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LEGAL METAPHORS IN THE EPISTLES

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I LEGAL METAPHORS AND ROMAN LAW

It is generally agreed that much of our language is metaphoric. We often communicate not by the precise exposition of idea, but by analogy and symbol. We grasp things said metaphorically, without necessarily completely understanding them. Pruned of the richness of metaphor our language would be impoverished. Indeed what I have said just now is couched in the metaphors of manual dexterity and of gardening. But the function of communication is communication. Unless the symbol expressing the idea is comprehended by the recipient in the way it is understood by its user, the transmission of information or feeling through the use of the idea is defective. We must therefore seek to understand the picture-language of the NT in the way its users would have done. The Lamb of God is not a cuddly toy.[1]

1. *Cf.* J. Bannerman, *Analogy, considered as a Guide to Truth, and applied as an Aid to Faith* (Edinburgh: Johnstone Hunter, 1864); Bishop J. Butler, *The Analogy of Religion to the Constitution and Course of Nature* (1736), Introduction; E. Bevan, *Symbolism and Belief* (London: Allen and Unwin, 1938); C. K. Ogden and I. A. Richards, *The Meaning of Meaning,* 10th ed. (London: Routledge and Kagan Paul, 1949); H. Palmer, *Analogy* (London: Macmillan, 1971); P. Ricoeur, *The Rule of Metaphor* (London: Routledge and Kegan Paul, 1978); B. Barry, 'On Analogy', *Political Studies* 23 (1975) 208-224; B. E. F. Beck, 'The Metaphor as a Mediator between Semantic and Analogic Modes of Thought', *Current Anthropology* 19 (1978) 83-97; F. Lyall, 'Of Metaphors and Analogies: Legal Language and Covenant Theology', *SJT* 23 (1979) 1-17. I have not yet seen G. B. Caird, *Language and Imagery of the Bible* (London: Duckworth, 1980).

This applies no less to the legal metaphors in the epistles than to any of the others. In order to understand what is being communicated by a metaphor drawn from the law, we have to understand what the law on the matter was and meant in its ordinary employment. This has, two applications. First we may look at ideas as they appear in different legal systems in NT times;[2] the recipients of the epistles, and certainly their later readers, would have interpreted legal language by the law they knew, and it is interesting and informative to see. what they would have found. The second application is to ask what was the intention of the writers; what did they understand by these words, and what did they intend to convey and believe they were conveying by these technical expressions? Both elements require us to find a source, or sources for the legal metaphors.

In the case of the legal metaphors in the epistles there are three main possible sources. There is Roman law, Greek law and Jewish law. Roman law was the law of the Empire or rather the law of imperial citizens. That law, was present wherever a Roman went. It was found in the courts of the Roman officials and governors, and in the Roman colonies scattered throughout the territory of the Empire. Such colonies were embedded within an alien legal environment, for the Romans did not impose their own law, but left the indigenous law of an area still applicable to its inhabitants. They interfered with the

2. See W. E. Ball, 'St Paul and the Roman Law', *Contemporary Review* 60 (1891) 178-192, which was expanded (though not really in its Roman law element) into a book of the same title, published by T. and T. Clark, Edinburgh 1901; Septimus Buss, *Roman Law and History in the New Testament* (London: Rivingtons, 1901); W. S. Muntz, *Rome, St Paul and the Early Church* (London: John Murray, 1897). *Cf.* also A. N. Sherwin-White, *Roman Society and Roman Law in the New Testament* (Oxford, 1963); and the writings of J. D. M. Derrett, in part collected in *Law in the New Testament* (London: Darton, Longman and Todd, 1970); and his *Studies in the New Testament*, 2 vols. to date (Leiden: Brill, 1977, 1978).

indigenous law only as required for reasons of state.[3]

Greek law therefore remains a possible referent for legal metaphors in the epistles because it was known to many in the eastern Empire. However, Greek law was not uniform, and it might be more accurate to call it 'the laws of Greeks' for different Greek cities had different laws within a common heritage of Greek culture. The laws of Athens, Thessalonica, Sparta, Alexandria and Ephesus differed. One cannot therefore confidently interpret a precise Pauline figure of speech written to Ephesus in terms of the law as it was known in Athens.[4] This diminishes the usefulness of Greek law as a source, and for our purposes.

A similar difficulty attaches to Jewish law, for the practices of the Jews outside the Land seem on occasion to have differed from those at Jerusalem. Further much of our evidence is drawn from the Mishnah of *c*. AD 200 and other compilations, which were the work of Pharisees who suppressed Sadducean ideas; yet it was the Sadducees who held the ascendancy in Paul's time.[5]

3. L. Mitteis, *Reichsrecht und Volksrecht* (Leipzig: Teubner, 1891; rep. Leiden: Brill, 1963); W. T. Arnold, *Roman Provincial Administration* (Oxford, 1879, 1906, 1914); G. H. Stevenson, *Roman Provincial Administration* (Oxford: Blackwell, 1939); F. Millar, *The Emperor in the Roman World* (London: Duckworth, 1976).
4. For Greek law see: L. Beauchet, *Histoire du Droit Prive de la République Athénienne* (Amsterdam: Rodopi, 1969); A. R. W. Harrison, *The Law of Athens,* 2 vols. (Oxford 1968, 1971); J. W. Jones, *The Law and Legal Theory of the Greeks* (Oxford, 1956); G. M. Calhoun, *Introduction to Greek Legal Science* (Oxford, 1944): W. R. Lacey, *The Family in Classical Greece* (London: Thames and Hudson, 1968); D. M. McDowell, *The Law in Classical Athens* (London: Thames and Hudson, 1978).
5. For Jewish law see: Z. W. Falk, *Hebrew Law in Biblical Times* (Jerusalem: Wahrman, 1964); I. Herzog, *The Main Institutions of Jewish Law* (London: Soncino, 1967); G. Horowitz, *The Spirit of Jewish Law* (New York: Central Book Co., 1953, 1963); H. Danby (trans.), *The Mishnah* (Oxford, 1933); also articles in the *Jewish Encyclopedia*, most of which (but not all the historical articles) are collected in M. Cohn (ed.), *The Principles of Jewish Law* (Jerusalem: Keter, 1975).

Of course there are difficulties also with Roman law. It is, however, the best evidenced of the options. We have a legal primer written by a jurist, Gaius, some one hundred years after Paul, who fortunately had a historical bent, and there are available other writings and evidence of the Roman law going right back through Paul's time.[6]

I must, however, confess at this stage that my approach to these matters has not been detached and scholarly, in the modern sense of that word. I have brought an idea to the facts. A study of the concept of adoption[7] led me to argue for a Roman reference for several of the legal metaphors in the epistles. Adoption, slavery[8] and citizenship[9] seemed fairly clearly Roman, and, if they were, then a presumption arises that other legal ideas should similarly be referred to Roman law for their interpretation.[10]

6. *The Institutes of Gaius*, ed. and trans. F. de Zulueta, 2 vols. (Oxford, 1946, 1953); The *Institutes of Gaius and Rules of Ulpian*, trans. J. Muirhead (Edihburgh: T. and T. Clark, 1880). For Roman law see: W. W. Buckland, *A Textbook of Roman Law from Augustus to Justinian*, 4th ed. rev. P. Stei (Cambridge, 1970); H. F. Jolowicz, *Historical Introduction to the Study of Roman Law*, 3rd ed. rev. B. Nicholas (Cambridge, 1972); F. Schulz, *Classical Roman Law* (Oxford, 1951); J. A. C. Thomas, *Textbook Roman Law* (Amsterdam/Oxford, North-Holland Publishing Co., 1976).
7. F. Lyall, 'Roman Law in the Writings of Paul - Adoption', *JBL* 87 (1969) 458-466. This article was inspired by G. M. Taylor, 'The Function of ΠΙΣΤΙΣ ΧΡΙΣΤΟΥ in Galatians', *JBL* 85 (1966) 58-76.
8. F. Lyall, 'Roman Law in the Writings of Paul - Slavery', *NTS* 17 (1970/1) 73-79.
9. F. Lyall, 'Roman Law in the Writings of Paul - Alien and Citizens', *EQ* 49 (1976) 3-14.
10. I have discussed other examples in a series of articles in *Christian Heritage,* December 1975 - June 1976. This and other related material is to be published in book form.

Other strands of argument may be drawn from the writers and recipients of the epistles. Peter and Paul travelled in the Empire and therefore knew by experience the advantages of Roman citizenship and the disadvantages of being an alien. They make use of language drawn from the law of citizenship in their epistles. Interestingly, so does the writer to the Hebrews. In the case of Paul, of course, we are dealing with a Roman citizen. For Paul to have been born a citizen would require that his father was a citizen also, and he would have inherited from him under Roman law. Roman law would be his own personal law, and citizens who, let us remember, were but a small part of the population were in those days knowledgeable in such matters - for a start there was not so much law as nowadays.

Paul was also a trained Jewish lawyer. While that makes a reference to Jewish law likely, it also increases the chances of a reference to his personal law, for once you know one system thoroughly, it is not so difficult to pick up another. Paul, knowing that he was to preach to the Gentiles, would have thought about his faith to see how best to present it. How could he, a native of Cilicia and trained in Jerusalem, communicate with people from other places? It seems to me quite arguable that he would have realized that Roman law was a common factor. And if that were so, what would have stopped him purposively learning more of it, perhaps during the Ten Years' Silence in Cilicia (Acts 11:25; Gal. 1:21-2:1)? It was, after all, the provincials who took on the main burden of legal study and systematization, text book and commentary writing,[11] and Tarsus had a prominent university.[12]

Again it is Paul, the lawyer, who makes most use of legal imagery. The point is not substantial, since most of the NT epistles come from Paul; but it is not insignificant.

Now I know that some intelligent people, laymen in law, though not in NT studies, would say that their own nodding acquaintance with legal notions would allow them

11. A. M. Honore, *Gaius* (Cxford, 1962) 70-96.
12. Strabo, *Geographia* 14.5.13.

to make some play with legal ideas. In practice, they don't; but my point is that Paul was better informed. His use of legal imagery cannot be explained merely as felicitous vocabulary.

As for arguments drawn from the recipients of the epistles, it is noteworthy that the legal metaphors do show some clustering. There is a cluster of metaphors in Ephesians, and Ephesus was not a colony. However, it was the major centre of Roman influence in the province of Asia at the time. The other clusterings are in Corinthians, where Paul makes use of the status of freedman in Roman law to drive home his point. The language makes little sense if interpreted by Greek or Jewish law; Corinth was a Roman colony, and therefore its slave market which was an important centre of the trade with the East, was governed by Roman law.

Another clustering is to be found in Galatians. Here it makes no difference whether you subscribe to the North or South Galatian theory. In both North and South Galatia the centres of population were either Roman colonies or had very significant Roman garrisons. Roman law was therefore present to the mind of the churches in these areas.

Lastly, a major cluster of legal images is to be found in the letter to the Romans. There Paul way writing to a church he did not personally know, and yet he uses many technical legal ideas as metaphors. The church in Rome might be expected to know its local law. Roman law links Paul and the Roman church. Hence, it is proper to refer to Roman law for the interpretation of this language in Romans.

Finally on this track, it is interesting also to find that there are few legal metaphors in the Pastoral Epistles. Did Paul use legal language where he was not quite sure of his audience? Or did he know that there was no point in using such language to Titus and Timothy? The latter seems probable to me when I compare those epistles with the gambolling through legal metaphors in the letter to Philemon. There I see the badinage of old comrades, typical of friendships between lawyers in the cut and thrust, puns and allusions drawn from fatherhood and such business matters as partnership and accounts. Any legal or business gathering today

light of their local law. But in relation to the law of Slavery there is one passage where only Roman law will fit, and that to my way of thinking immeasurably increases the probability that other uses of such metaphors are based on Roman law.[16] The passage relies on a technical distinction found in that law.

In I Corinthians 7:21-23 we read:

> Were you a slave when called? Never mind. But if you can gain your freedom, avail yourself of the opportunity. For he who was called in the Lord as a slave is a freedman of the Lord. Likewise he who was free when called is a slave of Christ. You were bought with a price; do not become slaves of men. (RSV)

You will readily recognize the metaphors and legal language in the passage: slave, free, bought, slaves of men. But in verse 22 there is the reference to the freedman. The free man is Christ's slave. The slave is Christ's freedman; not a free man but a freedman. That makes sense only under Roman law, for the freed slave remained tied to his former owner by natural duties of support, maintenance and respect. That was the security of a freed slave. His owner could not get rid of him by freeing him, even were he an economic liability; it was a modified form of social security. That link was known, in the way I describe, only in Roman law. In Greek law there was a tie only until the price of the slave had been worked off. In Jewish law there does not seem to have been such a legal tie. Corinth, with its slave market, wholesale and retail, was a Roman colony, governed by Roman law. The reference to the freedman therefore makes perfect and appropriate sense. That inclines me to look at all slave metaphors in the Pauline writings in the light of Roman law. The slave is to consider himself as Christ's freedman, a beautiful and gracious figure of speech, which contrasts also with the free man who becomes Christ's slave. That also would have been a sharp image in NT times.

16. See above note 8.

III ADOPTION AND INHERITANCE

I would like now to jump to some verses in Romans 8, which contain another clustering of legal metaphors. In the KJV, Romans 8:12-17b reads:

> Therefore, brethren, we are debtors, not to the flesh, to live after the flesh. For if ye live after the flesh, ye shall die: but if ye through the Spirit do mortify the deeds of the body, ye shall live. For as many as are led by the Spirit of God, they are the sons of God. For ye have not received the spirit of bondage again to fear; but ye have received the Spirit of adoption, whereby we cry, Abba, Father. The Spirit itself beareth witness with our spirit, that we are the children of God: and if children, then heirs; heirs of God, and joint-heirs with Christ.

Debtors, sons, adoption, witness, children, heirs, joint heirs; that is quite a conglomeration of ideas, which I have not the time here fully to disentangle. I pick two notions, adoption and heirship.

I will not say much about adoption. It was the first legal notion which took my attention,[17] and I have subsequently explored the idea at length. In summary what I see here is a statement putting the relationship of the Christian to his God in acutely personal terms, with many overtones, and yet managing to avoid the theological pitfall of a too direct equation of the redeemed sinner and the redeemer. He is the Son of God. We are sons by adoption. As such sons, using the Roman implications of the idea, we are in a close relationship with our father, who has paternal rights (*patria potestas*) over us. In law all we have and are belong to him. There is no coming of age to free us from that control. Only his death or deliberate destruction of the paternal relationship would remove us from his power, authority and care.

Jewish law did not have such a notion.[18] In the Greek law of adoption, which is known to us through the

17. See my article cited in note 7 for a preliminary effort.
18. See above note 5.

Orations of Isaeus, some four hundred years before Paul, adoption functioned as a succession device and did not subject the adoptee to the paternal powers of the adopter. Certainly the Roman notion also had a succession purpose, but by contrast the transference from the existing familial state into the new family was immediate and complete. To me that is a richer concept and communicates more than the Greek notions, or the casual woolliness of adoption present in the lay mind today.

Now let me turn to another intriguing use of legal language, the idea that we are the heirs of God.[19] For Paul, the Christian is the 'heir of God'. Romans 8:17 runs together several of the elements of this imagery. If we are the children of God, attested by his Spirit, we are 'then heirs; heirs of God and joint heirs with Christ'. In other places he says that, if one is a son of God, one is an heir of God (Gal. 4:7); one of the heirs according to the hope of eternal life (Tit. 3:20); one of the fellow heirs of the promise, whether one is Jew or Gentile (Eph. 3:6).

In these short metaphors Paul describes the essential elements of a Christian's hope and assurance; his relationship with God. The words have been well worn over the centuries. They are easily said or read, and we do tend to slip over them. Yet we ought not to be so lazy or indifferent. One of the most remarkable phrases in the whole New testament is that the Christian is the 'heir of God'. This phrase must give rise to inquiry, for the legal idea it incorporates has no basis in present law. Nor did it have basis in the Jewish law of Paul's time, and it is this which leads me to refer the images of heirship to Roman law for their interpretation.

We are accustomed to talk loosely of a person being the heir of somebody else but strictly this is incorrect. In our law and in Jewish law a living person does not have an heir. He may have an heir apparent or an heir Presumptive but not an heir.[20] It is only when a person dies that we can know who is his heir, for, until he dies, there is always the possibility that his 'heir' may

19. See also J. D. Hester, *Paul's Concept of Inheritance* (SJT Occasional Paper14, 1968).
20. *Cf*. Horowitz (see note 5) 378-401.

predecease him. In Scots and English law, this is summed up in the maxim, *nemo est heres viventis* - no one is the heir of the living.

The matter comes down to these possibilities. First, the phrase 'heir of God' may be a simple colloquialism, devoid of real meaning other than a generalized 'glow'. The actual legal relationship between God and his 'heir' is uncertain, since it is open to frustration by the death of the 'heir' before that of his 'father', and since it is conditional on the death of God. (Actual 'heirship' is postponed to God's death or is frustrated by our own death.) For myself I cannot think that such vagueness was Paul's intention, particularly in view of the apparent technical detail and the conceptual development or progression found in passages such as Romans 8:17: 'heirs; heirs of God and joint-heirs with Christ'. Such precision appears quite deliberate. Secondly, anticipating one school of modern theology, the expression may mean that God is dead, for that would be required by a strict Jewish or modern understanding of the legalities involved. Thirdly, it may be possible that the phrase 'heir of God' and similar expressions do have a technical significance, carrying a useful meaning under a legal system of the time of Paul. This last is what we find if we look at the meaning of the expressions in Paul's day and in the light of the Roman law of inheritance.

The fundamental difference between the Roman rules of succession and those of other legal systems of the time was that under the Roman system the heir was considered to be more than the legal representative of the deceased: he actually continued his legal personality. This notion arose because the original concept of heir in Roman law had reference to the patriarchal system and the family cult (the sacra). Each cult worshipped its own family gods - the *lares* and *penates*, the gods of hearth and larder - and the spiritualization of that family, its *genius*. The heir was the person or persons entitled to carry on the family cult. This went beyond the idea of a continuity of priesthood, for the 'new' priest was considered to be the same person as the former priest, now deceased.

This is a difficult idea in modern thought, but is not as extraordinary in its context. The word 'person' come comes from the Latin *persona*, which first meant a mask, then a character in a play, and only latterly a person in the modern sense. Its root is clear in the verb *per-sonare*, meaning 'to speak through'. In Roman plays the actors used masks and 'spoke through' them: the *persona* was first the mask, then the character being played, but never the actor. However, by the normal processes of language the word did come eventually to mean 'person' in the sense of the individual. In the cultic concept the priest was the *persona*, continuing to serve the family *sacra*, although the individual 'speaking through' the mask might change. He was the 'personification' of the family. Again by transference the distinction between the priest and the individual became blurred, and a form of continuity of personality between the individual holders of the priesthood emerged. (*Cf*. the idea in the UK that the sovereign is but the receptacle of monarchy; the Crown is more important than the King or Queen.)

The continuity of personality between heir and ancestor in cultic practice was carried over in law into matters affecting the inheritance. Thus, under Roman law the heir did not take the estate minus debts in the way, that one does under present-day law, or indeed ancient Jewish law. Today, if the debts exceed the assets, the estate is bankrupt, and that is the end of the matter in law. But in Roman law the heir was the same person as the deceased and he was liable for the full amount of the deceased's debts, beyond the assets of the estate even to the extent of his 'own' property. Naturally rules developed under which a person might refuse to accept the inheritance lest he ruin his own financial standing. It was only at that stage that it was possible to talk of the inheritance as something apart from the heir. But even with the development of this equitable device, the technical position of the heir who accepted his Inheritance remained that of continuing the legal personality of his father.[21]

21. C. W. Westrup, *Introduction to Early Roman Law* (Oxford, 1934-50) vol. 3, 219-229; H. S. Maine, *Ancient Law*, 10th ed. by F. Pollock (London: John Murray, 1920) 123-230. This view is rejected by F. Schulz, *Classical Roman Law* (Oxford, 1951) 215.

But the idea of continuity between the heir and the deceased went even further. There was a continuity of legal personality between the heir and his ancestor before the death, for in Roman law the heir existed and had legal standing as heir during the life of his ancestor. In the Roman family a father had control over, the person, personal relationships, assets and property of all those children whom he had not set free (emancipated) from his control. There was no limit of time, no legal coming-of-age and automatic independence. Their legal existence was not separate from his. In a sense, he was them. Their acquisitions in strict law belonged to him. Their acts benefited him and he might be laid under legal liability by their actions. Of course, rules developed to mitigate the harshness and absurdities of such a system, but nonetheless in technical civil law the heir did not have independence of his father.

Those who were released from such patriarchal control on and by the death of their ancestor, were called *sui heredes* and the inheritance passed automatically to them in the absence of a will. In strict civil law children who had been emancipated from control took no part of the inheritance. They were no longer part of the family of heirs. Latterly, the exclusion of emancipated, children was done away with, though not by making them again part of the family, but by the praetor giving them other rights of succession. Where children had not been emancipated, if the father wished to disinherit his heirs he had formally to do so by naming them in his will and in effect excluding them from the family. If there was an attempt to exclude them without using the appropriate formula the will failed and the estate passed under the rules of intestate succession to these very people (Gaius, *Inst*. 2.123,138). In short, a Roman always had an heir if he had children in his family: the point which Paul was making when he says 'if children, then heirs' (Rom. 8:17). Whether the children were natural children or adopted children was irrelevant. children of either source were heirs.

A summary of views is contained in G. D. MacCormack, 'Hausgemeinschaft and Consortium' *Zeitschrift für Vergleichende Rechtswissenschaft* 76 (1977) 1-17.

The existence of heirs under such a situation was therefore not conditional upon the death of their ancestor, for they had existence and status already by virtue of their relationship with him. Birth, not death, constituted heirship - an appropriate illustration of the gospel faith. Further we must remember the notion of the unity of personality. So, in talking of 'heirs of God', Paul is not in any way assuming that God is dead or will ever die. As long as God is, his children are his heirs. And, does the indwelling Holy Spirit not mean a continuity of personality between the Christian and God?

IV CONCLUSION

The imageries of inheritance could, of course, take us to Galatians 4, where it leads Paul into the ideas of tutors and curators, but I must draw to a close. To use the phrase from Hebrews, 'time would fail me to tell of yet more examples of legal language in the NT epistles.

Let me then conclude by agreeing that I have not conclusively demonstrated that all legal terminology in the epistles is drawn from Roman law. Greek and Jewish law would provide a meaning for some of the examples, and would perhaps explain even more if we knew those laws better. There are also the intertwined concepts which are loosely bundled together in your books as ‘Redemption’. That fascinating skein disentangles only in the solution of Jewish law.[22] Yet I think that I have shown that the technicalities of law have much to offer in considering some of the language of the epistles. Beyond that I stick to my twin beliefs: first, that many in the early church would have understood the legal imagery in the epistles by Roman law; you must concede that. Second, that much of that imagery was a deliberate use of Roman ideas. To interpret it in that light communicates more to the modern reader.

22. See D. Daube, *Studies in Biblical Law* (Cambridge, 1947; rep. New York: Ktav, 1969) 39-62, 71-73; J. D. M. Derrett, 'An Oriental Lawyer looks at the Trial of Jesus and the Doctrine of the Redemption', Inaugural Lecture, University of London, 1965; and his *Law in the New Testament* (London: Darton, Longman and Todd, 1970) 389-460.

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