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## Life, Death and the Law. Law and Christian Morals in England and the United States. By Norman St. John-Stevas.

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## BOOK REVIEW

LIFE, DEATH AND THE LAW. LAW AND CHRISTIAN MORALS IN ENGLAND AND THE UNITED STATES. By Norman St. John-Stevas. Bloomington: Indiana University Press, 1961. \$5.95.

If you believe that there is any chance that you may someday commit suicide, you would be well advised to do it as a resident of the United States and not of the United Kingdom. If you are afraid that you might stop short of the deed itself and finish only with the attempt, Texas would be a good state for you to live in. If you wish to purchase contraceptives legally, you should emigrate to the United Kingdom. The differences among the various states of the Union on this matter are such as to convict all but a specialist in the field. At least one variety of homosexual perversion may be practiced with a possibility of complete legal immunity in Vermont; whereas, the same act may cost you twenty years in prison in the state of Massachusetts. You will be completely safe from being legally sterilized, even if you want to be, if you take up residence in England; but in twenty-three states you may find yourself compulsorily deprived of fertility for quite a number of reasons. In neither the United Kingdom nor the United States may your death, even at your own wish in a state of incurable pain and illness, be legally hastened; but in both countries should you be able to persuade a doctor to assist you in this way, you can die in the comfortable assurance that he is not likely to be prosecuted at all, and if prosecuted is almost certain not to be convicted. No country in all the world has yet made up its legal mind as to whether or not your wife may be artificially inseminated by you or some other donor; but it would seem that if you wish to be left in a state of legal doubt on this matter, you would be well advised to stay away from West Germany, where a commission on penal law "has recommended that the new criminal code should include an article prohibiting A.I.D. but permitting A.I.H." (D. is for donor; H. is for husband.)

This is only a tiny and very general sample of the kind of information given by Mr. Norman St. John-Stevas in his fascinating book, *Life, Death and the Law*, published recently by the Indiana University Press. The author himself, with a clarity that distinguishes the whole book, introduces his project in an admirable summary in the first paragraph of Chapter One. "Should the sale and distribution of contraceptives be restricted by law? Ought the State to foster sterilization policies? What should be the attitude of the law to artificial insemination? Should homosexual acts taking place in private between consenting adults be subject to the criminal law? Should euthanasia be countenanced by the law? Ought suicide and attempted suicide to be treated as criminal offences?" Having stated his questions the author proceeds, if not to answer them, at least to provide a critical apparatus for the answering of them.

The apparatus which he provides is on every question distinguished by thoroughness, many-sided breadth, fair-mindedness, balance, objectivity and fearless plain-spokenness.

On every question we are provided with an historical perspective, Biblical views, Roman Catholic and Protestant (generally Anglican) traditional and present opinions, English (on one or two occasions even Scottish) and American legal findings, a study of present day public opinion on the subject and, finally, on a number of issues, the author's own conclusions clearly and fearlessly stated.

The book is distinguished by the wide range of authorities quoted and by the excellence of its documentation. It is, however, refreshing to find a writer who is not afraid to confess that he realizes the indispensability of a knowledge of St. Thomas Aquinas in any one who professes to speak of the views of the Roman Catholic Church; and of John Calvin, Karl Barth, and Reinhold Niebuhr in one who would write of Protestant opinion yesterday and today. The great charm of the book lies in the fact that the author can so whole-heartedly respect Karl Barth and the Archbishop of Canterbury while so obviously loving the Angelic Doctor.

"This book," we are told, "is intended as a modest attempt at the resolution of the tension which is especially marked where the forces of traditional Catholicism and English liberalism meet and join." It goes without saying that the book does not resolve this tension, but it has the unusual excellence of recognizing the deep sources of it. Because it is a thoroughly truthful book it is more eirenical than many glossing compromises. In Chapter One there is a masterly statement of the question of the right relationship of law and morals. "That law is not co-extensive with morals is generally, although not universally agreed within the Western tradition."<sup>1</sup> The positivist attempt to abolish this distinction by asserting the unreality of morality is admirably dismissed in a typical pregnant sentence. "The clarity which is said to be the merit of positivism vanishes as soon as an obligation to disobey law is admitted."<sup>2</sup> If the obligation ever to disobey law on moral grounds, or any other, is not admitted we are committed in one form or other to Statism. For the author it would seem that all law derives its sanction from the law of Nature as St. Thomas uses that term. On this point many theologians would be well advised to take to heart our author's admirable analysis. "Another misconception has been to confuse 'natural' with 'normal' and to seek to disprove natural law by empirical evidence of behaviour at variance with the alleged norm. 'Normality' is a statistical concept but 'Natural' is essentially an abstraction of reason considering man as he ought to be."<sup>3</sup> How much nonsense in written theory, and

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1. P. 14.  
2. P. 17.  
3. P. 22.

perhaps even aberration in practice, might have been saved by a perception of the above.

The excellence of the author's statement of the basis of all law in the law of Nature as St. Thomas understands it, and his own seeming conviction of the rightness of such an analysis, in no way detracts from his doing justice to the diametrically opposed view of traditional Protestant, and modern Protestant Orthodox, views of the State. For such views "the idea of natural law itself is sinful."<sup>4</sup> The very essence of Protestantism is indeed individual protest not against Rome, but against anything, including the State, which would make a man anything less than a free soul facing a series of entirely individual moral predicaments and choices. It is typical of our author that while he sees the tension thus sharply he can find in it a cause not of despair but of hope. "Tensions between Church and State can never be totally eradicated. . . . The struggle will continue. . . . The basic problem is not the relation of Church and State, but the relation of Church and Society."<sup>5</sup>

Having thus generally introduced his subject, our author proceeds in the remaining six chapters of his book to face the implications of this situation as they apply to The Control of Conception, Artificial Human Insemination, Human Sterilization, Homosexuality, Suicide, and Euthanasia.

The discussion of each and every one of these subjects is frank, full and fair, and therefore cannot but be interesting. These are the subjects which provide endless debate at all levels of society and intellect. The astonishing thing is that Mr. St. John-Stevas has so much to say that is new and illuminating about every one of them. We are informed, for example, that the rhythm method of conception control is not a mere game of Vatican roulette. "The risk of pregnancy is 14.4 for every hundred years of exposure." This is interesting enough in itself; but the whole subject is brought sharply into focus when we are informed that "For women using contraceptives the equivalent figure is 6-7."<sup>6</sup> The whole question of sexual morality and the law relating to it is shown to be a major source of complete disagreement between the Roman Catholic and Protestant Churches. It is refreshing indeed to find a jurist and a moralist who is aware that the basic disagreement is theological. The issue is not drawn up simply by those who wish to increase or decrease population. The Roman Catholic Church does not forbid artificial birth control because it wants to out-vote Protestants some day. It does so because it believes that the purpose of sexual intercourse is the procreation of the race. Anything which frustrates this purpose is therefore "unnatural" and wrong. The Protestant teaching that artificial contraception is moral is not simply a concession to lust. It is based on the view that the purpose of sexual intercourse is primarily that man and woman may become "one flesh." The use of contraception is therefore

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4. P. 32.  
5. P. 49  
6. P. 92.

"natural" and right. This is the issue which dominates the whole argument in all the chapters on sexual matters. It is an issue which is often not recognized in all sorts of discussions of these matters. The avoidance of it is probably productive not only of inconclusiveness but of needless acrimony. The basic question that has to be faced behind this and all issues is the relationship of God to the World and the meaning of the World and Life in the light of its creation. It is in such a wide horizon that our author invites us to see all the questions.

A notable omission in the whole discussion of the theology, morals and law of sex is that no attempt is made to account for the fact that the Roman Catholic and Orthodox Churches are in disagreement with the rest of Christendom on the matter of contraception. A recognition of the possibility that the celibacy of the Roman clergy and the Orthodox bishops might be responsible for the rightness (or wrongness) of their position would have been welcome.

On matters non-sexual—Suicide and Euthanasia—which are the subjects of Chapters Six and Seven, the main rift that is revealed is between the laws of England and the United States. The churches are united in condemnation of both practices. The law of England is more severe than the law of the United States; but the practice of both countries in the application of law inclines to mercy. It is interesting to discover that the movement for the legalizing of Euthanasia, like the movement for legalizing sterilization, has largely spent its force due to the excesses of Hitler's Germany.

The scrupulous fairness of the author has been repeatedly stressed; but "even Homer nods." In the chapter on Suicide we are informed that "Suicide rates in Catholic countries tend to be lower than in Protestant countries, measuring the higher degree of social integration offered by the Catholic religion."<sup>7</sup> Since we have already been informed that a higher standard of living means more suicides than a lower standard of living, we might suspect that the lower suicide rate in Ireland than in England is due rather to Irish poverty than to Irish devotion. If the author has his way we would have to believe that high churchism was more dangerous than low churchism since the Oxford rate is 30.5 while that at Cambridge is only 21.3.<sup>8</sup> And even the most perfervid Scotch Presbyterian would not readily conclude that it was Presbyterianism alone which made Scotsmen less likely to commit suicide than their Episcopalian neighbors to the south.

The book is distinguished in many places by writing which preserves complete clarity despite magnificent compression. For example, "However different the approach of research workers investigating the suicide problem, their work leads ineluctably to one conclusion, the irrelevance of the criminal law to its solution."<sup>9</sup> On many questions such a compressed sentence threatens to

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7. P. 254.

8. P. 255

9. P. 256.

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burst like a bomb amid the complacencies of widely but not deeply held opinions. For example, "Humanitarian and reformatory theories of punishment tend to take the decisions on liberty away from the courts and place them in the hands of technical experts."<sup>10</sup>

It may well be that this reviewer has given the impression that this is a work of interest rather to moral theologians than to lawyers. If this is so I do believe that this grows from the nature of the book and not of this reviewer. The book is based on the conviction that law worthy of the name rests on moral theory and that moral theory worthy of the name rests on theology.

The book concludes with a quotation from Professor Kalven writing in the *New York University Law Review*: "In the end and with no great conviction in my conclusion, I would favour leaving things as they are and trusting for a while yet to the imperfect but elastic equity in the administration of the law as written."<sup>11</sup> This quotation admirably sums up the point of view of Mr. St. John-Stevas on all issues. On all great matters we put our hope and trust, under God, not in abstract theorizings but in the good wisdom of men. On matters legal we put our hope and trust ultimately not in good law but in good lawyers.

The book is attractively produced and carefully printed. There are misprints only in the first paragraph on page 53, in the second paragraph on page 133 and in the second note on page 204. There are too many commas in the first sentence of the second paragraph of page 239; and surely on page 113 we should either have "contraceptives" in place of "contraception" or "it" in place of "them."

For some people the Appendices with their full apparatus of statistical analyses of American and British laws and opinions and practices in the fields examined will not be the least interesting part of the book. To all readers the very full bibliography will be of great worth.

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10. P. 228.

11. P. 278.