

# The Social Implications of Moral Law : Charles Hodge’s Perspective on the Nature of Justice

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An active Presbyterian and long-time professor at Princeton Theological Seminary, Charles Hodge was one of the most influential Christian leaders of nineteenth century America. Chief architect of the movement known as the *Princeton Theology*, Hodge taught theology and biblical studies at Princeton for over fifty years, his theological and philosophical perspectives remaining remarkably consistent over those years. Theologically, Hodge spoke from the position of the scholastic Calvinism of Francis Turretin. Philosophically, he was influenced primarily by the thought of Francis Bacon and the Scottish Common Sense Realism of Thomas Reid.<sup>1</sup>

It is important to note, however, that Hodge and the Princeton theologians drew upon the Scottish philosophy more for methodology than for content, combining this methodology with distinctively Christian presuppositions, and verifying these presuppositions via the Scottish appeal to “intuition”. In the Scottish tendency to see physical facts as parallel to the facts of theology and consciousness, Hodge found a helpful model for

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<sup>1</sup> For a comprehensive treatment of the philosophical foundations of Hodge’s thought, cf. Peter Hicks, *The Philosophy of Charles Hodge—A 19<sup>th</sup> Century Evangelical Approach to Reason, Knowledge and Truth* (Lewiston, New York : The Edwin Mellen Press, 1997). For a short introduction to these theological and philosophical influences on Hodge’s thought, cf. Jonathan Wells, *Charles Hodge’s Critique of Darwinism—An Historical-Critical Analysis of Concepts Basic to the 19<sup>th</sup> Century Debate* (Lewiston, New York : The Edwin Mellen Press, 1988) pp. 21-48.

understanding the relationship between natural laws (e.g., gravity) and moral laws (e.g., the Decalogue), and between the laws of God and the laws of men. As he developed his understanding of the role of moral law in society-at-large, guided methodologically by the Scottish epistemology, Hodge wove together four major themes, viz., God’s providential governance, God as the ground of moral law, the mediate sources of moral law, and the implementation of moral law in society. We shall treat these in order.

### **GOD’S PROVIDENTIAL RULE OVER HUMAN SOCIETY**

The doctrine of providence has traditionally provided the theological background behind discussions of God’s sovereign rule over and through the activities of nations and individuals in the fallen order. Faithful to historic Reformed orthodoxy as mediated through the Westminster Confession, Hodge recognized a crucial systematic distinction between the natural, providential government of God and the supernatural operations of God’s grace : “In the one [the natural] God acts according to uniform laws, or by his *potentia ordinata*, in the other [the supernatural], according to the good pleasure of his will, or by his *potentia absoluta*.”<sup>2</sup> The distinction is an important one, especially for polemical theology :

This distinction between nature and grace, between the providential efficiency of God and the workings of his Spirit in the hearts of his people is one of the most important in all theology. It makes all the difference between Augustinianism and Pelagianism, between Rationalism and supernatural, evangelical religion.<sup>3</sup>

Within the doctrine of providence, Hodge utilized the traditional categories of *preservation*, *concurrence* (Hodge uses the Latin term *concursum*) and *government*. For our present purposes, we shall focus of the category

<sup>2</sup> Charles Hodge, *Systematic Theology, Volume 1*, p. 614. In *Systematic Theology*, 3 vols. (New York : Charles Scribner and Company, 1871 (vols. 1-2) ; Scribner, Armstrong, and Company, 1872 (vol. 3) ; reprint ed., Grand Rapids, Michigan : Wm. B. Eerdmans Publishing Company, 1977). Hereinafter cited as ST I, ST II, and ST III.

<sup>3</sup> *Ibid.*, p. 615.

of divine government, following an abbreviated discussion of the topic of divine preservation.

By “divine preservation,” Hodge meant “that omnipotent energy of God by which all created things, animate and inanimate, are upheld in existence, with all the properties and powers with which He has endowed them.”<sup>4</sup> Though the fact of preservation is universally revealed, the *mode* of preservation remains a profound mystery: “The mode in which his [God’s] efficiency is exerted, further than that it is consistent with the nature of the creatures themselves and with the holiness and goodness of God, is unrevealed and inscrutable.”<sup>5</sup>

By the term divine providential “government,” Hodge referred basically to the idea that God’s rule and care covers all creatures and everything they do. The following statement, though offered by Hodge in a summary of the general doctrine of providence, speaks mainly to the subject of God’s providential government :

This doctrine admits the reality and efficiency of second causes, both material and mental, but denies that they are independent of the Creator and Preserver of the universe. It teaches that an infinitely wise, good, and powerful God is everywhere present, controlling all events great and small, necessary and free, in a way perfectly consistent with the nature of his creatures and with his own infinite excellence, so that everything is ordered by his will and is made to subserve his wise and benevolent designs.<sup>6</sup>

God’s ultimate design for the universe includes various subordinate ends which contribute to the ultimate end. God’s control ultimately extends over the sequence of all events, making the accomplishment of God’s purposes certain. The divine government is universal, extending over all creatures and their actions, to the extent that both necessity and chance

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<sup>4</sup> Ibid., p. 581.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

are excluded from the universe. Divine government is *powerful* in that it makes it certain that God's designs are accomplished ; it is *wise*, in that the divine design is consistent with God's infinite wisdom, the divine means are wisely adapted to their accomplished objectives, and divine control is suited to the nature of the creatures that are subject to that control. Finally, God's providence is *holy*. Nothing of the ends, means, or agency of God's providential government is inconsistent with God's infinite holiness, or is not demanded by the highest moral excellence.

The proof of providence comes first of all from the Scriptures. Universal providence is not only consistent with the very nature of God as revealed in the Bible, it is *demande*d by it. Even the divine promises and threatenings recorded in Scripture assume the exercise of God's universal, providential control over all creatures and their actions. Nevertheless, once again Hodge insists that the intuitive convictions of all people also testify to the reality of universal providence ; universal providence is verified within our religious nature as an "instinctive and necessary belief :"<sup>7</sup>

It may be, and doubtless is true that we owe to the Scriptures most of our knowledge of the moral law, but this does not impair our confidence in the authority and truth of our views of duty, and of moral obligation. These religious feelings have a self-evidencing as well as an informing light. We know that they are right, and we know that the doctrine which accords with them and produces them, must be true. It is, therefore, a valid argument for the doctrine of a universal providence that it meets the demands of our moral and religious nature.<sup>8</sup>

The extent of God's providence is not only broad, it is deep. God's providential care extends over all operations within the natural and animal

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<sup>7</sup> Ibid., p. 584. From the standpoint of practical religion, Hodge points out that the denial of providence is tantamount to atheism, for it denies that God is in the world.

<sup>8</sup> Ibid., p. 585.

worlds, and more importantly from an ethical perspective, God's exercises absolute and providential control over nations and individual people :

God uses the nations with the absolute control that a man uses a rod or a staff. [sic] They are in his hands, and He employs them to accomplish his purposes. He breaks them in pieces as a potter's vessel, or He exalts them to greatness, according to his good pleasure.<sup>9</sup>

The lives of all people are under God's governance : "The circumstances of every man's birth, life, and death, are ordered by God".<sup>10</sup>

The idea of a universal providence involving divine control over all humanity was certainly not new with Hodge. It did, however, call to issue the need to correlate certainty with free agency, a noble philosophical and theological endeavor with a rich polemical history. Like other Reformed theologians before him, Hodge sought to preserve the certainty inherent within God's universal providential governance, without relinquishing free agency. His argument was not primarily a logical attempt to reconcile the paradoxical features of the two concepts, but rather a declarative effort to maintain both ideas within the scriptural system, on the rationale that both are attested to by God. Hodge contended that certainty and free agency are not obviously contradictory, for Scripture and the consciousness testify to the existence of both ; both are God-given truths. In one discussion dealing with "God's providential government of rational creatures," Hodge remarks :

Mind is essentially active. It originates its own acts. This is a matter of consciousness. It is essential to liberty and responsibility. It is clearly the doctrine of the Bible which calls on men to act, and regards them as the authors of their own acts.<sup>11</sup>

A partial solution to the dilemma is suggested in Hodge's discussion of

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<sup>9</sup> Ibid., p. 588.

<sup>10</sup> Ibid.

<sup>11</sup> Hodge, STI, p. 614.

Romans 2.4, which, Hodge argues, speaks of “the moral tendencies of *providential* [emphasis mine] dispensations.”<sup>12</sup> By acting on the human will, God can accomplish his purposes without coercion, or force. Hodge’s Scottish understanding of the composition of the human consciousness allowed him to suggest that the will can be influenced apart from any coercion which would abrogate moral responsibility :

Does not God work in us to *will*, as well as to do. Surely there is such a thing as being made willing without being forced. There is a middle ground between moral suasion and coercion.<sup>13</sup> God supersedes the necessity of forcing, by making us willing in the day of his power. The apostle, however, is not here speaking of gracious influence, but of the moral tendencies of providential dispensations.<sup>14</sup>

Since the exercise of God’s providential will over us is always in accord with our nature, we can be sure that our free agency will never be violated :

The providential government of God over free agents is exercised as much in accordance with the laws of mind, as his providential government over the material world is in accordance with the established laws of matter. Both belong to the *potentia ordinata*, or ordered efficiency of God.<sup>15</sup>

To see free agency and certainty as inconsistent would be seriously to undermine our understanding of God’s ability to act in our world :

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<sup>12</sup> Charles Hodge, *A Commentary on the Epistle to the Romans*, New Edition, Revised and in Great Measure Rewritten (Philadelphia : W.S. & A. Martien, 1864 : reprint ed., Grand Rapids, Michigan : Wm. B. Eerdmans Publishing Company, 1965), p. 49.

<sup>13</sup> Though Hodge does not mention Jonathan Edwards in the context of this quotation, his idea here of a “middle ground between moral suasion and coercion” might well be seen to correlate with Edwards’ idea of the power of human “affections” to guide the human will.

<sup>14</sup> *Ibid.*, pp. 48–49.

<sup>15</sup> Hodge, *ST I*, p. 615.

If God cannot effectually control the acts of free agents, there can be no prophecy, no prayer, no thanksgiving, no promises, no security of salvation, no certainty whether in the end God or Satan is to be triumphant, whether heaven or hell is to be the consummation. . . . And if God has a providence, he must be able to render the free acts of his creatures certain : and therefore certainty must be consistent with liberty.<sup>16</sup>

This latter excerpt is, in a summary way, typical of Hodge's argument that certainty and free agency are both necessary because both are divinely revealed truths. Though a certain amount of logical tension may be apparent between them, the sacrifice of either would have grave consequences for the authority of Scripture and the consciousness, and for the important implications derived from certainty and free agency themselves. In Hodge, a Scottish understanding of an authoritative and veracious consciousness joined with a true and authoritative Scripture to proclaim the necessity of both providential certainty and free agency, regardless of our human inability to understand fully the relationship between them. Regrettably, in the end, Hodge does not speak clearly to the issue of a "middle ground" between moral suasion and coercion, other than by saying that both are necessary. Did he assume something like Jonathan Edwards' concept of "affections?" It is difficult to say, for Hodge simply states by declaration that both must be true.

### **GOD AS THE ULTIMATE GROUND OF MORAL LAW**

Hodge had a high regard for law in general, and became deeply concerned when he witnessed what he saw as a deterioration of the regard for law in society :

It is the testimony of experience that where religion has lost its hold on the minds of the people, there the moral law is trampled under foot. The criminal and dangerous class in every communi-

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<sup>16</sup> Charles Hodge, "Free Agency," *PR* (1857) : p. 127.

ty consists of those who have no fear of God before their eyes.<sup>17</sup>

In an 1824 letter to his brother, Hodge spoke of the importance of the law of the land, “the first principles of which all educated men should understand.”<sup>18</sup> And in a subsequent letter, he decried the lack of regard for law exhibited by Martin Van Buren in the latter’s threat to cause violence over the seating of some Congressional delegates :

It is plain that regard for law is to a fearful extent losing its hold on the minds of our people, and that whenever a sufficient temptation [?] is offered [sic] they will trample every thing under their feet.<sup>19</sup>

In spite of these seemingly utilitarian concerns, Hodge did not see law’s primary function to be the promotion of social cohesion ; he also insisted on the intrinsic value of the law :

First, that moral good is good in its own nature, and not because of its tendencies, or because of its conformity to the laws of reason ; and, second, that all law has its foundation in the nature and will of God.<sup>20</sup>

The goodness of the moral law is an intrinsic goodness because of the close relationship between the moral law and the revealed will of God :

The moral law . . . is in its nature the revelation of the will of God so far as that will concerns the conduct of his creatures. It has no

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<sup>17</sup> Hodge, ST III, p. 280.

<sup>18</sup> Charles Hodge to Hugh Hodge, 30 October 1824, [unpublished letter], Hodge Family Letters and Papers, Firestone Library, Princeton University (hereinafter referred to as “HLP”).

<sup>19</sup> Charles Hodge to Hugh Hodge, 24 November 1839, HLP. Hodge was, personally, a bit of a legalist, as indicated by the following excerpt from another letter to brother Hugh : “My dear Brother, I sent you yesterday my New York paper because it contained details which I thought might interest you. I do not know whether [the] Post Master might not think I was taking too great a liberty in marking additional information in the margin—but it does not strike me, ignorant of [the] wording of the law, to be wrong. I should be sorry however to bring a fine of \$30 on you—and had perhaps better be on [the] safe side hereafter——” (Charles Hodge to Hugh Hodge, 1 August 1832, HLP).

<sup>20</sup> Hodge, ST III, p. 262.

other authority and no other sanction than that which it derives from Him.<sup>21</sup>

Indeed, Hodge saw an intractable connection between moral law and God. In tacit rejection of Hume's critique of causation, Hodge argued that the existence of law implies a law-giver, and this law-giver is the "first principle" of the law. For support, Hodge cited Friedrich Julius Stahl, eminent nineteenth century German legal philosopher :

Every philosophical science must begin with the first principle of all things, that is, with the Absolute. It must, therefore, decide between Theism and Pantheism, between the doctrine that the first cause or principle is the personal, extramundane, self-revealing God, and the doctrine that the first principle is an impersonal power immanent in the world.<sup>22</sup>

Hodge also contended that there could be no law without God, rejecting the historic contention of Hugo Grotius (seventeenth century jurist and founder of international law) that even without God there would be natural law. Hodge argued that the essence of God involves moral excellence and that, without "obligation to God", there can be no "obligation to virtue."<sup>23</sup> In short, the moral foundation of all law rests in the authority of God. Thus rooted in God, law is central to Christian ethics and constitutes a necessary claim upon the will of the Christian believer.

The development of Hodge's argument here actually took him beyond the Enlightenment assumptions of Reid and the Scottish philosophers, more accurately reflecting the position of what Donald Meyer called the "American moralists" of his time. As Meyer has pointed out, the American moralists pushed beyond Reid to establish a divine basis for moral authority, believing

that the universe was truly governed by a just god according to the

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<sup>21</sup> Ibid., p. 260.

<sup>22</sup> Friedrich Julius Stahl, *Die Philosophie des Rechts*, quoted in Hodge, *ST III*, p. 260.

<sup>23</sup> Hodge, *ST III*, p. 261.

dictates of moral law. Conscience, supplemented by revelation, was to bridge the epistemological gap between man's mind and the moral law. Will, aided by the grace of God, was to conform the secret heart to the transcendent standard of right.<sup>24</sup>

The moral law is the revealed will of God which is designed to bind the conscience and to regulate the conduct of men."<sup>25</sup> Though the mode of revelation may vary according to the context, the law never relinquishes the binding nature of its authority :

As the rule which binds the conscience of men, and prescribes what they are to do and not to do, has been variously revealed in the constitution of our nature, in the Decalogue, in the Mosaic institutions, and in the whole Scriptures, the word ["law"] is sometimes used in a sense to include all these forms of revelation ; sometimes in reference exclusively to one of them, and sometimes exclusively in reference to another. In all cases the general idea is retained. The law is that which binds the conscience.<sup>26</sup>

The importance of the divine base for moral law becomes even clearer when one recognizes the connection between the moral law and the laws of men. Both divine and human laws are ultimately grounded in the nature and authority of God :

[The laws of men] have no power or authority unless they have a moral foundation. . . . All moral obligation . . . resolves itself into the obligation of conformity to the will of God. . . . Theism is the basis of jurisprudence as well as of morality.<sup>27</sup>

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<sup>24</sup> Meyer, Donald H. The Instructed Conscience : The Shaping of the American National Ethic (Philadelphia : University of Pennsylvania Press, 1972), p. 42. Meyer does not, here, speak specifically of Hodge as one of the "American moralists," but he does include, in this group, Archibald Alexander, Hodge's highly influential mentor and author of a text on moral philosophy, viz., Outlines of Moral Science.

<sup>25</sup> Hodge, ST III, p. 266.

<sup>26</sup> Hodge, ST II, p. 182.

<sup>27</sup> *Ibid.*

So strong were Hodge's convictions regarding the moral law, that even God's infinite grace did not detract from its continuing relevance. In the words of one reviewer of Hodge's Systematic Theology: "Whilst Dr. Hodge's system is pre-eminently one of grace, no one can charge him with making light of the moral law. As a rule of duty he enforces its authority."<sup>28</sup>

### THE MEDIATE SOURCES OF MORAL LAW

Hodge's epistemological perspective on the moral law is actually a modified version of Calvin's contention in Book One, Chapter I of his Institutes of the Christian Religion, that knowledge of God and knowledge of self are profoundly interrelated. Pointing to the difficulty of determining which type of knowledge precedes the other, Calvin emphasized that our sinful depravity (and consequent hypocrisy) clouds our understanding of ourselves, a predicament which can only be remedied by looking to God as the proper standard of comparison.<sup>29</sup> Hodge differed slightly, though significantly, from Calvin on this point, suggesting that the various intuitive truths of consciousness convey meaning about God in a manner largely unhindered by man's sinful depravity. From Hodge's perspective, sin was not as severe an hindrance to understanding God as it had been in the thought of the Genevan Reformer. According to Hodge, we are aware of God largely because truths concerning God are present in our consciousness (albeit in a way that complements their more explicit representation in Scripture), and not primarily because of a recognizable comparison which contrasts God's perfect righteousness with man's hypocritical, false righteousness. Furthermore, for Hodge, knowledge of God is closely connected with knowledge of God's will, a manifestation of which is God's law.

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<sup>28</sup> Review of Systematic Theology, vol. 3, by Charles Hodge, in Evangelical Review (Lutheran Quarterly Review), n.s. (1873): 156.

<sup>29</sup> John Calvin, Institutes of the Christian Religion, vol. 1, The Library of Christian Classics (Philadelphia: The Westminster Press, 1960), pp. 37-38.

Knowledge of the moral law comes from two sources, viz., conscience and the Scriptures. The moral law is “revealed in the constitution of our nature, and more fully and clearly in the written Word of God.”<sup>30</sup> Like knowledge of God, knowledge of the law is received by people in varying degrees. Though this knowledge is imperfect, it nevertheless gives us a basic internal knowledge of right and wrong. Because intuitive knowledge of the moral law is indefinite, the written revelation in Scripture is superior to the moral law revealed in the conscience :

There are some truths which are so obvious, that all men possessed of reason see and recognize them as true. But there are other truths the knowledge of which men obtain in very different degrees as there are certain moral truths so plain that all men feel their obligations, while there are others which only a few obtain. The existence therefore of a law written in their hearts, does not supersede the necessity of an external revelation of the moral law, any more than the revelation of God in his word. We have a perfect rule of duty no where but in the S.S. [sacred scriptures].<sup>31</sup>

Just as the intuitive truths of consciousness corroborate those of Scripture, there is a similar corroboration between the moral law perceived internally, and the law seen externally in the Decalogue. Hodge writes glowingly of this mutually supportive relationship :

It is one of the most beautiful and powerful of the proofs of the divine origin of the Bible, that all its doctrines are in accordance with the actual nature of man, and condition and prospects of the world, and that all its moral precepts are seen to be the results to which the constitution God has given us naturally lead. The moral law is a development of the moral constitution of man. If the law requires a child to obey its parents, obedience is the normal fruit of

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<sup>30</sup> Hodge, *ST III*, p. 266.

<sup>31</sup> Charles Hodge, *Notes of lectures on theology*, 1857, Princeton Theological Seminary, Princeton [New Jersey], p. 432.

the relation between the parent and child. If it requires the wife to be subordinate to the husband,<sup>32</sup> such is the position assigned to her by her nature, and is essential to her excellence and happiness.<sup>33</sup>

The unifying feature underlying this mutual corroboration is the understanding that both the internal and external sources of the moral law have ultimately come to us from God, and both also point us back to God. Let us now take a more detailed look at these two sources of moral law.

### **The Internal Source of Moral Law**

Hodge saw within the human constitution a strong sense of the difference between right and wrong, and of personal responsibility for our moral actions. The moral law is not only truth, it is *divine* truth, for all men have faith “in the moral law, which they recognize not only as truth, but as having the authority of God.”<sup>34</sup> The instinctive judgment of the mind confirms that we are all “subject to the authority of a rational and moral being, a Spirit, whom [we know] to be infinite, eternal, and immutable in his being and perfections.”<sup>35</sup> We are ultimately responsible to God, for, in the end, it is God who is offended by our violation of the moral law :

It is intuitively certain that God only can forgive sin ; He is our moral governor ; it is against Him that all sin is committed, and

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<sup>32</sup> Hodge’s was an age in which sexual inequality was accepted as a “given,” even within the church. For the most part, little regard was shown for biblical statements concerning sexual equality “in Christ” or the role played by cultural factors in determining the status of one sex over another.

<sup>33</sup> Charles Hodge, “The General Assembly,” PR (1852) : 463. Between 1825 and 1884, the title of the Princeton Review varied as follows : Biblical Repertory (1829), The Biblical Repertory and Theological Review (1830-36), The Biblical Repertory and Princeton Review (1837-71), The Presbyterian Quarterly and Princeton Review (1872-77), and The Princeton Review (1878-84). For purposes of this article, when citing any of the above issues, the title, Princeton Review, or the abbreviation “PR” followed by the year of issue will be used, e.g., PR (1829)=Biblical Repertory (1829).

<sup>34</sup> Hodge, ST III, p. 70.

<sup>35</sup> Hodge, ST II, p. 183.

He only has the right to remit its penalty.<sup>36</sup>

However, if the intuited moral law, serves initially to point us to the giver of the law, it also comes to assume a more specific form as the will of the law-giver :

Law, as it reveals itself in the conscience, implies a law-giver, a being of whose will it is the expression, and who has the power and the purpose to enforce all its demands. And not only this, but one who, from the very perfection of his nature, must enforce them.<sup>37</sup>

As creatures, we are subordinate to our Creator, and the Creator's will quite naturally binds our consciences. Our ultimate responsibility is not to ourselves, but to a Being (and the will of that Being) external to us :

It arises from the very nature of a creature, that the moral law which binds the conscience should assume in consciousness the form of the will of God, that is, of a Being to whom we are responsible. None but God is above law and a law to himself.<sup>38</sup>

More specifically considered, for example, the sense of justice residing within each of us points to the perfect manifestation of that sensibility in God, this reality further suggesting a divine basis for the internal sense of moral law :

Our moral nature is as much a revelation of God's perfections, as the heavens are of his wisdom and power. If therefore he has implanted in us a sentiment of justice, distinct from that of benevolence, we are constrained by the very constitution of our nature to refer that perfection to God. All men in fact do it.<sup>39</sup>

Hodge was aware of the tendency in the German philosophy of his day to bring to articulate expression the concepts of individualism and human-centeredness, concepts which had deep roots in the Renaissance and

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<sup>36</sup> Hodge, ST I, p. 502.

<sup>37</sup> Hodge, ST II, p. 184.

<sup>38</sup> Charles Hodge, "The Princeton Review and Cousin's Philosophy," PR (1856) : 381.

<sup>39</sup> Charles Hodge, "Beman on the Atonement," PR (1845) : 90-91.

Enlightenment. Early in the eighteenth century England's eminent poet, Alexander Pope, had written in his *Essay on Man*, Epistle I, "The bliss of Man (could Pride that blessing find)/ Is not to act or think beyond mankind," and in Epistle II, "Know then thyself, presume not God to scan ; / The proper study of Mankind is Man."<sup>40</sup> The individualistic tendency exemplified in Pope's rationalistic metaphysic intensified throughout the Enlightenment, flowering expansively in the German romantic philosophers of Hodge's day, e.g., Friedrich Schlegel, Schleiermacher, and Fichte. Emphatically resistant to such human-centered tendencies, Hodge persevered in his insistence that human life and moral responsibility are grounded in the person and will of God. Hodge's use of the moral argument for God to argue for the divine basis of our sense of moral law is somewhat circular, though, in a sense, necessarily so, since there can be no higher moral authority than God, who is both moral and the basis for morality.

Since the existence of moral law is intuited within the human consciousness, disbelief in the moral law must be seen intuitively as abnormal or perverse :

If a man does not believe in the moral law ; if he holds that might is right, that the strong may rob, murder, or oppress the weak, as some philosophers teach, or if he disbelieve in the existence of God, then it is evident to men and angels that he has been given up to a reprobate mind.<sup>41</sup>

### **The External Source of Moral Law**

In spite of Hodge's periodic nod to the Scots' internal truths of consciousness, it was ultimately his scholastic Calvinist heritage that carried the most weight in his understanding of the nature and function of moral

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<sup>40</sup> As quoted by Ernest Campbell Mossner in "Pope, Alexander," in Paul Edwards, Editor in Chief, *The Encyclopedia of Philosophy*, Vol. 6 (New York : Macmillan Publishing Co., 1967 edition, reprint edition 1972, s.v.), p. 397.

<sup>41</sup> Hodge, *ST I*, p. 54.

law. Though he believed the intuited moral law to be real and trustworthy, he felt the well-defined imperatives of Scripture achieved a clarity of expression unmatched by the internal senses or affections. Furthermore, the comprehensiveness of Scripture made it the ultimate standard for moral obligation: “The Scriptures are a complete rule of duty . . . in the sense that there is and can be no higher standard of moral excellence.”<sup>42</sup>

The increased perspicuity of the external, or written, law, however, calls for more precise interpretive criteria. While intuited moral laws can only be evaluated under the somewhat amorphous criteria of universality and necessity, other criteria can be used to classify written laws and to determine their temporal or universal applicability. In the plethora of Mosaic laws, Hodge found two distinguishing foci in the recognition that some laws were designed specifically for the Jews, and others for all people universally. Many of the laws of the Old Testament economy were ceremonial or national in nature, and were eventually abrogated; however, that which was *moral and universal* has survived and remains applicable. A law can be considered permanently binding if it is addressed to all mankind, or if the reason behind the command is permanent and universal.

Hodge divided biblical laws into four categories. The first includes those laws founded on the divine nature. Such laws are immutable and indispensable. To change such laws would imply a change in the nature of God.<sup>43</sup> An example of this first type of law is the command to love God. The second category includes laws founded on relations of people as they presently exist.<sup>44</sup> Examples of this type include moral laws regarding property, marriage, and parental duties. The tenure of such laws correlates with the tenure of the relationship of the parties involved, and

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<sup>42</sup> Hodge, *ST III*, pp. 270-71.

<sup>43</sup> *Ibid.*, p. 267.

<sup>44</sup> *Ibid.*

while such laws are permanently binding within the applicable relational context, their abrogation or non-applicability outside of this context has no effect on the nature of God. The third category includes laws which are founded in temporary human relations or social conditions, and which are enforced by divine authority, e.g., the civil laws of the ancient Israelite theocracy. This type of Old Testament judicial law should be considered a permanent obligation, if the New Testament recognizes the continuation of its authority, or if the basis for the law is permanent.<sup>45</sup> The fourth and final category includes “positive” laws. These laws are authoritative because they are explicit commands of God, e.g., external rites, circumcision, and sacrifices. They are binding only when positively enacted, and they bind only those to whom they have been expressly given. The tenure of positive laws is contingent solely upon the appointment of God.<sup>46</sup> To understand the relation Hodge perceived between moral law and social ethics, we must first look at Hodge’s understanding of the Decalogue. Grounded in the divine will, the Decalogue is “the foundation of the moral and religious code of Christianity, as well as of Judaism,”<sup>47</sup> and is permanently and universally binding. The obligation to obey the Decalogue’s precepts is initially established in the Decalogue’s preface, where the source of the commands is revealed as the very person of God: “It is because . . . [the commandments] are the words of the covenant God and Redeemer of his people that we are specially bound to render them obedience.”<sup>48</sup> This same idea is prominently expressed in the first commandment, and Hodge’s discussion of this commandment provides an interesting insight into his understanding of the connection between morality’s procession from and dependence upon religion. The preeminence of the first commandment is evident: “Religion, or the duty we owe to God,

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<sup>45</sup> *Ibid.*, p. 269.

<sup>46</sup> *Ibid.*

<sup>47</sup> Hodge, *ST I*, p. 444.

<sup>48</sup> Hodge, *ST III*, p. 276.

is the foundation of morality. Without the former, the latter cannot exist."<sup>49</sup> The responsible connection between God and humans is established by the existence of an identical relationship between the moral law within us and the revealed will of God :

Morality is the conformity of an agent's character and conduct to the moral law. But the moral law is the revealed will of God. If there be no God, there is no moral law ; and if a man does not acknowledge or recognize God, there is no higher law than his own reason to which he can feel any obligation to be conformed.<sup>50</sup>

Hodge offered a basic rule for interpreting the Decalogue, a rule which wove together a profound appreciation of the spiritual significance of the commandments and a hermeneutical flexibility that allowed for a rather extensive development of the ethical implications of the commands :

The decalogue is not to be interpreted as the laws of men, which take cognizance only of external acts, but as the law of God, which extends to the thoughts and intents of the heart. In all cases it will be found that the several commandments contain some comprehensive principle of duty, under which a multitude of subordinate specific duties are included.<sup>51</sup>

Hodge's interpretive elasticity regarding the Decalogue was not unique, and had, in fact, been demonstrated in the Larger Catechism of the Westminster Assembly which served as an authoritative model for Hodge. Though this hermeneutical flexibility certainly broadened Hodge's understanding of applied law, as Glenn A. Hewitt has pointed out, it also opened the door to the possibility of Hodge using the Bible to support his own personal, hermeneutical preferences. As Hewitt further indicates, it is quite possible that Hodge's conclusions in this regard were not the result of fully conscious decisions. Rather, they were most likely rooted in hu-

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<sup>49</sup> *Ibid.*, p. 279.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*, p. 272.

man affections which were, in a sense, unwittingly formed and shaped by the society and culture in which he lived. In Hewitt's words, Hodge's "culture and society subconsciously shaped his understanding of which laws should still be applicable and which should not. The point is that Hodge's hermeneutic allowed this to happen."<sup>52</sup>

With the Decalogue rooted solidly in the will of God, and with a hermeneutic flexibility that allowed for creative development of the commandments' implications, Hodge's formulation of a Decalogue-based ethic needed only to establish the perpetually binding nature of the commandments. Many of the detailed laws written in the books of Moses are no longer in force. Hodge insisted, however, that the precepts of the Decalogue remain in force and are perpetually binding upon the church, in every age. The key to distinguishing between laws perpetually binding and those no longer in force lies in the nature of the relations addressed by the Decalogue's precepts. Laws that are *perpetually binding* or authoritative are those laws which express "the will of God in reference to those duties which arise out of our permanent relations to him and to our fellow men."<sup>53</sup> Hodge also maintained that any Old Testament commands understood by Christ and his apostles to be binding upon their disciples should be seen as similarly binding upon all Christians. If the binding nature of a law is questioned, the burden of proof lies upon those who deny its perpetually obligatory character :

If God gives a law to men, those who deny its perpetual obligation are bound to prove it. The presumption is that it continues in force until the contrary is proved. It must be hard to prove that laws founded on the permanent social relations of men were intended to be temporary.<sup>54</sup>

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<sup>52</sup> Glenn A. Hewitt, Regeneration and Morality : A Study of Charles Finney, Charles Hodge, John W. Nevin, and Horace Bushnell (Brooklyn, New York : Carlson Publishing Inc, 1991), p. 81.

<sup>53</sup> Charles Hodge, "The General Assembly", PR (1842) : 515.

<sup>54</sup> Hodge, ST III, p. 412.

Hodge was aware of the possibility of conflict between laws, and his ranking of divine laws allows for differentiating in the “relative dignity and importance” of various divine laws. In cases of conflict, the lower law should always yield to the higher, e.g., as is the case in the Bible, when positive laws are subordinated to those that are morally obligatory.<sup>55</sup> As a principle of Scripture,

any of those moral laws which are founded, not on the immutable nature of God, but upon the relations of men in the present state of existence, may be set aside by the divine law-giver whenever it seems good in his sight ; . . . . The same principle is involved in the words of Christ, God loves mercy and not sacrifice. When two laws conflict, the weaker yields to the stronger.<sup>56</sup>

One illustrative example of this rule is found in Hodge’s 1843 “General Assembly” article in the Princeton Review. The context involves a case involving a conflict between the marriage of a close relative and the need for keeping the Sabbath. Hodge writes :

God has laid down the general rule that a man should not marry his near kindred. This law cannot be violated with impunity ; but it does not follow that every marriage inconsistent with it should be dissolved. About the principle there can be no doubt ; whether it is applicable to the case of marriage, depends on the view taken of the general law of marriage. If that law is a moral one, in the highest sense of the term, then no engagement inconsistent with its provisions can be binding, any more than a man can bind himself to commit murder. But if it be a positive law, or only in a secondary sense moral, and therefore dispensable, then the principle is applicable, in all cases where the sacred obligation of the marriage contract is more obligatory than the positive law with which it is in conflict. If a man is in such circumstances that he cannot

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<sup>55</sup> *Ibid.*, p. 270.

<sup>56</sup> *Ibid.*, p. 410.

comply with both of two laws, it is a plain principle that the weaker law gives way, or ceases to be binding. If the law of the Sabbath conflicts with the claims of mercy, it is in that case no longer obligatory ; for God will have mercy and not sacrifice.<sup>57</sup>

Though Hodge argued that the moral law should also be applied to political matters, he cautioned that the appropriate relation between state legislation and Scripture is a perplexing issue plagued with no small amount of ambiguity. Indeed, the ambiguity of Hodge's position in this regard is apparent in a few of his statements. For example, in Systematic Theology, vol. 3, Hodge claims : "The Word of God is the only sure guide of legislative action as well as of individual conduct."<sup>58</sup> Later he even suggests that Pentateuchal laws dealing with the permanent relations of men are still binding. In fact, heathen nations enacted these laws "under the guidance of natural conscience."<sup>59</sup> In another context, however, he claimed that it is the duty of the state to determine what judicial regulations are to apply to people :

With the Levitical law, considered as law, we have nothing to do. God never gave it for a law to us. The moral precepts which it contains we receive, because they are moral, but not on the authority of the Levitical law ; and if we receive some of the precepts of the judicial branch of that law, it is not because they are found in Leviticus, but because their general equity recommend them to our adoption. It is the business of the state, and not of the church, to determine what particular parts of the judicial law, as human regulations, we must be under.<sup>60</sup>

Hodge clearly desired to affirm the Reformation understanding of different spheres of responsibility for the church and the state ; however, his view

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<sup>57</sup> Hodge, "The General Assembly", PR (1843) : 452-53.

<sup>58</sup> Hodge, ST III, p. 386.

<sup>59</sup> *Ibid.*, p. 413.

<sup>60</sup> Charles Hodge, "The General Assembly", PR (1842) : 502.

of the wide applicability of the moral law, as expressed both internally and externally, suggested also that legislation should follow the prescriptive direction of the moral law as expressed in Scripture. This religious and political ambiguity was to play an important role in Hodge's concept of America as a Christian nation.

### **IMPLEMENTING MORAL LAW IN SOCIETY**

#### Moral Law and *Justitia Civilis*

As previously noted, according to Hodge, the moral law is ultimately concerned with our obligation to conform to the divine will. When we fall short and violate God's moral law, we subject ourselves to punishment :

Moral obligation is the obligation to conform our character and conduct to the will of an infinitely perfect Being, who has the authority to make his will imperative, and who has the power and the right to punish disobedience.<sup>61</sup>

In this ultimate sense, we are all responsible to God for our violations of moral law, whether we consider these violations as being external acts or as being less obvious, sinful intents of the heart.

Hodge was not so concerned with this *ultimate* dimension of the moral law, however, that he neglected the distinctions between relative levels of evil. Though he saw significant value in acts performed for their own intrinsic value, he disagreed with the Jesuit principle that the character of an act is determined *solely* on the basis of the intention behind the act. He found merit in external acts considered on the basis of their wider social sense (*justitia civilis*) :

Man since the fall . . . is able to perform moral acts, good as well as evil. He can be kind and just, and fulfill his social duties in a manner to secure the approbation of his fellow-men. It is not meant that the state of mind in which these acts are performed, or the

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<sup>61</sup> Hodge, ST III, pp. 259-60.

motives by which they are determined, are such as to meet the approbation of an infinitely holy God ; but simply that these acts, as to the matter of them, are prescribed by the moral law. Theologians, as we have seen, designate the class of acts as to which fallen man retains his ability as “*justitia civilis*,” or “things external.”<sup>62</sup>

A similar kind of practical distinction is found in Hodge’s attempt to distinguish between the intrinsic *criminality* of an act and the blameworthiness of the offenders. By calling attention to this important distinction, Hodge’s understanding of moral responsibility made an important adjustment to the contingencies of the wider social-ethical context. Indeed, rejecting many of the tenets of nineteenth century American individualism, he took a more progressive approach, maintaining that we are social beings directed not only by our own inward affections, but also by external circumstances. Society shares in the responsibility for individual violations of moral law :

A man’s character, his opinions, feelings, and conduct are determined in part by the inward principles of his nature, and largely by the external influences to which he is subject. If kept in ignorance of the truth ; if error is constantly inculcated, and all the power of education and example be brought to bear in favour of evil, it is almost unavoidable that the judgment will be perverted and the mind corrupted.<sup>63</sup>

This wider assignation of moral responsibility was nowhere more prominently expressed than in the distinctions Hodge made between *moral criminals* and *political offenders*. Hodge suggested, for example, that a rebel might be doing a good work by his rebellion, or even that illegitimate rebellion might primarily be the result of external causes rather than the internal wickedness of the rebel. Sounding even a bit like the twentieth

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<sup>62</sup> Hodge, *ST II*, p. 263.

<sup>63</sup> Charles Hodge, “President Lincoln,” *PR* (1865) : 451.

century pragmatic radical, Saul Alinsky,<sup>64</sup> Hodge remarks :

It is plain that rebellion, as homicide, may be an atrocious crime, or justifiable, or commendable, according to circumstances. Whereas moral offences are always, and under all circumstances, evil [sic]. A good thief, or a good murderer, is as much a solecism as good wickedness. But a good rebel is no such solecism. [Furthermore,] even when rebellion is not justifiable ; nay, when it is not only a great mistake, but really a great crime in itself considered, it does not necessarily follow that those who commit it must be wicked men. It is often the effect of wrong political theories.<sup>65</sup>

Hodge was not so far removed from the American Revolution that he failed to appreciate the rebellious beginnings of his country. Though he has often been seen as the *status quo* theologian *par excellence*, with little room for movement in his theological thought over the years, his ethical thinking shows a moderate degree of flexibility and openness in his approach to matters of a social and political nature. His recognition of external, social influences and their role in determining the degree of responsibility for one's actions, show a Hodge who was deeply concerned, personally and philosophically, with the practical manifestations of moral law in human society.

### **Corporate Morality**

Like individuals, a group or an organization of people also has a moral character which, to a great extent, determines the influence the organization will have in society :

Every organized body has a moral character to sustain and cherish as well as every individual. And that character is its great means of influence. To attain a character which shall enable it to do

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<sup>64</sup> "The fourth rule of the ethics of means and ends is that judgment must be made in the context of the times in which the action occurred and not from any other chronological vantage point." Saul D. Alinsky, *Rules for Radicals : A Pragmatic Primer for Realistic Radicals* (New York : Vintage Books, 1971), p. 30.

<sup>65</sup> *Ibid.*, p. 452.

good, it must appear before the world pure, faithful, intelligent, and active. It must not only be such, but it must be seen as such. It must let its light shine.<sup>66</sup>

To Hodge, the idea of *corporate moral character* was not simply a superficial description of good or bad groups. Human organizations are highly organic in structure, and each of them has a distinct, deeply embedded *moral character*. Consider the following description of denominational moral character :

The high moral character attained by a denomination exerts the most happy influence upon all its members. The spirit of the whole diffuses itself through the several parts ; every member feels not only the motives which press upon him as an individual, but as a constituent portion of a great benevolent society. . . . There is no more effective means of diffusing life through the several parts, than to maintain an elevated spirit in the organization as a whole.<sup>67</sup>

If corporate entities or organizations have a distinct moral character, however, they also bear a coordinate responsibility for corporate acts of an immoral nature, and Hodge fails to offer an adequate explanation of this responsibility. His concern was with the responsibility of *individuals* within the corporate entity, by virtue of their individual participation in that corporate entity. The slippery nature of the individual's role in corporate activity, however, makes the individual a less than adequate basis for determining corporate responsibility, i.e., responsibility for corporate criminality is not as easily determined as is responsibility for individual or personal crimes. For example, in speaking of Lincoln's proper distinction between sin and sinners, the offence and the offender, Hodge pointed out that when offenses are committed by nations or communities, the responsibility for the offenses is not assigned as clearly as it is in the case of

<sup>66</sup> Charles Hodge, "The General Assembly," PR (1836) : 428.

<sup>67</sup> *Ibid.*, pp. 428-29.

individual crimes :

In ordinary cases of theft and murder all the criminality and turpitude which belong to the offence attach also to the offender. But in other cases, especially in the offences of nations or communities, the distinction is legitimate and important.<sup>68</sup>

Individuals do share in the guilt of national sin. For example, in the case of those who acquiesced in the slave laws of this country, Hodge claims :

that those who enacted, and those who sustained those laws must have contracted great guilt in so doing. . . . Such guilt rests, in a measure, on all who acquiesced in the system thus established, or who failed to protest against it, and to use all lawful efforts to secure its abolition.<sup>69</sup>

This, however, is not really a matter of determining corporate guilt ; rather, the *individuals* are the guilty ones because of their personal acquiescence in the acts committed, not because of what the nation, as a corporate entity, did.

In short, as Hodge saw it, responsibility for corporate immorality can be determined, but only with a lack of clarity substantial enough to make any kind of significant punishment or redress of violations a practical impossibility. Furthermore, responsibility for corporate immorality rests primarily upon those *individuals* who, through omission or commission, support the sinful or immoral activity of the corporate structures.

### **Punishment—Its Nature and Application**

The nature of moral law demands that punishment be the response to its violation. The question is ultimately one of justice, and most specifically, the justice of God. When God's moral law is broken, divine justice must be upheld through the judicious application of punishment. Divine justice is not only *rectoral*, i.e., concerned with the imposition and impartial execution of righteous laws ; it is also *distributive*, i.e., concerned with

<sup>68</sup> Charles Hodge, "President Lincoln", p. 450.

<sup>69</sup> Charles Hodge, "The General Assembly", PR (1864) : 546.

the righteous distribution of both rewards and punishments. Justice is a moral excellence rooted in the very nature of God, an excellence which must be maintained either through the keeping of the moral law, or through punishment following its violation ; in either case, the divine justice is satisfied. Hodge resisted the trend of much Enlightenment thought which had come to understand righteousness more in terms of benevolence rather than penal satisfaction :

What the Scriptures teach of the justice of God leads to the same conclusion. Justice is a form of moral excellence. It belongs to the nature of God. It demands the punishment of sin. If sin be pardoned it can be pardoned in consistency with the divine justice only on the ground of a forensic penal satisfaction.<sup>70</sup>

The doctrine of the atonement was the guiding principle in Hodge's understanding of the nature of justice and punishment. At a time when the traditional doctrine of the atonement was being jettisoned by one theologian after another, Hodge held to the orthodox understanding of atonement as *vicarious penal satisfaction*. Bucking the trend, Hodge stood firm in his opposition to Schleiermacher's subjective Mystical Theory and Ritschl's denial of a vicarious and propitiatory atonement. Closer to home, he was even critical of the New England theology for giving up the penal satisfaction theory in favor of what was essentially the governmental theory of Grotius, according to which Christ did not actually take upon himself the penalty for human sin. In a review of Horace Bushnell's *Vicarious Sacrifice*, Hodge was sharply critical of Bushnell's *moral influence* theory and consequent rejection of expiation.<sup>71</sup>

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<sup>70</sup> Hodge, *ST II*, p. 488.

<sup>71</sup> See Charles Hodge, "Bushnell on Vicarious Sacrifice", *PR* (1866). As Berkhof has noted, Bushnell later "received new light, and then saw that God had to be propitiated. Consequently, in his *Forgiveness and Law* he retracted the last part of his former publication [*Vicarious Sacrifice*], and substituted for it the idea of self-propitiation by self-sacrifice" (L. Berkhof, *The History of Christian Doctrines* (Edinburgh : The Banner of Truth Trust, 1969, reprint ed. 1975), p. 196).

For Hodge, however, the need for punishment and satisfaction of justice, was not a matter of theology alone. His atonement-based theological understanding of penal satisfaction was practically applicable to cases of penal satisfaction regarding less abstract, specific human conduct. God's comprehensive reign establishes justice in all aspects of his relationship with the world, a justice that is characterized by equity and proportion, as evidenced by the laws affecting all of God's human creation :

It is true that a man reaps what he sows ; that he receives here and hereafter the natural consequences of his conduct. . . . He [God] controls all the laws which determine the well-being of the souls of men, so as to accomplish his designs and to secure the fulfilment [sic] of his promises and threatenings.<sup>72</sup>

The universal intuitive perception that sin deserves punishment on its own account, is, in itself, a clear revelation of the very nature of God. Pressing this point, Hodge suggests that the same kind of intuitive response is evident regarding crime at the social level :

When any great crime is committed, there is an instinctive and universal demand for the punishment of the criminal. No man can pretend that the desire for his reformation is the feeling which prompts that demand. . . . It is the instinctive judgment of the mind that he ought to suffer.<sup>73</sup>

Once again, however, we see the weakness in the idea of *universal truths of consciousness*. In this case, the difficulty presents itself in the form of a basic human inability to distinguish between an instinctive and universal demand for the punishment of the criminal, and plain, sinful revenge, which, according to Scripture, is the prerogative of God alone. The instinctive demand for punishment may well constitute a neutral category theoretically, but just how it is to be distinguished from revenge, which is clearly sinful, is not made clear by Hodge.

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<sup>72</sup> Hodge, *ST I*, p. 439.

<sup>73</sup> *Ibid.*, p. 418.

Since the primary purpose of punishment is the satisfaction of justice, it is its primary purpose as satisfaction of justice that distinguishes punishment from chastisement. The latter is inflicted primarily for the benefit of the one being chastised, while punishment, in its primary function, does not attempt to reform the offender. Hodge claimed that both Scripture and consciousness teach that punishment is meted out primarily on the basis of desert :

That the reformation of the offender is the primary or sole end of punishment is contrary to the Scriptures, and to the universal judgment of men. . . . Every man finds in his own consciousness the sentiment which demands the punishment of sin for its own sake, irrespective of the effects of punishment upon himself or upon others.<sup>74</sup>

In short, as Hodge explains it, there is an absolutist character to punishment ; it is “evil inflicted in satisfaction of justice,” and to this extent, it is morally right.<sup>75</sup> The absolutist character of Hodge’s concept of punishment appears practically to be indistinguishable from the revengeful spirit that may lurk behind the law, or at least to provide the cover of legitimacy for a revengeful application of the punishment. Needless to say, Hodge would not have seen it that way at all. He saw punishment as not, in any sense, sinful ; to the contrary, he saw it is an important element of moral perfection :

[Punishment] is not an expression of malice, or revenge, or blood-thirstiness, but of a necessary constituent element of moral perfection. But punishment is the expiation of guilt. That is its nature and effect. If punishment is morally right, so is expiation.<sup>76</sup>

This being said, the benefits of punishment are not, however, limited to the satisfaction of justice. Hodge argues that the public also benefits

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<sup>74</sup> Charles Hodge, “Bushnell on Vicarious Sacrifice,” *PR* (1866) : 167.

<sup>75</sup> *Ibid.*, p. 168.

<sup>76</sup> *Ibid.*

when punishment is properly meted out, though his argument becomes a bit convoluted when he attempts to explain why :

Though it is admitted that governmental reasons properly enter into the considerations which determine the nature and measure of punishment, yet it is the universal and intuitive judgment of men, that the criminal could not be rightly punished merely for the public good, if he did not deserve to be punished irrespective of that good. His suffering benefits the public because it is deserved ; it is not deserved because it benefits the public.<sup>77</sup>

Hodge seems to be saying here that punishment is good for the public because punishment is good, a truism, but, like most truisms, not terribly helpful. Indeed, he appears to say that society benefits when we all get the punishment we deserve. He seems to suggest the possibility of justifiable punishment which might not be for the public good, though just how this might be the case (even hypothetically) is not clear.

Hodge recognized varying degrees of moral turpitude in regard to both personal and social morality. One prominent example is found in a Princeton Review article co-authored by Hodge and one, Dr. Hope. The issue under consideration involved an “incestuous” (according to the confessions) marriage of a minister to his wife’s sister. The Hodge-Hope article argued for a wide connotation of the term *incest*, “embracing under [the term] acts of very different degrees of moral turpitude.”<sup>78</sup> For the discussion at hand, the relevant issue is not that the marriage was adjudged incestuous, but that some incestuous acts are considered to be worse than others. Hodge and Hope argued that just as man-slaughter might range from justifiable homicide to first degree murder, in the same way there are varying degrees of incest, depending upon the relationship between the parties involved. Not to recognize degrees of moral turpitude is to obscure the distinction between right and wrong :

<sup>77</sup> Charles Hodge, “Beman on the Atonement,” PR (1845) : 88.

<sup>78</sup> Charles Hodge (with Dr. Hope), “The General Assembly”, PR (1847) : 416.

It is to confound all our ideas of right and wrong, to shock the moral convictions of all sane men, to maintain that there is no difference between marriage within the prohibited degrees, when those degrees extend from a niece to a parent.<sup>79</sup>

The writers admitted that, according to the confessions, the marriage must be considered incestuous. However, they argued against the conclusion “that no distinction is to be made between such a marriage and one between brother and sister, or parent and child,” a distinction recognized by both Scripture and the nature of man.<sup>80</sup>

### Capital Punishment

For justice to be satisfied, punishment must be inflicted in proportion to the crime committed. Though Hodge made no attempt to set up any kind of penal code, i.e., by matching specific crimes with specific punishments, his concern for penal proportionality was clearly expressed in the context of his views on capital punishment. *Proportionality* was one of three principles Hodge used to make the case for capital punishment. The other two may be described as *hermeneutic* and *utilitarian*.

*Hermeneutically*, Hodge did not evaluate capital punishment from the perspective of the sixth commandment. Rather, on the basis of Genesis 9.6,<sup>81</sup> he argued that capital punishment is of *perpetual obligation*, and that it constitutes “the announcement of a general principle of justice ; a revelation of the will of God.”<sup>82</sup> The rationale for the law is a permanent one, for the law of capital punishment was originally based on the permanent relations of all people. In short, the rationale provided by Genesis 9.6 is as applicable now as it was in previous ages.

His *utilitarian* concerns came through in his brief argument for the

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<sup>79</sup> Ibid.

<sup>80</sup> Ibid., pp. 416-17.

<sup>81</sup> Genesis 9 : 6 : “Whoever sheds the blood of a human, by a human shall that person’s blood be shed ; for in his own image God made humankind.” (Revised Standard Version)

<sup>82</sup> Hodge, *ST III*, p. 363.

social necessity of capital punishment :

Experience teaches that where human life is undervalued, it is insecure ; that where the murderer escapes with impunity or is inadequately punished, homicides are fearfully multiplied. The practical question, therefore, is, Who is to die ? the innocent man or the murderer ?<sup>83</sup>

It is worthwhile to note that Hodge's "experience teaches" idea here did not involve the citation of any particular studies or research on the issue of capital punishment as a criminal deterrent. Rather, the controlling factor was Hodge's philosophic assumption that it is the universal and necessary intuition of all men that the absence of capital punishment leads to inadequate punishment or impunitive escape for the murderer, and that such a situation breeds a fearful multiplication of homicides, and the insecurity and undervaluation of human life. To suggest that convictions with content this specific can be correctly arrived at *intuitively*, is, of course, a dubious assumption at best, and yet another example of the Scottish philosophical tendency to resort to claims of intuition when rational evidence was lacking.

From the standpoint of *proportionality*, Hodge argued that if justice is to be satisfied, capital punishment is the only possible punishment that adequately fits the crime of homicide. The principles of natural justice call for proportionate punishment as do the instinctive truths of consciousness ; in the case of capital crimes, it is "a dictate of our moral nature . . . that there should be a just proportion between the offence and the penalty ; and that death, the highest penalty is the proper punishment for the greatest of all crimes."<sup>84</sup> To treat the penalty of homicide less seriously would be a mockery of justice : "To fine a man a few pence for wanton homicide would be a mockery ; but death or imprisonment for life

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<sup>83</sup> Ibid., p. 364.

<sup>84</sup> Hodge, ST III, p. 364.

would be a real satisfaction to justice.”<sup>85</sup> Of more profound theological significance is Hodge’s suggestion that the outrage of the crime of murder (for which he considered capital punishment to be the proportionate punishment) befouls the very image of God :

If it is an outrage to defile the statue or portrait of a great and good man, or of a father or mother, how much greater is the outrage when we defile the imperishable image of God impressed on the immortal soul of man.<sup>86</sup>

### **Humanitarian Considerations in Applying the Law**

In spite of his somewhat rigid understanding of the need to carry through the penal implications of statutory law in the administration of justice, Hodge demonstrates a surprisingly sophisticated understanding of legal due process, and calls for a fair amount of latitude in the consideration of mitigating circumstances in the determination of a correct and proportionate punishment. He maintains that no person should be deprived of liberty or property except by due process of law, and that legitimate criminal prosecution is contingent upon the accused being completely in possession of his or her faculties both during the alleged committing of the crime, as well as during the trial of the accused :

If a man should commit an offence in a state of somnambulism or of insanity, when he did not know what he did, and all recognition of which on his restoration to a normal condition is impossible, it is plain that such an offence could not justly be the ground of punishment. Suffering inflicted on such ground would not be punishment in the view of the sufferer, or righteous in the view of others. It is no less plain that if a man should commit a crime in a sound state of mind, and afterwards become insane, he could not justly be punished so long as he continued insane. The execution of a maniac or idiot for any offence committed prior to the insanity

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<sup>85</sup> Hodge, *ST II*, p. 471.

<sup>86</sup> Hodge, *ST III*, p. 363.

or idiocy would be an outrage.<sup>87</sup>

Hodge's belief in penal proportionality is not so rigid that he cannot appreciate extenuating circumstances that provide a legitimate basis for altering the application of the punishment. He even suggests that in certain exceptional situations, punishment is unnecessary. Political offenses often constitute such exceptions, especially when they involve great numbers of people :

While the punishment of ordinary crimes is indispensable to the well-being of society, the punishment of political offences is often unnecessary. In many cases treason and rebellion, when confined to a few persons, must be severely punished, as the only means of deterring others from the commission of the same offence. But when a rebellion involves a great multitude of men, and leads to a civil war which issues in the establishment of the legitimate government, no such necessity ordinarily exists. The misery and loss consequent on the suppression of such outbreaks answers all the ends of punishment as a means of prevention.<sup>88</sup>

In regard to the purpose of punishment, an interesting shift takes place when Hodge's discussion moves from individual to political crimes, viz., a shift of emphasis from penal satisfaction to deterrence. As we have seen, in the matter of individual crimes, Hodge stresses that the primary rationale for punishment is satisfaction of justice. With corporate immorality, however, there is a less clear and direct opportunity for assigning responsibility. A similar ambiguity is apparent in regard to political crimes involving the participation of many individuals. Indeed, Hodge eventually comes to see deterrence or "prevention," *not* satisfaction of justice, as the primary rationale behind punishment for political crimes ; only this change in emphasis can explain his willingness to forego legal punishment for political crimes. In this developing regard for

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<sup>87</sup> Hodge, ST II, p. 223.

<sup>88</sup> Charles Hodge, "President Lincoln", p. 454.

expediency in the determination of punishment, Hodge even goes so far as to suggest that “unnecessary” punishments of this nature might be *detrimental* to justice :

All unnecessary punishments are positive evils. They exasperate instead of subduing [sic] ; they exalt criminals into martyrs. The sympathy felt for the victims is transferred to the cause for which they suffer. Unnecessary punishment degrades justice into vengeance ; all history proves its impolicy.<sup>89</sup>

Hodge’s less rigid approach to the application of penal measures in the case of group political crimes might well be attributed, at least in part, to his recognition that the distribution of justice is not always equitable, especially in cases where social, economic, and political contingencies play prominent roles. He spoke of this problem in a letter to his brother in which Hodge comments somewhat cynically in regard to a courtroom shooting incident in Kentucky, where Charles’ daughter Mary was living. In Hodge’s words : “nothing was likely to be done with the assailant— Nothing can be done in such cases, where the aggressor has friends and property.”<sup>90</sup>

In his later years and in an era in which sociology as a social science was at its germination stage, Hodge’s views on penology came to exhibit an increasingly sophisticated awareness and appreciation of the influence of broader social forces on individual lives. This development within Hodge’s thought, while creating a few problems of consistency, such as the deepening distinction between individual and social crime and an increasingly relativistic attitude toward punishment (at least in regard to social crime), nevertheless was expressive of a significant degree of openness on his part regarding social issues.

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<sup>89</sup> *Ibid.*, p. 455.

<sup>90</sup> Charles Hodge to Hugh Hodge, 10 March 1851, HLP.