

IMAGINE LAW

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The most profound definition of justice is Martin Luther King Jr.'s: "Love correcting that which revolts against Love." Its power comes from its affirmation that we are first of all *connected*, that as individuals we are but unique incarnations of a spiritual force that unites us, and that justice is the making manifest of that love by correcting, through the inherent ethical call that this love makes upon every one of us and all of us, the spiritual distortions that revolt against love and seek to deny it. It was to this inherent ethical understanding emanating from the very essence of our social existence, pulling upon the conscience of the oppressor as much as giving courage to the oppressed, that King always addressed himself. Injustice is as self-evident to us as the presence of justice—even the Nazi cannot stop killing for fear of becoming aware of what he knows—and it is the necessity of love that both enables us to tell justice from injustice and calls upon us to move from the one to the other.

Law ought to be the particular temporal embodiment of our effort as a real historical community to move from the one to the other. Law is not a body of rules or any other such thing-like entity, but rather a *culture of justice* whose ethical legitimacy depends upon how deeply and sincerely it enables us to carry out the work of justice, of love correcting that which revolts against love. Thus conceived, legal culture ought to be a spiritual practice through which the community calls upon love's evolving wisdom to heal the spiritual distortions that continue to alienate us from love itself as the realization of our social being. Like the mountain climber who *first* throws his pick up to the top of the mountain, making sure that the pick is anchored so as to maximize the tension in his rope, and who *then* seeks to pull himself upward by intuitively gauging the rightness of every step in relation to his ultimate and transcendent end, law must maintain its connection to justice by following an ethical intuition anchoring the present to the future, an intuition of what we are in our being but are not yet in reality.

America's legal culture at the turn of the millennium has temporarily lost this connection to justice because its great historical accomplishment—the affirmation of the freedom of the individual and the protection of the individual from officially sanctioned group coercion—has been misunderstood to require the denial of the spiritual bond that unites the individual to the other and, through love, fulfills the individual in his or her social existence. As a result, alongside the accomplishments of constitutional democracy and the Bill of Rights, which liberated the individual from the officially sanctioned religious and political oppression of previous historical periods, we have created a society of disconnected monads, spiritually isolated and starved for love and recognition. Not only has this collective spiritual starvation now progressed to the point of posing a threat to the very existence of the planet (because the denial of the universal need for loving connection has spawned a pathological, paranoid scramble to exploit everything outside oneself—other people and the natural world—in order to "save" oneself), it has also failed to secure the liberty of the individual in whose name the denial of our spiritual bond was legislated. Today as "free individuals," we live most of our lives in a completely unnecessary spiritual prison, each of us longing for the same liberation that

only we can provide each other, each of us denying that this longing exists within ourselves because we doubt that our longing would or could be reciprocated by the other. Since this is the IMAGINE project, let us begin by acknowledging that it is we, and not merely Eleanor Rigby, who are all the lonely people, withdrawn into our heads and peering out at a social world whose collective gaze we have come to fear and whose love, whose reciprocating acceptance and affirming recognition, is at the same time our only spiritual salvation.

Of course the law is not exclusively to blame for this, but it does have a special responsibility because it legitimizes our predicament in the name of justice. Law cannot exist without claiming to be just: it would be superfluous to elevate what are merely orders backed by the threat of violence to some higher cultural status. But when law loses its true spiritual connection to justice, it becomes "legitimation"—a justification of the status quo that lacks the ethical legitimacy that only moral anchorage in true justice, Martin Luther King's justice, can provide. Law as legitimation exploits the longing for justice by using the claim of justice to legitimate an alienated society that the community, deep in its core, experiences as spiritually and ethically illegitimate.

Thus however much we are tempted to blame the present ecological and spiritual crisis on the global capitalist marketplace, for example, we must realize that this marketplace is held in place, so to speak, by a legal culture that through a vast network of "rights" allows the community of souls that form that marketplace to believe that what it is doing is right and even required by justice itself. If the prevailing culture of justice declares that individual liberty means there exists no spiritual force, no essential love, that unites us to each other and to the sacredness of the natural world and the wider universe, then the universal longings of the soul are in contradiction with the community's public declaration—through the official political and legal institutions that define the community's very public existence—of the ethical basis of community membership. To put it simply, absent the support of a spiritual/cultural/political movement, the isolated soul cannot but believe that its longing for a loving and spiritually connected society is "wrong" and that the ethics of the marketplace is both "right" and a condition of social membership. Thus the prevailing legal culture, which we begin to internalize even before the explicit conditioning of seventh and eight-grade civics class, plays a unique and powerful role not only in sustaining what is, but in keeping our spiritual longings and our spiritual knowledge a collective and even unconscious secret.

Since what we are to imagine, in a moment, is precisely the legal/spiritual revolution that will dissolve these invisible walls that separate us, we must first enumerate the elements of our existing legal culture that contribute to this state of affairs and that must be revolutionized. All of these elements reflect the central mistaken conviction that the protection of individual liberty requires the denial of, rather than the affirmation of, the spiritual bond that unites us. Here are the most important ones:

1. Our legal culture declares that disputes are to be resolved through an adversary system that defines differences as antagonistic clashes of conflicting interests, fosters hostility, mutual deprecation, and lying, and rejects any moral objective that might

inform the process beyond the parties' own objectives, beyond their self-interested goals. Protection of the "rights of the individual" is thought to require that each side treat the other with skepticism and mistrust, to demean the other's position while exaggerating the virtue of your own, to use cross-examination to undermine the testimony of even those you believe to be truthful, and to conceal any information that might be harmful to your side unless your opponent extracts it from you under penalty of perjury (only in rare circumstances is voluntary disclosure legally required). The adversary process assumes that justice is best served by the use of evidentiary rules that limit what the judge and jury may hear to the proof of empirically verifiable facts. Any evidence regarding the spiritual and social *meaning* of the dispute or of the social and ethical context that might bring out this meaning is inadmissible because it is regarded as "merely subjective," merely matters of opinion that cannot be determined to be true or untrue and therefore can only unfairly prejudice the objectivity of the proceeding. The assumption is that the vindication of "individual rights" is the basis of law's claim to justice, and that objectivity in pursuit of that end is best assured by having an impartial third-party (sometimes the judge, sometimes a jury) evaluate each side's case after the other has had a full opportunity to destroy it.

2. Once the "facts" are thus determined, the basic rules of substantive law that are used to resolve disputes—embodied in, for example, the law of contracts, torts, corporations, and property—assume that people are essentially unconnected monads whose principal desire is to pursue their own material self-interest in the competitive marketplace, and whose principal social concern is limited to protecting their persons and property against unwanted interference by others. Even the Constitution, often thought to be among the world's great documents in securing social justice, provides no recognition of the human longing for community, for social connection, for the authenticity of mutual recognition, for the creation of a society that fosters our awareness of the sacredness of life itself and of the natural world. Instead, the main text of the Constitution provides only the formal structure to secure a democracy of strangers, an unconnected collection of individuals protected against their neighbors by the secret ballot and against abuses by the government itself through the "checks and balances" secured by the separation of powers. Similarly, the Bill of Rights does not aspire to *connect* us to one another but to protect us against each other, against the community's interfering with our right as isolated individuals to speak, to assemble (if as disconnected monads we can find anyone to assemble with), to be secure in our homes (those supposed havens in a heartless world), and even to keep others from taking away our guns. Indeed, the current preoccupation with "the right to bear arms" is an example of a highly visible appeal to the Bill of Rights (in this case the Second Amendment) that reveals how clearly its protections equate individual freedom with fear of the other rather than connection with and love for the other.

3. In their training and in the disciplinary and ethical rules that govern the legal profession, lawyers are encouraged and even to some extent required to ignore ethical considerations beyond the narrow self-interest of the client. Because our legal culture lacks a spiritual and moral direction, or more precisely because it denies the legitimacy

of embracing such a direction in order to defend an isolated conception of individual liberty, the role of the lawyer is simply to advocate for the legitimacy of whatever the client wants or does (so long as it is not a crime). Legal education is almost exclusively directed toward teaching students the analytical techniques of rule-manipulation; the best students are those who can demonstrate their capacity to argue for any side irrespective of moral consequences. No part of a law student's education is directed toward instilling in the student the obligation or the capability to promote the creation of a more loving, more spiritually whole society. And once in practice, the lawyer's professional "duty of zealous representation" virtually requires the lawyer not to allow his or her own "private" ethical concerns to interfere with the zealous pursuit of the client's ends, irrespective of the impact of these ends on others, on the society as a whole, or on the environment.

Because the individualistic, materialist, and adversarial character of this legal culture is "binding" on the consciousness of society—because its assumptions about who human beings are and how we ought to relate to one another are also The Law—we cannot overcome the spiritual alienation that is at the heart of our own and the world's suffering without a fundamental transformation of this culture. And because the great social movements of the twentieth century did not grasp this, they foundered when they entered the legal arena. The labor movement, the civil rights movement, and the women's movement, for example, were fundamentally spiritual movements aspiring to a new kind of connection that would realize our common humanity—even the word "movement" denotes the spiritual emergence of just such a vitalizing connection. But once these movements began to translate their spiritual aspirations into a demand for legal rights, their very victories became a cause of the defeat of these aspirations. Absorbed into the law's individualistic and materialist framework, the labor movement's aspiration to a classless society based on solidarity and universal brotherhood became the right to bargain for higher wages and safer working conditions; the civil rights movement's aspiration to love across our racial differences became the right of "the individual" not to be discriminated against on the basis of race in order to protect his or her liberty to pursue "equality of opportunity" in the marketplace; the aspiration of the women's movement to replace a world of power, hierarchy, and heartless rationality with a communal, intuitively grounded fabric of care became the right not to have one's liberty to pursue material success in the marketplace impeded by gender. No matter how important these liberal victories were, they required looking in a mirror that made the spiritual aspiration for a fundamental social transformation invisible.

Yet for a complex of reasons—the most important of which are probably the failure of the liberal global marketplace to create a meaningful social existence, and the failure of the movements for social transformation to be able to sustain themselves through either the liberal or the materialist-socialist framework—a new flower has begun to sprout across the face of the world. This flower is the world-wide spiritual/ecological movement that is finally helping the necessity of love to *recognize itself* as the spiritual force that unites us. To bring this recognition to fruition, to enable this flower to grow in spite of the centuries of alienation and mistrust and "misrecognition" that have preceded its

birth into awareness, we must create a new legal culture. And we are already beginning to do so.

Love Correcting That Which Revolts Against Love

A legal culture that can begin to realize Dr. King's great description of justice is one in which the community's response to conflict of every kind—civil and criminal to use the current categories—begins with a moral awareness of the love, the sense of compassionate and caring social connection, that is to be restored through the legal process. This requires that law's primary focus no longer be judgment directed toward divided individuals, but the healing of wounds to the connection that is to be restored.

This in turn requires that the three principal elements of the individualistic and materialist legal culture undergo the following transformation:

1. The adversary system should be abolished and replaced by processes that encourage empathy, compassion, and mutual understanding. Each human and ecological problem that requires community resolution should proceed by locating the presentation of all "facts" within a context of *social meaning* that reveals their ethical significance. Within this transformed framework, the courtroom would be the public space devoted to healing the spiritual wounds of alienation by allowing the community to hear these wounds in their full human dimension, instead of restricting what constitutes "evidence" to intentionally despiritualized "facts." For example, imagine the effect of a single public hearing of a case of racial oppression in such a setting. Imagine if the community and the perpetrator listened with a legally validated compassion to the suffering of the victim, and then with equal compassion to the desperate allegiance of the perpetrator to whatever distorted vision of racial superiority and false communal identity led him or her to inflict humiliation and pain on another (for listening with compassion does not mean sparing the offender of moral responsibility). And imagine the healing effect on the wider culture of watching such spiritual truths revealed on television—in contrast, say, to the alienating effect of watching the manipulations of the O.J. Simpson trial. The effect of a single such act of collective witnessing would have an immense impact by giving communal recognition, through a public legal process, to the pain of separation that pervades all of our lives and produces our worst distortions.

If you find it difficult to imagine how we could arrive at such a transformed vision of law's purpose and process, consider the rapid spread of the Restorative Justice movement in criminal law in America today. All across the country (but especially in Austin, Milwaukee, and Minneapolis), concerned lawyers, religious leaders, and community members are seeking to heal the community wounds caused by crime by creating safe contexts for victims to confront those who have hurt them with the full expression of the pain they have suffered, by allowing the perpetrators to come face to face with *the reality of the Other* that such a confrontation permits, and by sometimes eliciting sincere apologies and the sincere forgiveness that is the only true way to repair the spiritual harm of violence. Of course these restorative justice processes also require the offender to provide appropriate and meaningful restitution to the victim where

possible—such as requiring, in one case, two teenagers who had defiled a Des Moines synagogue with swastikas to remove the offending symbols, perform other community service, and study Jewish history in addition to coming to understand, through face-to-face encounters with Holocaust survivors who were members of the synagogue, the enormity of the suffering associated with the swastika. But the essential point of Restorative Justice is responding to crime in a manner consonant with love correcting that which revolts against love, with understanding crime as a wound to love that is itself almost always caused by such a wound that preceded the criminal act.

The power of this re-imagining of the healing power of law has been nowhere better revealed than in the work of South Africa's Truth and Reconciliation Commission (TRC) under the leadership of Bishop Desmond Tutu. That commission has sought to avoid the vengeance that almost inevitably accompanies revolutions against a legacy of oppression by seeking, on behalf of the black majority, to forgive the white minority for the crimes of apartheid so long as the offenders acknowledged the truth of what they had done. With all its limitations, including the immense political complications accompanying the TRC's work (hearing and televising a review of some 22,000 cases often involving extreme violence), the TRC is one of the greatest experiments in human history in a spiritual approach to healing social conflict. Imagine if we began now to take the next millennium to build our entire legal culture on the TRC's premise announced in the title of Bishop Tutu's recent book: *No Future Without Forgiveness*.

2. The role of "rules" in resolving disputes in civil cases should be greatly diminished, in favor of wisdom guided by ethical and spiritual ideals. Just as the Restorative Justice movement has sought to foster the healing of the effects of violence on individuals and communities in criminal cases, the process of resolving civil disputes should draw upon the healing-centered focus of today's transformative mediation movement to assist in the realization of these spiritual and ethical ideals.

The importance of this shift can best be understood by grasping the changes in legal culture that will have to occur for David Korten's visionary conception of a post-corporate, sustainable economy to actually come into being. Korten's alternative to globalization calls for the creation of "mindful markets" that will be based on such ethical values as true mutuality and cooperation, respect for the meaningfulness of one another's labor, the production of material goods that satisfy real human needs in a manner that respects the sacredness of the earth, and respect by economic actors for the integrity of each other's local cultures. But the only way to bring about such an economic transformation is to build a parallel legal culture that gradually helps to develop acceptance of these values as expressive of a *just* economy, and to fill out the practical meaning of these ideal values through the resolution of individual cases over time—through a spiritual/ethical equivalent of our present individualist/materialist common law.

What this new legal culture requires is not a new set of abstract rules to be applied neutrally and logically to strangers who want to remain strangers, but a legal process that emphasizes empathic listening and the elicitation of the social meaning of an

economic exchange in order to gradually overcome the legacy of capitalist self-interest that presupposes disconnection between the parties. The purpose of the legal proceeding must be to bring into being a *connection* expressive of Korten's vision of an ethical and sustainable economic culture. If a dispute develops between a buyer of coffee in the United States and a supplier from Central America, the legal resolution of the dispute should perhaps begin with a period of meditation and a sharing of food and music, followed by a telling of respective stories and a period of questioning (not "cross-examination") aimed at resolving the dispute in accordance with the aspiration to a spiritual and ethical ideal. The aspiration to respect the inherent worth and meaningfulness of each other's labor cannot be realized by a verbal statement of this ideal in the form of a "rule" to which alienated actors must conform their conduct, but by a process that realizes this aspiration is an ideal "in front of us" that must be nurtured into existence through empathy, education, and reciprocal sensitivity.

Accompanying the replacement of rules with ideals in substantive law must be the development of spiritual remedies for the resolution of differences. In today's legal culture, the measure of all things is money. Consistent with the law's emphasis on material self-interest and the profit motive as the driving force of humankind, the legal remedy prescribed for almost every injury, whether economic (such as breach of contract) or non-economic (such as sexual harassment) is monetary damages to be transferred from one disconnected stranger to another. In the civil area as in the criminal area, remedies aimed at creating social connection must emphasize acknowledgment of wrong-doing and the elicitation of genuinely voluntary apology and forgiveness. Of course some and perhaps many cases will require some material restitution for material loss unjustly suffered by one party, but even here the aim wherever possible should be the promotion of future material assistance freely given, rather than just the payment of money.

Finally, while I have here emphasized re-imagining the relationship between a new legal culture and a new economic culture, the same re-imagining should occur in the non-economic sphere of a reconceived civil society that aspires to connect us rather than separate us. To take but the most obvious example, the present rule of American tort law that there is no duty to attempt to rescue someone in distress—for example, someone drowning in front of you in a swimming pool—should be replaced by the ideal expectation that we will do all we can to rescue each other from isolation, fear, and danger, whether someone is drowning or someone is homeless. That we today associate this expectation as "making sense" only in relation to intimate family members is but a result of our conditioning that transforms those outside the tiny circle of blood relations into mere strangers, mere vessels of anonymity to whom we are not essentially related.

3. The role of lawyers must be equally reconceived as a "calling" rather than a trade. Instead of lawyers understanding themselves as neutral legitimators of their clients' individual self-interest, lawyers must reconceive of themselves as healers—that is, as spiritual actors whose aim is to reconcile the goals of their clients with the creation of a

loving world. No longer should the ethics of the profession encourage the criminal defense lawyer to seek the acquittal of those whom the lawyer knows has committed violent acts, or encourage the lawyer for a lumber company to help his or her client destroy old-growth Redwoods with impunity. Instead, the lawyer should be trained from the first day in law school to engage every human situation with which he or she is confronted so as to create a better, more spiritually connected world. Rule-manipulation and the cultivation of cleverness should give way, through the study not of "cases" but of ethically compelling and challenging situations, to empathic engagement with both one's client's deepest hopes and the reconciliation of those hopes with the law's substantive ethical ideals. The purpose of the profession as a whole, therefore, should be the deepening of the collective moral consciousness of the community as a whole, as the community—finally facing the inevitability of the destruction of its own species if it cannot overcome the fear of the Other that has come to dominate its existence—approaches Martin Luther King Jr.'s simple and universally desired moral truth.

Whether this vision sounds hopelessly utopian to you or fully realizable and even necessary—whether you believe such a profoundly connected vision of law and legal culture cannot be accomplished without unacceptable threats to individual freedom, or, on the other hand, whether you believe such a vision of legally recognized spiritual connection is essential to the fulfillment of individual liberation—depends upon whether you really can embrace Martin Luther King Jr.'s affirmation that loving connection made manifest in the world will be but the realization of who we already are. I can embrace this. And with Dr. King and John Lennon in my mind's eye, I know I'm not the only one.

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