

## CHAPTER FOUR

### Situation Ethics

When we talk about ethics, we mostly mean a series of rules and laws and principles by which we act and which tell us what to do. Mostly we take it that ethics classifies words and actions into things which are good and things which are bad, and we take it that the goodness and the badness belong to the thing as such. On the whole this is meant to simplify things and to make life easy. It means that we have got, so we think, a series of prefabricated rules and laws and principles, which we accept and apply. It saves us from the difficult and the often dangerous task of making our own judgments and deciding things for ourselves.

But in 1966 an American professor called Joseph Fletcher wrote a book called *Situation Ethics*, which has proved to be one of the most influential books written this century. Fletcher's basic principle is that there is nothing which is universally right or universally wrong; there is nothing which is intrinsically good or intrinsically bad. Goodness and badness are not built in, essential, unchangeable qualities of anything; they are only things which happen to actions in different situations; they are only descriptions of things in different circumstances; they are not properties, they are predicates. According to this theory of ethics, there is no such thing as a predefinition of goodness or badness. What we have to take to any situation is not a prefabricated decision, but an act of judgment. Throughout this chapter the arguments and the illustrations are taken mainly from Fletcher's two books, *Situation Ethics* and *Moral Responsibility*.

It has to be noted that the situation ethics man does not as

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it were start from nothing. He knows all the rules and the principles; he knows all that the accumulated experience of human beings has found out. He knows that there are rules and principles; but he refuses to say that any principle is absolutely binding and always valid, right or wrong in itself. Bonhoeffer said: 'Principles are only tools in the hand of God, soon to be thrown away as unserviceable.' The situationist does not deny that there are principles; he does not for a moment deny the classifications of things that experience has built up; but he completely refuses to be shackled or bound by anything.

We have got to qualify all this; for to the situationist there is one thing and one thing only that is absolutely, always and universally good—and that one thing is love. So Fletcher's first two propositions are:

Only one thing is intrinsically good, namely love: nothing else. The ultimate norm of Christian decisions is love: nothing else.

Quite clearly we will have to be sure of just what love is. The situationist is not talking about what we might call romantic love. In Greek there are four words for love. There is *erōs*, which means passion; there is always sex in *erōs*. There is *philia*, which is friendship-feeling; there is physical love in *philia*, but there is loyalty and companionship as well. There is *storgē*, which is love in the family circle; there is no sex in it; it is the love of a father for a daughter, a son for his mother, a brother for a sister. And there is *agapē*; this is the word. *Agapē* is unconquerable goodwill; it is the determination always to seek the other man's highest good, no matter what he does to you. Insult, injury, indifference—it does not matter; nothing but goodwill. It has been defined as purpose, not passion. It is an attitude to the other person.

This is all important, because if we talk about this kind of love, it means that we can love the person we don't like. This is not a matter of the reaction of the heart; it is an attitude of the will and the whole personality deliberately directed to the

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other man. You cannot order a man to fall in love in the romantic sense of the term. Falling in love is like stepping on a banana skin; it happens, and that is all there is to it. But you can say to a man: 'Your attitude to others must be such that you will never, never, never want anything but their highest good.'

Obviously, when we define love like this, love is a highly intelligent thing. We must, as the Americans say, figure the angles. We must in any situation work out what love is. What does love demand?

Suppose, for instance, a house catches fire and in it there is a baby and the original of the Mona Lisa; which do you save—the baby or the priceless and irreplaceable picture? There is really no problem here; you save the baby for a life is always of greater value than a picture.

But think of this one—suppose in the burning house there is your aged father, an old man, with the days of his usefulness at an end, and a doctor who has discovered a cure for one of the world's great killer diseases, and who still carries the formulae in his head, and you can save only one—whom do you save? Your father who is dear to you, or the doctor in whose hands there are thousands of lives? Which is love?

On the Wilderness Trail, Daniel Boone's trail westward through Cumberland Gap to Kentucky, many families in the trail caravans lost their lives to the Indians. A Scottish woman had a baby at the breast. The baby was ill and crying, and the baby's crying was betraying her other three children and the rest of the party; the party clearly could not remain hidden if the baby continued crying; their position would be given away. Well, the mother clung to the baby; the baby's cries led the Indians to the position; and the party was discovered and all were massacred. There was another such occasion. On this occasion there was a Negro woman in the party. Her baby too was crying and threatening to betray the party. She strangled the baby with her own two hands to stop its crying—and the whole party escaped. Which action was love? The

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action of the mother who kept her baby and brought death to it and to herself and to all, or the action of the mother who killed the baby and saved the lives of the caravan? Here is the kind of decision with which the situationist confronts us; which action was love?

The situationist is always confronting us with decisions. There is no absolute right and wrong; we have to work it out in each situation. There are principles, of course, but they can only advise; they do not have the right of veto. Any principle must be abandoned, left, disregarded, if the command to love your neighbour can be better served by so doing.

The situationist is sure that a rigid sticking to the rules is all wrong. It can produce what someone called 'the immorality of morality'. It can produce what Mark Twain called 'a good man in the worst sense of the term'. A French priest said that fanatic love of virtue has done more harm than all the vices put together. It is the situation that counts. There are times when justice can become unjust. So Fletcher tells two stories, the first from real life, the second from a play.

A friend of Fletcher's arrived in St Louis just as a presidential campaign was ending. He took a cab and the cab-driver volunteered the information: 'I and my father and my grandfathers and their fathers have always been straight ticket Republicans.' 'Ah,' said Fletcher's friend who is himself a Republican, 'I take it that means you will vote for Senator So-and-so.' 'No,' said the driver, 'there are times when a man has to push his principles aside, and do the right thing!' There are times when principles become wrong—even when they are right.

The other is a story from Nash's play *The Rainmaker*. The Rainmaker makes love to a spinster girl in a barn at midnight. He does not really love her, but he is determined to save her from becoming spinsterised; he wants to give her back her womanhood, and to rekindle her hopes of marriage and children. Her morally outraged brother threatens to shoot him. Her father, a wise old rancher, says to his son: 'Noah,

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you're so full of what's right that you can't see what's good.' For the situationist a thing that is labelled wrong can be in certain circumstances the only right thing.

This leads us to the second of Fletcher's basic principles. Fletcher lays it down:

Love and justice are the same thing, for justice is love distributed, nothing else.

We can relate love and justice in different ways. Sometimes people think of love *versus* justice, as if love and justice were against each other; or love *or* justice, as if you had to choose one or the other, but could not have both; or love *and* justice as if the two things complemented each other. But for Fletcher love *is* justice; love and justice are one and the same thing. This is a new idea. Niebuhr, the great American teacher, used to say that the difference is that love is transcendent and love is impossible; while justice is something by which we can live in this present society. Brunner held that the difference is that love must be between two persons; whereas justice exists between groups. But Fletcher will have it that love is the same thing as justice. How does he make this out?

Accept the fact that the one absolute is love. Then love has to be worked out in the situations of life—and the working of it out is justice. Justice, it is said, consists of giving each man his due; but the one thing that is due to every man is love; therefore love and justice are the same. Justice, says Fletcher, is love distributed. When we are confronted with the claims of more than one person, of three or four people, we have to give them love, and it is justice which settles just how love is to be applied to each of them. Justice is love working out its problems.

So then unless love is to be a vague sentimental generalised feeling, there must be justice, because justice is love applied to particular cases. This is precisely what is so often the matter with love, the fact that it never gets worked out and never gets beyond being a feeling and an emotion. Some time ago—Fletcher cites the case—Sammy Davis Jr. the great enter-

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tainer became a Jew, and thereby repudiated Christianity. 'As I see it,' he said, 'the difference is that the Christian religion preaches, Love thy neighbour, and the Jewish religion preaches justice, and I think that justice is the big thing we need.' Sammy Davis is black, and he knew all about so-called Christian love. As Fletcher says, there are many people who would claim that they love black people, and who at the same time deny them simple justice. Fletcher goes on: 'To paraphrase the classic cry of protest, we can say: To hell with your love; we want justice.' This is exactly what happens when justice and love are not equated.

This means that love has always got to be thinking; love has always got to be calculating. Otherwise love is like the bride who wanted to ignore all recipes and simply let her love for her husband guide her when she was baking him a cake. Love has to think, wisely, deeply, intelligently. Fletcher goes on to illustrate the kind of problem love must face and solve.

Take the case of a nurse in a TV play called *The Bitter Choice*. She was in charge of a ward in a military hospital for wounded soldiers, and she acted with deliberate and calculated severity and even harshness to make the wounded soldiers hate her so much that the one thing they wanted was to get on their feet again and get out. Was this cruelty or was it a far more real love than the love which coddled and comforted until the men had no wish to leave the hospital at all?

Take the case of a doctor. A doctor is bound not to divulge any of the affairs of his patients. In his Hippocratic oath he promises:

Whatever in my professional practice—or even not in connection with it—I see or hear in the lives of men which ought not to be spoken of abroad, I will not divulge, deeming that on such matters we should be silent.

The doctor knows that a marriage is going to take place. He knows both parties; he knows that the girl is a virgin and is pure; he happens to know that the boy has been a libertine and has syphilis. What is the duty of love? Does the doctor keep

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his oath? If a doctor began to talk it would create a situation that would be intolerable. Or does he tell the girl? Which is love?

Suppose in a public works a personnel manager has on his staff a clerk in bad health and rendered inefficient through illness, where does *agapē*, love, concern lie? Does he keep the clerk on? Or does he think of the workers on the production-line whose output and piece rate are being cut by the inevitable delays caused by this clerk's inefficiency due to his health condition? Which is love? Which is the Christian thing to do?

In one of Sinclair Lewis's novels there is a scientist Dr Arrowsmith. He has discovered a serum which he knows to be a certain cure for a plague that regularly attacks a Caribbean island. He cannot persuade the government and the authorities to accept his claim. Plague hits the island. Arrowsmith inoculates half the inhabitants; and deliberately refuses to inoculate the other half. He knows that those inoculated will recover and he knows that those not inoculated will die. He deliberately sacrifices them to convince the government of the effectiveness of his serum, and thus to save thousands of lives in the future. Is this love? Is this the real concern?

Fletcher quotes a war incident which happened in Italy. A priest in the underground movement bombed and destroyed a Nazi freight train. The occupying Germans then began killing twenty prisoners a day, and said that they would go on doing so until the saboteur was handed over or surrendered. The priest refused to give himself up, not because he contemplated more sabotage, but because, so he said, there was no other priest available in the district, and the people needed the absolution he could give for their souls' sake. After three days a fellow resistance fighter deliberately betrayed the priest in order to stop the massacre of prisoners. Was he right? Was what looked like an act of treachery in fact an act of love?

Love has got to calculate. And it may well be that love has

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to use methods which in other circumstances would be terrible things. The argument of the situationist is that nothing is absolutely good or bad; it all depends on the situation and in certain situations even an act of treachery may be an act of love.

Let us return to the ten commandments. The situationist knows the ten commandments; he respects them; he does not merely toss them aside; but he is prepared to say that there can come times when any of the ten commandments may become a bad thing and when it may be a Christian duty to break any or all of them.

Let us look at some of the examples that Fletcher produces.

What about the commandment: You must not steal?

If a homicidal maniac had possession of a gun, surely it would be a duty and not a sin to steal it from him. Suppose a man was hellbent on murder, and he was mad. Suppose he came up to you and asked you where his intended victim was, and suppose you knew, surely it would be a duty to mislead the man rather than to give him the information you were asked for; surely a lie in this case is the right thing. Oddly enough, some ethical teachers do not think so. They think that you ought to tell the man the truth. They argue that if you do that, there will only be one sin—murder; whereas if you tell a lie and then afterwards the murderer does in spite of your lie get his victim, there will be two sins, lying and murder.

What about the commandment that you must not kill? When T. E. Lawrence was leading his Arabs two of his men had a quarrel and in the quarrel Hamed killed Salem. Lawrence knew that Salem's people would be out for vengeance, and he knew that a blood feud would arise in which both families would be involved, and that one whole family would be out to murder the other whole family. What did Lawrence do? He thought it out and then with his own hands he killed Hamed and thus stopped the blood feud. Was this right? Was this action which stopped a blood feud and probably pre-

vented scores of people from being murdered an act of murder or an act of love?

Take the case of the commandment which forbids adultery. Here Fletcher cites two illustrations, both from films. The first is from the film *Never on Sunday*. The film was originally cited by H. A. Williams in the volume entitled *Soundings*. The point he was making was that the biggest thing in life is generous self-giving, giving as God gives. And he was saying that a good deal of what we call Christian virtue is based on fear and on the refusal totally to give oneself to another. He applies this to sexual relationships. Sexual relationships are always wrong when they merely exploit the other person. But even in relationships outside marriage there can be this total self-giving. So he tells the story of the film, a Greek film. A prostitute in the Piraeus is picked up by a young sailor. When he gets to her room he is nervous and very ill at ease. She soon sees that he is not troubled by any idea of doing wrong, but that he doubts his own virility and his capacity for physical union at all. He is a prey to destructive doubt, not to moral scruples. She gives herself to him in such a way that he acquires confidence and self-respect. I quote Williams: 'He goes away a deeper, fuller person than he came in. What is seen in this is an act of charity which proclaims the glory of God. The man is equipped for life as he never was before.' Fornication or the wonderful cure of the personality of a psychologically maladjusted man; the transgression of God's law or the fulfilment of God's will; sin or love—which?

The second illustration is from an English film called *The Mark*. In it there is a man whose abnormality is that he is a danger to small girls. The abnormality springs from the fact that he is really afraid to commit himself to an adult woman. Time goes on and he meets a woman who inspires him with enough confidence to go away with her for a weekend. They occupy separate rooms at the hotel; but it is clear that until he summons up enough confidence to sleep with her he will never be delivered from that dreadful abnormality which is

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on the way to destroying himself and others. In the end—I quote—they sleep together and he is made whole. Williams goes on to say: 'Where there is healing, there is Christ, whatever the church says about fornication, and the appropriate response is: Glory to God in the Highest.' Is it God or the devil? Is it love or lust? Is it sin or love? Which? (It has been pointed out to me by experts in this field that in any event such action would by no means necessarily result in a cure.)

Are we going to be driven to this conclusion that nothing is absolutely right and that apparently still less is anything absolutely wrong, and that it all depends on the situation? Is it true that goodness and badness are not qualities which are built into actions, but things which happen to an action within a situation, that they are not properties but predicates?

Let us take one last example from Fletcher. He entitles it *Sacrificial Adultery*. As the Russian armies drove forward to meet the Americans and the British, a Mrs Bergmeier, who was out foraging for food for her children and herself, was picked up. Without being able to get a word to the children she was taken away to a prison work camp in the Ukraine. Meanwhile her husband was captured and ended up in a prison camp in Wales. Ultimately the husband was released. He came back to Germany and after weeks of search he found the children, the two youngest in a Russian detention school and the oldest hiding in a cellar. They had no idea where their mother was. They never stopped searching for her. They knew that only her return could ever knit that family together again after all that had happened to them. Meanwhile away in the Ukraine a kindly camp commandant told Mrs Bergmeier that her family were together again and that they were trying to find her. But he could not release her, for release was only given for two reasons. First, a prisoner was released if he or she was suffering from a disease with which the camp could not cope, and was in that case moved to a Russian hospital. Second, a woman was released if she be-

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came pregnant. In that case women were returned to Germany as being a liability and no use for work. Mrs Bergmeier thought it out, and finally she decided to ask a friendly Volga German camp guard to make her pregnant. He did. Her condition was medically verified. She was sent back to Germany and received with open arms by her family. She told them what she had done and they thoroughly approved. In due time the baby was born. Dietrich they called him and they loved him most of all because they felt he had done more for them than any one of the others. And for the German guard they had nothing but a grateful and affectionate memory. So what? Right or wrong? Adultery or love? Which?

Fletcher holds that, when an act of intercourse has no love in it, inside or outside marriage, it is wrong. When it has no care, no concern, no love, no commitment, nothing but the satisfaction of desire—in or outside marriage—it is wrong. Fletcher quotes a cartoon from one of the glossy magazines of sex. A dishevelled young male is holding a dishevelled young female in his arms, emerging from the blankets and saying: 'Why talk of love at a time like this?' It is better—so Fletcher says—to live together unmarried in commitment and loyalty and responsibility than to live in marriage with no love.

What, then, are we to say to all this? The situationist claims that nothing is absolutely right and nothing is absolutely wrong; it all depends on the situation. Goodness and badness are not something intrinsic, but things that happen to actions in the doing. What are we to say?

First, we can begin with something which is a criticism not so much of situation ethics as it is of Fletcher's presentation of it. The trouble is that by far the greater number of Fletcher's illustrations are drawn from the abnormal, the unusual and the extraordinary. I am not very likely to be confronted with an Arab blood feud or a war situation in Eastern Germany. It is much easier to agree that extraordinary situations need

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extraordinary measures than to think that there are no laws for ordinary everyday life.

Second—and this is a much more serious matter—situation ethics presents us with a terrifying degree of freedom. There we are in front of our situation; we have no prefabricated judgment; *you*—just *you*—have to make the right decision. Brunner has said that there is nowhere you can go—not even to the Sermon on the Mount and say: ‘Now I know what to do.’ There is no such thing as a readymade decision. Of course, we know the things that experience has discovered and teaches, but we are left alone in complete freedom to apply them.

Fletcher is quite right when he says that basically men do not want freedom. He quotes the legend of the Grand Inquisitor in Dostoevsky’s book, *The Brothers Karamazov*, which is a parable of the terrible burden of freedom. Jesus returns to this earth. The Inquisitor recognises him in the crowd, watching a religious procession, and immediately has him arrested. In the dead of night the Inquisitor secretly goes to Jesus. He tries to explain to Jesus that people do not want freedom. They want security. If you really love people, he argues, you want to make them happy, not free. Freedom is danger, openness. They want law, not responsibility; they want the neurotic comfort of rules, not the spiritual open places of decision-making. Christ, he says, must not start again all that old business about freedom and grace and commitment and responsibility. Let things be; let the church with its laws handle them. Will Jesus please go away.

There is no doubt that most people do not want to be continually confronted with the necessity of making decisions. They would rather have their decisions made for them; they would rather apply laws and principles to the situation. And it may well be that people are right.

The right use of freedom in our relationships with others depends on love. If love is perfect, then freedom is a good thing. But if there is no love, or if there is not enough love, then freedom can become licence, freedom can become selfish-

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ness and even cruelty. If you leave a man without love to do as he likes, then the damage that he can do is incalculable. It may well be that neither I nor any other person is at this stage ready for this lonely freedom which the situationist offers us. The situationists have a kind of phobia of law, but the lesson of experience is that we need a certain amount of law, being the kind of people we are.

Aristotle had his doctrine of habituation. He argued that there is a time when it is not possible to give a child freedom. It is not that the child is bad. It is that at the stage of childhood the child has not the wisdom or the experience, the ability to take the long view and to calculate consequences, which freedom demands. We have, therefore, at this stage to submit the child to discipline, to law, to control, so that the child develops the habit of doing the right thing. You only learn to play the flute by practising playing the flute according to the laws of flute-playing. You only learn to be good by practising goodness under the discipline—and sometimes even the punishment—of the laws of goodness. There is a stage at which the child has to be habituated and even compelled into goodness. Only after he has reached the stage of habituation is it possible to trust him with freedom.

Take the case of a game. A game would become a chaos if there were no rules. It may be that in some future sporting Utopia it will be possible for Celtic to play Rangers, or for Arsenal to play Manchester United, without a referee, but that stage has not yet come! The reign of law is still needed.

If all men were saints, then situation ethics would be the perfect ethics. John A. T. Robinson has called situation ethics 'the only ethic for man come of age'. This is probably true—but man has not yet come of age. Man, therefore, still needs the crutch and the protection of law. If we insist that in every situation every man must make his own decision, then first of all we must make man morally and lovingly fit to take that decision; otherwise we need the compulsion of law to make him do it. And the fact is that few of us have reached that

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stage; we still need law, we still need to be told what to do, and sometimes even to be compelled to do it.

Thirdly, the situationist points out again and again that in his view there is nothing which is intrinsically good or bad. Goodness and badness, as he puts it, are not properties, they are predicates. They are not inbuilt qualities; they happen to a thing in a given situation. I am very doubtful if the distinction between goodness and badness can be so disposed of.

We may grant that Fletcher has shown that there can be situations in which a thing generally regarded as wrong could be the right thing to do. But that does not prove that it is good. There is a close analogy here with dangerous drugs which a doctor may have to prescribe. When he describes these drugs, he does not pretend that they are not poisons. Poisons they are and poisons they remain. They have to be kept in a special cupboard and in a special container. They can only be used under the strictest safeguards. There are indeed occasions when the doctor will not prescribe them at all, because he is not certain that the patient has the strength of mind not to misuse them. These things have a kind of in-built red light, and that red light is not taken away, for the dangerous drug is never called anything else but a poison. So there are certain things, which on rare occasions may be used to serve a good end. But the red light should not be removed by calling them good things. They remain highly dangerous, and they should never be called, or regarded as, anything else.

I should personally go further. I think that there are things which can in no circumstances be right. To take but two examples, to start a young person in the name of experience on the experiments which can lead to drug addiction can never be right. To break up a family relationship in the name of so-called love can never be right. The right and the wrong are not so easily eliminated.

Fourth, the situationist is liable to forget two things.

(a) He is liable to forget what psychological aids can do for abnormal conditions. Fletcher took instances of cures being

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effected by what the Christian would simply regard as committing adultery. He cites the instance of the man who was a danger to small girls being cured by intercourse with a mature woman. It is to be noted that such an action would by no means guarantee a cure for a man in such a condition anyway. He quotes the play *The Rainmaker*, in which the Rainmaker deliberately seduces the farmer's daughter to save her, as he claimed, from being 'spinstersed'. This completely leaves out of account the very real possibility of sublimation. 'Sublimation', Dr Hadfield says, 'is the process by which instinctive emotions are diverted from their original ends and redirected to purposes satisfying the individual and of value to the community.' There is no need for repression with all its attendant evils. It is a perfectly normal thing for the force and the power and the surge that can flow through one instinct to be sublimated in the service of another. A man or a woman may have no outlet for the instinct of sex, and time and again that force of sex can be canalised into other channels and sublimated in the service of other things. There is many an unmarried woman who is very, very far from being a 'frustrated spinster' because she has found fullness of life in some other outlet. There is many a man who has had to do without marriage and who has sublimated his sex drive into other achievements and other service. One may speculate whether John Wesley would have been such a dynamic founder of a new church if he had been happily married. He poured into the church what he might have kept within the limits of a home. There are cures and compensations for abnormal conditions which do not involve breaking what we have learned to call the moral law—and in point of fact these cures are far more effective.

(b) And above all, the situationist is liable to forget quite simply the grace of God. Unless Christianity is a total swindle, then it must make good its claim to make bad men good. To encourage towards permissiveness is no real cure; to direct to the grace of God is. When John Wesley entered on open-air

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preaching, and when he saw what the grace of God could do, he wrote to his brother Samuel:

I will show you him who was a lion till then, and is now a lamb; him that was a drunkard, and is now exemplarily sober; the whoremonger that was, who now abhors the very garment spotted with the flesh.

These, said Wesley, are the arguments for, and the proofs of, the power of the grace of God—and that power is still as strong as ever.

The situationists have taught us that we must indeed be flexible; that we must indeed look on the problems of others, not with self-righteousness, but with sympathy; that we must not be legalists; but in spite of that we do well still to remember that there are laws which we break at our peril.

In the background of our discussion of situation ethics there has always been the idea of *law*. Sometimes, in fact, it has almost seemed that the idea of law and the idea of situation ethics formed a contrast and even an antithesis. I did say at one point that the situationists seemed to have a phobia of law. Before we leave this subject, it will therefore be well to look at the conception of law in general, so that, if we do discard law, we may see what we are discarding. What then is law, and what does law do, or what is law intended to do, for society?

*i.* It may be said to begin with that law is the distillation of experience. Law seeks to ensure that those courses of action which experience has shown to be beneficial are followed, and to eliminate those courses of action which experience has proved to be harmful and injurious to society and its members. Law is thus a summary of society's experience of life and living. Therefore, to discard law is to discard experience. This is not by any means a full description of law, for it will clearly make a very great difference which courses of action any particular society has decided to be good or bad.

*ii.* This may be put in another way. It has been said that 'law is the rule of reason applied to existing circumstances'.

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Fletcher has said that law is that which seeks to ensure that people will live life as a reasonable man would live it. Again, it has been said that 'law translates morals (value judgments) into social disciplines' (J. Fletcher, *Moral Responsibility*, p. 94). A society comes to a conclusion what a reasonable life is. It comes to a conclusion as to what it will take as its working values and as to what is dangerous to these values. It then frames a code of laws the intention of which is to ensure that this approved way of life and these chosen values can be followed.

*iii.* One of the main functions of law is definition. It defines what is to be punished and what is to be approved. It defines what is a crime and it lays down the point at which restraint will be exercised on the man who refuses to conform. There is a sense in which law not only defines but creates a crime. For instance, for long polygamy was perfectly legal as, for example, in patriarchal times in the Old Testament; then monogamy becomes the law, and that which was once legal becomes a crime. It is law's function to define that which at any time society forbids.

*iv.* Law has, or at least can have, two opposite effects. First, by defining the wrong things the law intends to dissuade people from doing them. It may either dissuade by making people afraid of the consequences of doing the wrong thing, or by creating in them a sense of responsibility for maintaining the society of which they are a part.

But, second, law can have an unfortunate effect. The very forbidding of a thing can create a desire for that thing, as Paul so vividly shows in Romans 7: 'If it had not been for the law, I should not have known sin. I should not have known what it is to covet, if the law had not said, "You shall not covet".' The thing is no sooner forbidden than it becomes attractive. This was what the boy Augustine discovered about the stolen pears:

There was a pear tree near our vineyard, laden with fruit. One stormy night we rascally youths set out to rob it and

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carry our spoils away. We took off a huge load of pears—not to feast upon ourselves, but to throw them to the pigs, though we ate just enough to have the pleasure of forbidden fruit. They were nice pears, but it was not the pears that my wretched soul coveted, for I had plenty better at home. I picked them simply in order to become a thief. The only feast I got was a feast of iniquity, and that I enjoyed to the full. What was it that I loved in that theft? Was it the pleasure of acting against the law, in order that I, a prisoner under rules, might have a maimed counterfeit of freedom by doing what was forbidden? . . . The desire to steal was awakened simply by the prohibition of stealing.

The sweetness of the pears lay in the fact that they were stolen pears. In the days before consenting homosexuality was legalised, Westermarck quoted a homosexual as saying that 'he would be very sorry to see the English law changed, as the practice would then lose its charm' (E. Westermarck, *Christianity and Morals*, p. 374; qtd. J. Fletcher, *Moral Responsibility*, p. 103).

Law is a double-edged force. Its prohibitions may dissuade, but they may encourage.

v. Law is for the protection of society. Law is meant for the control of the man who would injure society. Law is ordinary people uniting and banding themselves together to control the strong, bad man. A number of small boys may make common cause against the bully, against whom singly they would be helpless; so they combine to control him. So law is a defensive and protective alliance by the mass of ordinary people to control and restrain the man who for his own ends would injure or exploit or dominate society. Law exists for the protection of the ordinary citizen.

vi. I have left to the end one very important view of law. It is a view which is largely, but not quite universally, accepted. It is the view that it is always public morals with which the law is concerned, and never private morals, unless these private morals are an offence to public decency or a threat to public

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welfare. In other words, there are many things which are immoral, but which are not illegal. Or, to put it in another way, there is a wide difference between *sin*, with which the law is not concerned, and *crime*, with which the law is deeply concerned. To take the case of sexual morality, so long as a sexual act is by common consent between two adults, so long as it cannot be held to have hurt or injured either, and so long as it is carried on in a way that does not offend public decency or interfere with public order, then it is not the concern of the law. This has always been the law in regard to prostitution in this country. It has never been illegal to have sexual intercourse with a prostitute. What is illegal is solicitation, which is an offence against public order. Very recently, the situation has become the same in regard to homosexual practices, which until then were illegal as such.

This point of view is stated in the words of the Church of England Moral Welfare Council:

It is not the function of the State and the law to constitute themselves guardians of private morality, and thus to deal with sin as such belongs to the province of the church. On the other hand, it is the duty of the State to punish crimes, and it may properly take cognizance of, and define as criminal, those sins which also constitute offences against public morality.

Similarly, the Wolfenden Report says:

It should not be the duty of the law to concern itself with immorality as such . . . It should confine itself to these activities which offend against public order and decency, or expose the ordinary citizens to what is offensive and injurious.

On this view the law has nothing to do with a man's private morals, but everything to do with his public conduct. It is not only what we might call public pronouncements which take this point of view. There is a letter from C. S. Lewis to Mrs Edward A. Allen, written in 1958, which takes exactly the same view:

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I quite agree with the Archbishop that no *sin*, simply as such, should be made a *crime*. Who the deuce are our rulers to enforce their opinions about sin on us?—a lot of professional politicians, often venal time-servers, whose opinion on a moral problem in one's own life we should attach very little value to. Of course, many acts which are sins against God are also injuries to our fellow-citizens, and must on that account, but only on that account, be made crimes. But of all the sins in the world I should have thought that homosexuality was the one that least concerns the State. We hear too much of the State. Government is at its best a necessary evil. Let's keep it in its place (*Letters of C. S. Lewis*, ed. W. H. Lewis, p. 281).

So the official and the personal point of view combine to hold that private morality is no affair of the State or of the law, unless it has public effects. For the moment we shall leave this, and we shall very soon return to it.

The trouble about this whole question is that it presents us with a series of tensions, which are built into the problem of the connection between morality and law.

*i. There is the tension between freedom and law.* Here the situationists are very definite. Fletcher writes: 'Nothing we do is truly moral unless we are free to do otherwise. We must be free to decide what to do before any of our actions even begin to be moral. No discipline but self-discipline has any moral significance. This applies to sex, politics or anything else. A moral act is a free act, done because we want to . . . Morality is meaningless apart from freedom' (J. Fletcher, *Moral Responsibility*, p. 136).

On the face of it, this is true. But—and it is a very big but—who of us is, in fact, free? Our heredity, our environment, our upbringing, the traditions we have inherited, our temperament, the cumulative effect of our previous decisions all have an effect upon us. Again it is of the first importance that freedom does not only mean that a man is free to do a thing; it must also mean that he is free *not* to do it—and that is exactly where

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our past comes in. Most of us have made ourselves such that we are not free. The whole trouble about freedom is that for many of us it is an illusion.

If a man was really free, then we might agree that he must be given an unrestricted choice; but in the human situation, as it is, man, as he is, cannot do without law to persuade and even to compel him to do what is right. This is not to plead for a régime of law and it is not to reject a régime of freedom, for here we are certainly confronted not with an either/or but with a both/and. Freedom and law go hand in hand, and it may be the truest proposition of all that it is by the influence of law that people come in the end to be really free. And, to be fair, this is precisely where Fletcher comes down, for in the end he writes: 'In the language of classical biblical theology in the West, grace reinforces law and sometimes even bypasses it, but it does not abolish it, nor can it replace it, until sin itself is no more' (J. Fletcher, *Moral Responsibility*, p. 94).

*ii. There is the tension between immorality and illegality.* We have already made the point that there are many things which are immoral but which are not illegal. For instance, to take a crude example, prostitution is immoral, but it is not illegal. We have seen that the common, one might say the orthodox, view is that the law has nothing to do with private morals, but only with public morality. Not everyone agrees with that. So prominent a jurist as Lord Devlin did not agree with the Wolfenden Report. He said that it was wrong to talk of 'private morality' at all. He holds that 'the suppression of vice is as much the law's business as the suppression of subversive activities'. There is no doubt that this is a very difficult doctrine, if for no other reason than that it would be hard to get people to agree as to what vice in fact is. Fletcher quotes a section from the Sycamore Report from America: 'Let Christians face squarely the fact that what the body of authoritative Christian thought passed off as God's revealed truth was in fact human error with a Pauline flavour. Let us remember this fact every time we hear a solemn assertion

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about this or that being God's will or the Christian ethic.' The difficulty would be to define vice.

But suppose we do accept the Christian ethic as it is in the teaching of Jesus; suppose we accept it ourselves and suppose that we are convinced that it is the best prescription for the life of society. Are we then quite happy if the law progressively makes what we think wrong easier? Are we quite happy about the legalising of consenting homosexuality? Are we quite happy about the easing of divorce regulations? Would we be quite happy to find it enacted that unmarried students living together and begetting a child should then become eligible for the same grants as married people? The trouble is that once a thing is not forbidden, it may be felt not only to be permitted but to be encouraged. It could be argued that what the law permits, it approves. Take the case of the university-student relationship. No longer is the university *in loco parentis*, in the place of the parent; paternalism is out. But take especially the case of the residential universities. It is argued that in his rooms the student has the right to do as he likes, to live his own life, and that the university has no right to interfere with his 'private' life. But what if he makes his rooms a centre of what some people would still call seduction? What if he does have a girl in bed with him all night? What if he does make his rooms a centre for experiment in the taking of drugs? Is the university in such a case to be strictly neutral? Must the university stand by and see at least some students emerge from its life intellectually wiser and morally worse? Of course, if we say we no longer accept any Christian standards, then the question does not arise. But this we have not yet said, and so long as these standards are accepted, then sheer and absolute permissiveness is not possible. It is here, in fact, that the public aspect of private morality comes in. A man can live his own life, but when he begins deliberately to alter the lives of others, then a real problem arises, on which we cannot simply turn our backs, and in which there is a place for law as the encourager of morality.

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*iii. There is the tension between the individual and the community.* This is the tension between individualism and solidarity. In the early days of Judaism there was such solidarity that the individual as an individual had hardly any independent existence. When Achan's sin was discovered his whole family was stoned along with him (Joshua 7). They say that to this day if you ask a man in a primitive society what his name is, he will begin by telling you, not his name, but his tribe. But in our time it is the individual who is stressed. Self-development, self-expression, self-realisation have become the watch-words of modern society. Too much law means the obliteration of the individual; too much individualism means the weakening of law. It so happens that today we are living in a time of individualism, but a man will do well to remember that it can never be right to develop himself at the expense of others.

We may well come to the conclusion that one of the great problems of the present situation is to adjust the delicate balance between freedom and law, and between the individual and society. And the only solution is that a man should discover what it means to love his neighbour as himself.