

BOOK REVIEW: ALEX DEAGON, *FROM VIOLENCE TO PEACE: THEOLOGY, LAW AND COMMUNITY* (HART PUBLISHING, 2017)

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Dr Alex Deagon is a Senior Lecturer in the Faculty of Law at Queensland University of Technology, Brisbane. In his recent book, 'From Violence to Peace: Theology, Law and Community', an important contribution to the literature on jurisprudence and theology is provided. The book contends that the way to restore a legal community of peace is to return to a Christian theology which is informed by Trinitarian thinking grounded in the notion of a community of law as well as the notion of unity in diversity.

Ever since the coming of the Enlightenment, western elites have commonly adhered to a variety of secular faiths. In his book, Dr Alex Deagon explains how the substantial departure of the modern law from its theological origins has generated further antagonism and alienation, and, more broadly, violence. Dr Deagon advocates for an urgent return to a theology that not only reconciles faith with reason but that is also informed by the notion of unity in diversity. According to him, reconciling reason with the revelation of a benevolent Creator brings about the sort of "law of love" (to love your neighbour as yourself) that enables the legal community not just to better fulfil its professional obligations but even to go beyond merely what is required by the positive law. Also noted by him is the historical evidence that an authentic Christian faith is neither a 'blind faith' nor merely an exercise in intellectual vanity. Instead, the 'true faith' achieved by Christianity is about trusting in a benevolent God who is the ultimate source of all love and justice; an important premise that gave birth to modern constitutionalism, but that secular reason so vehemently rejects.

The book is an attempt by Dr Deagon to reconcile faith and reason, thus allowing a 'peaceful persuasion by the revelation of God's perfect being through the Trinity and Incarnation, which models and enables the peaceful coexistence of difference through self-sacrificing love'.¹ To shift the culture of law from violence to peace, Dr Deagon argues that a secular foundation for law should be replaced by the Christian idea of 'law of love'. According to him, there is a 'direct connection' between ontological violence and the disruption of peace

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¹ Alex Deagon, *From Violence to Peace: Theology, Law and Community* (Hart Publishing, 2017) 1.

through the exertion of secular power to regulate the community. Fundamentally, ‘the modern legal system creates boundaries which distinguish people rather than allowing mutual giving relationships’.² These boundaries separate and exclude people from social harmonious relationships, disrupting communal relationships. Drawing boundaries and dividing people into various categories is a form of violence that separates individuals; although ‘this is the characteristic process claimed of [secular] law’.³ There is here a clear opposition to the dualistic violence of the radical left. Dr Deagon does not explicitly say so but his view of the ‘law of love’ does not support dividing people into categories that are inimical of one another, such as ‘included versus the excluded’, thus creating ‘an ever-renewed conflict’ through which the traditional modes of violence can be justified and perpetuated.

However, in Christianity, writes Dr Deagon, there is no support for social exclusion but rather a Christian Trinitarian ontology which reconciles the one and the many, promoting peace through the unity of individuals in the community.⁴ Understood as a set of principles which govern individual relationships within a community, such an ideal of the legal community involves, according to Dr Deagon, ‘the law of love’ which instructs us to love our neighbours as ourselves. This is a model of conduct based on Christian theology which, in Dr Deagon’s opinion, ‘allows a harmonious relationship between the individual and the society, one which avoids the violence of antagonism and alienation, and provides for a peaceful legal community which privileges one’s neighbour as an individual and therefore strengthens the community as a composite of unique individuals’.⁵

But Dr Deagon also reminds us that through a series of historically contingent philosophical shifts, the idea of the ‘secular’ became ‘naturalised as the undergirding presupposition of modern jurisprudence’.⁶ This makes law rest on a ‘foundation which seeks to enforce peace by violence’, he says. It is an idea premised on law having an ‘interest in a monopoly of violence’ that preserves itself and prohibits any existence of violence outside the legal system ordained by the secular state.⁷ In the context of such an important discussion, Dr Deagon argues that Duns Scotus, one of the most important philosopher-theologians of the High Middle Ages, would have inaugurated a ‘theologically distorted notion of purely natural

² Ibid 3.

³ Ibid 6.

⁴ Ibid 7.

⁵ Ibid 9.

⁶ Ibid 92.

⁷ Ibid 106.

knowledge, leading to a secular realm and reason'.⁸ Indeed, Dr Deagon informs that, for Scotus, 'knowledge of God and His nature can come apart from God's direct revelation. Instead it comes through pure human reason'.⁹ Contrary to Thomism, this medieval thinker asserted that reason and revelation are separate areas of knowledge, so that 'there is no region of overlap containing truths knowable both by reason and by revelation'.¹⁰

If the statement is correct, and I do not doubt it is, then it is no exaggeration to say that the British secular-empiricist philosophers from Hobbes to Austin owe their conceptualisations of the law to Scotus directly or indirectly.¹¹ With Thomas Hobbes, argues Dr Deagon, one finds a 'political theory separated itself from theology. Hobbes's 'natural law' articulates a series of immanent rules based on purely philosophical reflections on the necessity of individual self-preservation'.¹² Hence such a 'natural law' indeed is actually positive law. The intrinsic link between the identity of the thought structure provided in Hobbes's *Leviathan* and the theory of sovereign will of modern positivism (the will of the absolute sovereign is law, because no higher norm stands above him) is here quite evident.¹³

Dr Deagon explains that Hobbesian legal ontology is fundamentally characterised by a 'visible antagonism' or a 'clash of wills' whereby the pure sovereign power emerges as the founding presupposition for the entire legal system.¹⁴ 'With Hobbes', he explains, 'political theory separated itself from theology. Unlike Thomist natural law, which is derived from transcendental equity surpassing human conventions, Hobbesian natural law articulates equity as a series of immanent rules based on purely philosophical reflections on the necessity of individual self-preservation'.¹⁵ That being so, it is not difficult to understand why Hobbes defined law solely in terms of the command of the sovereign, as the entity which everyone has been obliged to obey.¹⁶

Dr Deagon is correct to assume that the basic goal of Hobbesian theory is to increase the power of the sovereign via the governmental monopoly of violence. In such a theory the civil ruler (or 'political sovereign') is certainly not subject to any limitations of the law. On the

⁸ Ibid 92.

⁹ Ibid.

¹⁰ Wallace I Matson, *A New History of Philosophy: Ancient and Medieval* (Thomson Learning, 1988) 246.

¹¹ Julius R Weinberg, *A Short History of Medieval Philosophy* (Princeton University Press, 1967) 265.

¹² Deagon, above n 1, 98.

¹³ Heinrich A Rommen, *The Natural Law: A Study in Legal and Social History and Philosophy* (Liberty Fund, 1988) 53.

¹⁴ Deagon, above n 1, 97.

¹⁵ Ibid 98.

¹⁶ Ibid 100.

contrary, the sovereign has been granted unlimited power and also relief from any form of legal obligation. Such a legal-institutional arrangement ultimately allows the sovereign to obtain the final say on all matters pertaining law, justice and morality. As Hobbes put it: ‘Where there is no common power, there is no law: where no law, no injustice. Force and fraud are in war the two cardinal virtues.’¹⁷ In other words, Hobbes believed that the ideal of justice, including in its more practical legal implications, must be entirely left to the discretion of the sovereign. Hence his famous/notorious comment that ‘they that have sovereign power may commit iniquity but not injustice, or injury in the proper signification’.¹⁸ As noted by Mortimer Sellers, ‘Thomas Hobbes denied any distinction between ‘right and wrong’, ‘good and evil’, ‘justice and injustice’, beyond our separate and conflicting desires’.¹⁹ According to Hobbesian theory, definitions of law, justice, right, and wrong, are entirely determined through ‘the arbitrary commands of sovereign power’.²⁰

Dr Deagon reminds us that the Hobbesian view of law as ‘arbitrary command’ is akin to John Austin’s command theory and articulation of a positivist jurisprudence that entirely excluded God from law. This eighteenth-century English jurist famously opined that ‘the laws of God’ are not ‘within the province of jurisprudence’.²¹ Austin’s command theory proposed a ‘scientific’ presentation of law that expressed little or no concern to the substantive nature of the law, or the intrinsic goodness or badness of the legal system to be objectively analysed.²² Hence Austin’s most well-known statement: ‘The existence of law is one thing; its merit or demerit is another; ... A law, which actually exists, is a law, though we happen to dislike it, or though it varies from the text. By which we regulate our approbation and disapprobation’.²³

The sovereign in Austin’s theory is the society’s superior authority whose commands everyone habitually obeys, although the sovereign himself is not in the habit of obeying anybody else. From such a perspective, the sovereign’s power is absolute or unlimited. Being absolute and indivisible, the judicial and executive functions of government are simply two different ways in which the command of the sovereign is properly executed. Accordingly,

¹⁷ Thomas Hobbes, *Leviathan* (Penguin Books, 2017) Ch XIII.

¹⁸ Thomas Hobbes, *De Cive* [1642] (Penguin Books, 2017) ch 14, para 8.

¹⁹ Mortimer Sellers, ‘An Introduction to the Rule of Law in Comparative Perspective’, in Mortimer Sellers and Tadeusz Tomaszewski (eds), *The Rule of Law in Comparative Perspective* (Springer, 2010) 2–3.

²⁰ *Ibid.*

²¹ Deagon, above n 1, 100.

²² J M Kelly, *Western Legal Theory* (Oxford University Press, 1992) 315.

²³ John Austin, *The Province of Jurisprudence Determined* (Cambridge University Press, 1995) 157.

any 'law' which is not a direct product of the sovereign will is not law properly so called, but 'law' only by metaphor or analogy. Positive law thus becomes the exclusive province of lawyers, and the speculation about God's law a discussion for the theologians only. 'To say that human laws which conflict with the Divine law are not binding, that is to say, are not laws, is to talk stark nonsense', Austin stated.²⁴ Dr Deagon concludes his critical analysis of such a jurisprudential approach with this insightful remark, indeed one of the highlights of his book:

The very term 'positivism' itself connotes the violent positing of law, a use of force to establish and preserve the law, as well as to compel obedience to it. Integral to Austin's definition of law is this notion of sanction for disobedience, namely that obedience by which the legal subject is (en)forced through inflicted evil and pain. Furthermore, this violence is integrated with the use of theological language, such as 'sovereign' and 'command', for sovereign is an attributably traditionally ascribed to God, as it is (particularly in the Duns Scotus/Hobbesian framework for Austin). God who is a willing, superior being and has the power to enforce commands through the violent threat of punishments for disobedience. Austin explicitly admits this much when he notes that God is the ultimate sovereign. Hence, not only is Austin's theory of law characterised by violence, but his violence is linked to a distorted (pagan) theology.²⁵

Rather than a legal-secular-positivist community premised upon and regulated by violence, Dr Deagon argues for a jurisprudential approach based on a theology which promotes a 'community of peace' through the 'law of love'. The peace of Trinitarian theology, according to him, is found in the fact that the Triune God (existing in a divine loving relation of Father, Son and the Holy Spirit), consequently exists in a form where disengaged individual agency is effectively impossible. The will of God is therefore realised through this 'community of love' in which the divine members of the Trinity ensure the non-arbitrary character of the creation. Hence God is not just a singular ruler who capriciously imposes his own personal will upon creation, but a community of love and perfect relationship. Such an ideal of the Triune God Dr Deagon presents as the moral basis for a legal community in which to rule is actually to serve (the idea of 'servant-leadership'), and of people who are treated with dignity and so not perceived as merely individual contracting entities regulated by means of legal violence. The best example of servant-leadership, according to him, comes directly from

²⁴ Ibid 158.

²⁵ Deagon, above n 1, 100.

Jesus Christ. Arguably, the authority of Christ is established primarily by love and in complete absence of arbitrary power. As Dr Deagon explains,

Christ refuses to exert the power he possesses, instead resisting violent rule and establishing peace through service and the sacrifice of self; this in itself is far more powerful, and through Christ we can envisage the possibility of a similarly loving community. In this community to rule is to serve, and people are not merely individual contracting entities regulated by legal violence, but redeemed people who are part of a community operating under grace beyond legalism and characterised by mutual love, empowered and demonstrated through Christ the King, who gave himself for us.²⁶

To conclude, 'From Violence to Peace' is a remarkable book that can be read not only by people who have been trained in the rigorous discussion of legal philosophy, but also by everyone who possess a general interest in theology, philosophy and the history of ideas. This is an excellent and timely book, and I deeply recommend it. Of course, I also congratulate its author, Dr Alex Deagon, on an excellent book.

²⁶ Ibid 183.