civil authorities, seems to have supplied a general fount of authority. And so to America, the English experience (including Henry VIII's nationalization of the Church of England, with its considerable devolution of authority upon civil government) bequeathed a tradition of civil government as problem solver, ready to exercise power whenever in the public interest. Roads, schools, libraries, churches, and charity generally were all grist for the state mill as long as constitutional process stamped its approval. Politics and procedure counted for all, limits of state authority, in principle, for little or nothing.

A more thoroughgoing biblical approach would seem quite to the contrary. Instead of a state invested with whatever authority a polity may give it as it wills, the state, like any human authority, is ultimately to hold its warrant from God Himself. It is He alone Who must grant civil government whatever authority it has.

Ultimately, God -- Jesus Christ to be specific -- holds all authority.⁵ Humans hold authority "of God," to use convenient feudal parlance. Individuals, families, covenantal bodies, schools, all exist and have authority as prescribed by God. A biblical doctrine of the state equally should affirm that the existence and authority of the state are prescribed by God. Civil government is no general repository of residual authority, unless He has made it so.

4. See *Romans* 13:3, 4; 1 *Peter* 2:13, 14; 1 *Timothy* 2:2.

5. See *Matthew* 28:18.

Few would hold that the Bible permits a state to punish whatever sin its citizens agree it ought to punish. An evil thought is a sin. Unbelief is a sin. Every failure to meet the standard of Christ Himself is a sin.⁶ Sin, however, is not necessarily civil crime. To tag some sins as matters of religion only is to beg the question of civil authority. Why is failure to attend services of the True Church considered a matter of religion -- a duty owed to God, punishable by Him and subject to family and church discipline -- while abusing drugs is considered a matter within the authority of the state to punish?

Abusing drugs harms the abusers, and others as well. It breeds other wrongs within the authority of civil government to punish and, presumably thereby, to deter. These are evils, and the sword of the state is for evildoers, to subject them to God's vengeance.

But are we willing to assert that failure to attend services of the True Church, or, even worse, failure to trust God, receive redemption in Christ and sanctification by the Holy Spirit, does not harm the actor and others? And would not mass sanctification tend to reduce the incidence of crime? Irreligion breeds evil of all kinds. Should the state, therefore, fine absence from divine service where the Gospel is preached and the Bible taught? If none can force conversion, should the state nevertheless force exposure to the truth? Should it punish irreligion and blasphemy? Should it punish failure to teach children God's truth? Is freedom of religion merely an enlightenment bar to biblical civil government?

No, it is not. The Bible itself teaches that civil government lacks authority to punish every sin. If the state, like all human authorities, needs a warrant for all it does, and if the biblical warrant to civil government to punish some sins and not others is to be taken as meaningful, then the absence of biblical warrant to punish must also be taken as meaningful. The silence of Scripture, the absence of authorization, is not the indication of indifference, but rather of prohibition. In matters of authority, of a grant of power, silence means

6. See *Romans* 3:23; *Hebrews* 4:15.

no authority is given. And on the subject of the authority of civil government, the Bible does have its silences.

One of the strongest sets of passages from the Bible on this subject comprises the somewhat parallel chapters 18 and 20 of Leviticus. Take chapter 20 first. It, like 18, lies within the Holiness Code, the law prescribed to Israel by its God and covenant Lord, Who thereby sets it apart as His own people and possession. Chapter 20 begins with the Lord speaking to Moses, commanding the death penalty for Israelites and sojourners that give seed to Molech. The Lord also declares that He will cut off from the people any who do such. He specifies that if anyone who has offered his seed to Molech escapes capital punishment, then the Lord Himself will cut him off from among the people of Israel. After declaring also that He will cut off any that turn after spiritists, the Lord commands the Israelites to sanctify themselves and to keep the statutes of the Lord Who sanctifies them. Near the end of the chapter, the Lord again explains that He has separated Israel from other peoples, mentioning the dietary laws in this context, and again commanding that Israel be holy as is its God Who possesses it. The major central passage within the chapter, with its penalties for diverse offenses, is framed by these holiness statements and commands.

Beyond placing the central passage of the chapter between two "holiness" passages, the text explicitly ties the holiness concept to the central passage. At the beginning:

Sanctify yourselves therefore, and be ye holy: for I *am* the Lord your God. And ye shall keep my statutes, and do them: I *am* the Lord which sanctify you. For every one that curseth his father or his mother shall be surely put to death: he hath cursed his father or his mother; his blood *shall be* upon him.⁸

Likewise, at the end:

8. *Leviticus* 20:7-9. Biblical quotations are from the King James Version.

And if a man shall take his brother's wife, it *is* an unclean thing: he hath uncovered his brother's nakedness; they shall be childless. Ye shall therefore keep all my statutes, and all my judgments, and do them: that the land, whither I bring you to dwell therein, spue you not out. And ye shall not walk in the manners of the nation, which I cast out before you: for they committed all these things, and therefore I abhorred them. But I have said unto you, Ye shall inherit their land, and I will give it unto you to possess it, a land that floweth with milk and honey: I *am* the Lord your God, which have separated you from *other* people. Ye shall therefore put difference between clean beasts and unclean, and between unclean fowls and clean: and ye shall not make your souls abominable by beast, or by fowl, or by any manner of living thing that creepeth on the ground, which I have separated from you as unclean. And ye shall be holy unto me: for I the Lord *am* holy, and have severed you from *other* people, that ye should be mine.⁹

The central passage with its penalties God has placed firmly in the context of Israel's holiness, its being **unlike** other nations and a special possession of God Himself.

And so the first lesson of Leviticus 20 for us regarding the reach of civil authority is that this chapter does not specifically determine the reach of civil authority at all. Rather, it delimits the reach of Israel's authority, that of God's unique holy nation. Distinguishing between Israel as holy nation and Israel as nation like all others, identifying what that peculiar state was authorized to do beyond what other states are authorized to do, is no easy task. For example, the death penalties commanded for Israel in this passage are likely **not** commanded, or perhaps even allowed, to other nations. Rather, the passage emphasizes that Israel is different from other nations, holy and separated by God for Himself. In fact, therefore, Leviticus 20 lends no

9. *Leviticus 20:21-26.*

support to the proposition that the garden-variety civil government may punish these offenses at all.

Unlike the first, the second lesson from Chapter 20 does speak directly to the reach of civil authority. In Chapter 20, God declares that, for committing all the offenses condemned in the chapter, He abhorred Israel's predecessors in the Holy Land. On this point Chapter 18 is clear as well. Chapter 18 commands apodictically¹⁰ that Israelites shall not commit the various sexual and idolatry offenses for which Chapter 20 supplies the penalties. While God commands Israel to obey His ordinances, nowhere is holiness mentioned. Instead, the emphasis is on the universal moral law, the law under which Canaanites as well as Israelites must live. To commit these offenses is to commit abominations, abominations that defile nations and the land in which they live, so as to provoke the land itself -- or at least the land of Israel -- to spue out the nations doing such things. The offenses condemned in Chapters 18 and 20 are offenses against a universal moral law and not just against a Holiness Code peculiar to Israel.

What then is remarkable in Chapter 20 is that Israel is to punish some offenses with a capital penalty, while others appear to be left to God alone to punish. Just as He declares that He will cut off those that offer their seed to Molech and yet escape capital punishment, so other offenders shall be cut off (or bear iniquity, or die childless) without Israel being told to exact the death penalty for these offenses at all. For example, compare verse 6 with verse 27 (a verse falling after the second holiness passage of the chapter, but otherwise indistinguishable from the rest of the penalty provisions):

And the soul that turneth after such as have familiar spirits, and after wizards, to go a-whoring after them, I will even set my face against that soul, and will cut him off from among his people.¹¹

10. Apodictic law is that of the form "Thou shalt . . ." or "Thou shalt not . . ."

11. *Leviticus* 20:6.

A man also or woman that hath a familiar spirit, or that is a wizard, shall surely be put to death: they shall stone them with stones: their blood *shall be* upon them.¹²

Israel must stone spiritists, but those seeking to consult spiritists God Himself will cut off. Together, these verses teach that Israel may not stone those seeking to consult spiritists. Some of the listed sexual offenses likewise merit the death penalty, while others God Himself will punish and no human punishment is commanded. All these sexual offenses are condemned in Chapter 18, and God there pronounces the cutting off of those who defile themselves in such abominations. What Chapter 20 primarily adds to Chapter 18 is the command to Israel to punish with death some, but not all, of these offenses by virtue of its holiness. If all authority derives from God, and the chapter is to be read as significant at all, God's authorizing Israel to punish just some of these offenses entails the absence of that authority with respect to the others. Those God Himself alone will punish.

In this point lies the chief lesson regarding civil authority. Israel, even as holy nation, lacked authority to punish every offense against the universal moral law. Since it appears that Israel was authorized to do more, not less, than other nations by virtue of its holiness, it would seem all the more that other nations may not punish immoral acts, acts against God's universal law, simply by virtue of their being immoral. Some other indicium for civil authority must exist.

So far, the traditional understanding of the limits of civil government fits well with the lessons of Chapter 20. Not every sin is a civil crime. God Himself punishes a broader range of evil acts than those He allows to be punished by civil authorities as ministers of His wrath upon evildoers.

So how to distinguish that subset of evil acts to be punished by civil government as well as by God? Here steps up the Not-Nice School. It asserts that the state may punish to preserve good order.

12. *Leviticus 20:27.*

Evil acts that harm the doers of them, and especially those that harm society, are within the reach of civil authority to punish. Social harm, or perhaps harm to the family or some other social institution or good, becomes the test. Arguments to criminalize drug abuse, pornography distribution, and all other manner of evil, are made to rest upon demonstrations of their harmfulness. Those acts are wrong, and they are harmful; therefore, the state may outlaw them.

But this logic is the very logic Leviticus 20 prohibits. God Himself declares all the acts listed there to be abominations, heinous violations of the universal law. God also declares that these acts will cause the land to spue out Israel as it would spue out the Canaanites. The Canaanites, their families, all their social institutions, were to be destroyed for having violated these laws. Israel was warned against a similar fate for like violations. **Nevertheless, God did not permit Israel to punish all these offenses.** The punishment of some God reserved to Himself. The chapter teaches not only that the immorality of an act fails to supply reason enough for civil punishment, but also that social harm, or harm to individuals, or families, or economy, or whatever, fails as the additional indicium for civil punishment. If God granted Israel no civil authority over every harmful wicked act, it is arrogant to claim that authority for civil government generally. The Not-Nice School is itself not nice.

But the argument for civil authority from harmful evil is more than not nice. It is blasphemous. It is seizing God's authority where He has granted us none. It is attempting to preserve our place pragmatically, following our own way to suppress evil and harm, letting ends justify means. And for the Church to insist that the state indiscriminately prohibit evil harmful acts is to dump its ministry of evangelism and discipleship upon civil government (as it is has done with schooling, moral rehabilitation of criminals, charity, etc.), and replace the Sword of the Spirit with the sword of man. It is to reject God's way for man's. It is Uzza supporting the Ark.

The Church must know the Scriptures to know the power of God. If we were more faithful to the Bible, especially in the face of

promptings from the Not-Nice School, how much more effective would be our witness? Our witness would be to God and His truth, not to our own political predilections. We would decline to use civil power, not for pragmatic, but for principled reasons. We would affirm God's sovereignty and His ability to work His will according to His own decrees without uninvited assistance from us. Perhaps others would take our position more seriously, at least recognizing our dedication to a truly biblical view of civil law instead of to a self-sanctified program of pragmatic power politics.

And apart from our witness, God Himself promises to reward our seeking to do His will according to His truth. We shall learn the true limits of civil authority if we are dedicated to applying them obediently. Perhaps Genesis 9:6 and related passages from the Sinaitic Covenant will supply the key. Perhaps New Testament passages explaining the duties of a holy people may help distinguish within Old Testament law the parts that pertain to Israel *qua* holy people and the parts that pertain to Israel *qua* civil society. (The author tends to use both of these guides and believes the civil government is to punish the taking of biblically recognized rights in such acts as homicide, theft, rape, battery, trespass, and the like.) Much work remains. Of course, the work already done within the Church is not to be despised. The ancient general distinction between Israelite laws moral, ceremonial, and judicial, is useful. But our times require a more careful distinction. The biblical principle of the institutional separation of Church and state entails a truly biblical boundary for civil government. All God's truth is true. The Church, and her members, called to be the Body of Truth Himself, must not sacrifice truth to their own prejudices. Why supplant God's eternal Word Written with what is instead Not Nice?

The Ark of the Covenant did not remain long with the Philistines. After three months, David and the Israelites did indeed carry the Ark to Jerusalem with great joy and celebration.¹³ But this time they were careful to have only Levites carry the Ark, and then only upon their

13. See 2 Samuel 6; 1 Chronicles 15 & 16.

shoulders with staves, all as the Lord Himself had commanded in the Law. God's people had submitted to His word as to means as well as ends. And they sang:

Give unto the Lord the glory *due* unto his name: bring an offering, and come before him: worship the Lord in the beauty of holiness. Fear before him, all the earth: the world also shall be stable, that it be not moved. Let the heavens be glad, and let the earth rejoice: and let *men* say among the nations, the Lord reigneth.¹⁴

14. 1 *Chronicles* 16:29-31.