

The State in God's Design

We have a lot in this area called "The State in God's Design." I title it that way because states do not always live up to God's design. None of them do perfectly, and many of them are radically deformed. So I construe it that way. And there are several issues. Civil disobedience is one. We will deal with the death penalty and justifiable warfare next time, but I hope we will get a running start on the civil magistrate this session. And because this has been especially developed in the Presbyterian tradition, I think it best to have chapter 23, the chapter on the civil magistrate, from the *Confession*. This is the American revision from 1787. It is the revision of paragraph 3 that is radically different from the original Westminster Confession in 1647. Already in 1729, the American Presbyterian Church understood there was difficulty with this paragraph, and ministers were allowed to take exception to it when the Confession was adopted. Eventually, that had to be dealt with, and it was dealt with in 1788 between the time of the sending down of the Constitution to the states and its ratification in 1789. So it fits in with the disestablishment clause and the free exercise clause of the Constitution. And it has useful principles. I would say that this is our starting point. There is a lot in this area; whole semester courses are sometimes offered on the political order. We will have to deal in terms of the basic principles over these next couple of sessions. I think we can do it, but it is against the background of what is in our Confession.

So let us begin with prayer.

Lord, our God, we thank You for Your gracious provision for the whole of our lives. Thank You for the knowledge that we have of the lordship of Christ, who rules over all things for the sake of His body, the Church. Thank You for our great privilege of being members of that body. We pray that as we sort through how we are to live as Christ's disciples in this world, You will illumine our path, that we may understand Your design for the state as an institution, and that we may be faithful to our Lord in our activity in this life. Be with us during this session, we do pray for Jesus' sake. Amen.

Under this heading, "The State in God's Design," the first thing I want to talk about is what I call the two communities. As Christian believers, we are members of the body of Christ, citizens of the heavenly Jerusalem, and we are also members of some body politic. We are citizens of some earthly *polis*, which is the Greek term for, as we say, state. So we are members of two communities. We are members of the political community. Our becoming Christians does not take us out of that political community. Christ has left us in the world as His disciples, but now we have a citizenship that is higher, and the heavenly Jerusalem is our basic loyalty as disciples. As disciples of Christ, we have some duties that Christ holds us responsible for in terms of our citizenship. But we do not make an absolute separation between the two cities. Augustine tended to stress the antithesis between the two cities, and I think it is better to think of them as the two communities. I do not oppose the idea of the two cities, but we should recognize that we are citizens of both, that we are called to discipleship in the heavenly Jerusalem, and that that affects our citizenship of the earthly *polis* to which we belong. So we are members of some body politic as well as the body of Christ, the church, which is the visible expression of His body on earth. The church is organized under elders, so there is an authority principle that is involved in the church. We do not have time to expand upon that in this course, but the Church are those who are members of the body of Christ. The visible church consists of all those who profess the true religion together with their children. And to that visible institute, Christ has committed the ordinances of God. We should not make an absolute distinction between the invisible Church and the visible church, but rather think of the Church as invisible in terms of its spiritual union with Christ. But that same entity has its visible expression in the body of believers who are gathered under the authority of elders.

The earthly *polis* we call the state, and let me give you a definition of state. This is from Henry Meeter's book, *The Basic Ideas of Calvinism*. It is now in its revised sixth edition, and it is useful as a summary of the idea of sphere sovereignty and particularly the role of the state. This is a working definition of the state from Meeter, page 77: "The state may be defined as a political community which resides in a given territory, is organized under a distinct government, and is recognized by the people as supreme." Those are the three components of political community: it resides in a given territory, is organized under a distinct government, and is recognized by the people as supreme. We are all members of some earthly *polis*, which we call the state. Now, the essential theological framework within which the question of the relationship of our discipleship and our citizenship has to be answered is that of the nature of the present epoch of redemption, the time between the session of Jesus at God's right hand and His second coming in glory. In other words, we have to think in terms of redemptive history to understand what the relationship is between our two responsibilities. We are in the time, biblically, theologically, redemptively, and historically speaking, between the session of Jesus at God's right hand, in which He rules over all things for the sake of His body and His second coming in glory. He has been made head over all things, so He rules over the nations for the sake of His body, the Church. We live in the time between the session of Jesus at God's right hand and His second coming in glory. And the kingdom, as we saw earlier in this course, is both present and future, and I think that is the indispensable biblical category for understanding our Christian calling as citizens of the heavenly Jerusalem, living on earth as members of some body politic as well as the church of the Lord Jesus Christ.

Now, we will have to see how that works out. But first of all observe that though there is an institutional separation in terms of authority—the authority that belongs to the church and the authority that belongs to the state in their respective spheres—it is not true that our discipleship has nothing to do with the state and has nothing to do with our citizenship. The separation of church and state, which only became worked out from the 16th century forward, is an institutional separation in terms of government. The church has its own authority to govern its members. That first was developed in Calvin's Geneva, and Calvin worked long and hard to get excommunication back under the authority of the church. He did not succeed entirely. He did restore it to the consistory, which consisted of pastors and ruling elders. But the ruling elders were elected from the secular council, so it was still an overlapping responsibility. But that was a breakthrough in that it restored to ecclesiastical authority the ultimate right to say who belongs to the fellowship of the body of Christ. Now, it took a while before the implications of that were worked out, and we finally have their helpful analysis of that separation in the American edition of the Westminster Confession in chapter 23, paragraph 3. When we talk about the separation of church and state, we are talking about the separation of the spheres of authority, both of which were ordained by God to function in a particular way in this world. But as citizens of both, we have responsibilities that inescapably involve us in applying our discipleship to our citizenship. Now, we will talk about the way in which that is done, but there can be an ultimate separation of our Christian faith and our political activity. But we have to recognize that we are members of different communities as we go about that work. And the state is a mixed community. The church, although it is mixed in that there are hypocrites and various false professors within the pail, nevertheless, in terms of its constitution, are all those who profess the true religion together with their children. That is not the criterion for the state, and that state has to fulfill its responsibilities, recognizing that fundamental difference in belief.

Let us move next to the source of civil authority. Authority is the rightful exercise of power in one of the institutions that God has ordained. J. Douma is very good at analyzing authority in terms of the right to exercise power. Notice how the Westminster Confession begins when it comes to the civil government: "God, the supreme Lord and King over all the world, hath ordained civil magistrates to be under Him, over the people." That is the right way of putting it: they are under Him, over the people. That

conditions everything. Governments are held to a higher authority than what they may accrue to themselves, but God has ordained them to be “under Him, over the people, for His own glory and the public good.” And it goes on to say that He “has armed them with the power of the sword, for the defense and encouragement of them that are good, and for the punishment of evildoers.” So the government has the power to exercise its authority as it says in Romans 13:1. Let me give you some of the biblical texts in addition to Romans 13:1 that clearly underline the source of civil authority being God Himself. I will read Romans 13:1 to get it before us. “Let every person be subject to the governing authorities. For there is no authority except from God, and those authorities that exist have been instituted by God.” So civil authority is one of God’s institutions. Daniel 4:25 says, “The Most High ruleth in the kingdom of men and he giveth it to whomsoever he will.” In John 19:11, Jesus says to Pilate, “You would have no power over me unless it had been given you from above.” Mark 12:17 says, “Render to Caesar things that are Caesar’s and unto God the things that are God’s.” You know the story of the tribute money from which that comes. And so Caesar can claim a certain authority, but it is subordinate under God. When Caesar claims what is God’s, then of course it goes beyond its legitimate domain, and we must obey God rather than men. So the source of civil authority is clear in the Scriptures.

What we need to work out is the sphere in which God designs for that authority to operate, and so I have a section here on what I call “Components of the Public Good.” The Westminster Confession has that little phrase: “God has ordained them to be under Him, over the people, for His own glory, and the public good.” That is an interesting turn of phrase. It is not every good that you can think of, but it is for the public good. And when we turn to the Scriptures, there are various aspects of this public good. Now, I am going to use a number of biblical texts to develop these components. I think that we should be on guard against just proof texting, and so, although I am going to refer to specific texts, I think what we are really after is a biblical theology of the public good, which is this sphere for which the civil government is responsible. But I think, by and large, those components are explicit in a number of texts.

The first component of the public good, and the most obvious, is that the civil government is ordained to maintain law and order. Romans 13:1-7 says that magistrates are God’s servants to restrain evil and to promote civic righteousness. You notice in Romans 13 that it is to punish evildoers, but to also reward those who are good. There is a positive encouragement of what is good, and I think that we ought not to lose that. But magistrates are God’s servants to restrain evil and to promote civic righteousness. We tend to think of it only in terms of the restraint of evil, which in a fallen world has to be done, and the coercive power of the state is largely expressed in that restraining force. But we should not leave it to that. It is to restrain evil and to promote civic righteousness. The societal benefits of law and order are domestic tranquility and peace. This is why Paul urges us to pray for kings and all those in authority. In 1 Timothy 2:1-2 Paul says, “I urge then, first of all, that requests, prayers, intercession, and thanksgiving be made for everyone, for kings and all those in authority, that we may live peaceful and quiet lives in all godliness and holiness.” That is why we pray for those who are in authority. In Jeremiah 29:7, when Israel is in exile into Babylon, the Lord tells Jeremiah to “pray for the *shalom* of the city to which I have sent you [...] because in its *shalom*, you will have *shalom*.” “*Shalom*” there means “well-being.” So the first function that we have as disciples, in relating discipleship and citizenship, is that we have the great privilege of interceding for those who are in authority and of praying for the well-being of the city in which we are placed. That is a continuing and distinctive responsibility that we have as members of the body of Christ.

Earlier in the course we went over the various biblical texts that have to do with justice that relate to public justice, both retributive in terms of punishment and remedial in terms of requiring restitution. What we saw earlier was that justice in Scripture especially requires impartial discrimination between

the guilty and the innocent, that each may be rendered his or her due. Public justice is retributive in terms of punishment and also remedial in that it requires restitution. In the American system, we have laid much more emphasis on the retributive than we have on the remedial. But biblically, the state restrains evil and promotes civic righteousness by both of those. Now, in conservative circles, the emphasis falls on law and order almost to the exclusion of what I think is also clear in the Scriptures, that there is a calling of the state to maintain social justice. I think that while Romans 13:1-7 is the primary text on the role of the state in God's design, we should put another text beside it. Psalm 82:1-4 says, "God presides in the great assembly. He gives judgment among the *elohim*," the gods. This is referring to human beings. We know that from John 10, as well as from the context, that God is calling human beings *elohim* here. He is calling them gods because of the high calling that they have in the exercise of authority. He tells the gods, the rulers, "How long will you defend the unjust and show partiality to the wicked? Defend the cause of the weak and fatherless; maintain the rights of the poor and oppressed. Rescue the weak and needy; deliver them from the hand of the wicked." I would say on the basis of the text that the primary responsibility of civil government is to maintain the rights of the poor. The reality of the world is such that we must always be on guard to preserve and protect the rights of the socially weak, those whom the Bible calls the poor, the aliens, the orphans, and the widows. So justice not only rectifies injustice by deciding cases, but the justice for which the state is responsible has a structural dimension as well. I call this protective justice, that is, the structural safeguards of human rights which are mandated in many texts in the Law of Moses and in the prophets. For example, Exodus 23:6, Deuteronomy 19:10, and, for just one text from the prophets, Isaiah 10:1-2, which says, "Woe to those who make unjust laws, to those who issue oppressive decrees to deprive the poor of their rights and withhold justice from the oppressed of my people." So, that social justice, particularly in a fallen world, has to do with the maintenance of the rights of the poor.

Now, both of these aspects of the state are most visible in terms of the emergency conditions that are created by the Fall. I do not think that it is entirely correct to say that the state is a result of the Fall. I think that the coercive power in restraining evil and providing for protection from those who would oppress the weak in society, that forcible restraint of evil, does come about as a result of the Fall, but God has created us for community. And the idea of a political community in which there are administrative roles to see that the public good is served is not something that comes about simply because of the Fall. There would be administrative responsibility for someone to engage in, even in an unfallen world. I think we should remember that we are social beings and that God has created us for community. And the church is the redemptive community for the specific purpose of bringing us to Christ and forming us in His image, so that the church in a way comes about as a consequence of the Fall. And the state also is conditioned by the Fall. But its role is not simply negative as a consequence of the Fall. There is a positive administration as well. They are in a fallen world to secure the rights of individuals, which is certainly necessary, and, I would say also to secure the rights of institutions such as the family, the church, and the various voluntary associations, such as schools and guilds, which are institutions and voluntary associations that function as mediating structures between the church and the state. Society flourishes when all the spheres are able to do what God has called them to do. The concept we use in Reformed circles is sphere sovereignty. The idea is that we must respect the integrity of various cultural domains. For example, art is not economics, the university is not a family, and the state is not a church. Each sphere of cultural interaction is ordained by God with its own proper means and its own authority that is proper to it. What the state does in terms of the public good is make sure that those institutions have the right to carry out that for which God has ordained them. There has been a turn in that direction with welfare reform in the United States in allowing charitable choice and allowing faith-based institutions to function properly in terms of the flourishing of society. Christians have been very much involved in that movement.

Now, a third area that is a part of the public good, with which the civil government rightfully concerns itself, is public health and safety. In the book of Deuteronomy, where you look at the equity principle of the various passages there, you see that that is the case. Making sure that the conditions are sanitary, in Deuteronomy 23:12, is a government function. Deuteronomy 22:8 is a very famous text. “When you build a new house, make a balcony around your roof.” Well, those regulations for health and safety are the responsibility of civil government. We do not need to find a text for everything in that area, but sometimes it is very close. When you build a swimming pool, put a fence around it. That is a matter of law, and it is almost directly for the same reason as Deuteronomy 22:8. Health and safety is a legitimate part of governmental responsibility for the public good.

A fourth area would be environmental protection. And there are explicit biblical texts, again in Deuteronomy, that alert us to this as a legitimate aspect of the public good for which government regulates, because this belongs to all. All are affected by the environment. Deuteronomy 20:19 says, “When you make a war, do not destroy the trees.” Deuteronomy 23:6 says, “If you come on a bird’s nest in any tree or on the ground, with fledglings or eggs with a mother sitting on the fledglings or eggs, you shall not take the mother with the young.” That is a conservation measure, and there are other laws of that type in the book of Deuteronomy that show that there is a legitimate role for civil authority in pursuit of this component of the public good.

A fifth area I call public works. And, for example, 2 Kings 20:20 refers to the conduit of Hezekiah by which water was brought into Jerusalem. That was a famous public work in the days of Hezekiah, and that tunnel is still there. That tunnel was recently reopened. It has been divided in the divided city, but there was a television camera that went through that opening. It is a big public works project; it was for the public good, it allowed Jerusalem to survive sieges, and it gave them a sanitary source of fresh water that was hidden from attackers. It was an example of a further component of the public good. So I think that there is much more to the role of the state, not all of it conditioned by the Fall. Certainly, what is most prominent about it is the coercive nature of the state in restraining people, but there are positive things that are involved, too. In a way, all of these are conditioned by the Fall. But still, the political community has a positive role in living together, and at least in these five areas there is a clearly biblical mandate for governmental activity. Conservatives tend to suspect government. I think when you look at the Bible, there is a positive role for government, not just in restraining evil but rather in promoting the public good of society.

Now, the sixth component of the public good I want to deal with separately, and that is the issue of national security and defense. And I want to talk about that next session when we come to the idea of the just war over against the pull toward pacifism in certain Scripture passages. So we will look at that as a separate issue, but I think that there is a biblical basis for national security and defense. But I will elaborate on the principles of just war and relate them to the contemporary discussion in that area.

I call my next section “Contemporary Political Responsibility.” And I will make three points under contemporary political responsibility. The first is some reflections on constitutional government. The political responsibility of Christians in the first century was largely a matter of respect for and obedience to the governing authorities, along with prayer for them. Those are direct instructions that you get in the New Testament: respect for, obedience to, and prayer for the governing authorities. Now, those things still continue to be relevant, but we should notice that the political task is more widely distributed in our historical circumstances, so that to act in accord in biblical principle means bearing greater responsibility for the government itself. This is not something we can opt out of in our historical circumstances. Now, the degree to which we participate in the political order is a matter of gifts and opportunity. But since the political task is more widely distributed in our historical circumstances, to act

in accord with biblical principle means bearing greater responsibility for the government itself. I would say that public justice is the social form of love for our neighbor and therefore one of the ways we are obligated to practice our religion. It is no more optional for God's redeemed people than worship and evangelism. Doing justice and showing mercy are requirements of biblical religion, the practice of which is limited only by opportunity, and under constitutional government there is great opportunity.

In terms of the American situation, the national covenant of the United States is the Constitution. The Declaration of Independence figures largely in giving us a background in that it appeals to the endowment by our Creator with inalienable rights, among them, life, liberty, and the pursuit of human flourishing, the pursuit of happiness. So that is as close as we come to providing a transcendent ground for our political order. But I think that we should recognize that the United States Constitution is the culmination of a process that dates back to the Magna Carta, in AD 1215, when kings were limited by parliament. And I think that the Magna Carta is actually rooted in the Old Testament as the people ratified the kings of Israel. The kings were anointed, but people ratified the kings of Israel so that there was participation in the political order, a kind of representative affirmation, under the Old Testament. I think it is the growth of the principle over time that leads us to the constitutional government. Israel's constitution was the Law of Moses. But when they asked for a king and God acceded to their request, there was at least that participation in terms of ratifying those whom the prophet anointed.

Recall the preamble of the Constitution of the United States. Those of us who were in American schools memorized this at some point: "We the People of the United States, in order to form a more perfect union"—and then there are five things governed by that proposition—"to establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, secure the blessings of liberty to ourselves and our posterity." Those are the purposes of the establishment of constitutional government: to establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty for ourselves and our posterity. I think it is a reflection of the components of the public good that are biblical. Now, it is more than the biblical stream that enters into that. There is the natural law stream, but I think that certainly we should review those five things from time to time. What is the purpose of our constitutional form of government? And I think particularly the last of those, "to secure the blessings of liberty," is a profound choice of words. Why are they called blessings? Why are they not called the privileges of liberty? Well, because there is a Blesser behind them. And although the Constitution is not specifically grounded in the transcendence of God, that is its background. That is the thought. And the thought is that in carrying out these five things, we are fulfilling the role of the state in God's design.

The second point I would make here is to introduce you to the idea of principle pluralism. The Constitution, and as a matter of fact our Confession, commits us to the idea that all citizens are of the same class. There are no second-class citizens on the ground of profession or non-profession of faith. There is no religious test for public office. And the theological rationale for that is that coercion in religion is fundamentally opposed to the dignity of the human person and is incompatible with the spiritual mission of the church. So the government should endorse no confession of faith nor impose any form of worship, but concern itself only with public justice for the common good. That is its role, and that enables us to work with people who have varying world and life views. I think that ultimately it does imply a transcendent ground. I do not think that we can forsake the idea that there is something higher than the civil government to which they are responsible, namely, the moral law.

This leads me to my third point here, which is to say something about morality, law, and politics. You cannot legislate morality. That is a slogan that you hear very frequently when somebody poses something that somebody else disagrees with. Every heretic has his proof text, so every slogan has its

grain of truth. If “you cannot legislate morality” means you cannot change the human heart by passing laws, then of course it is true, but that is beside the point. When it comes to the political community, standards of public justice have to be imposed in a fallen world. Actions that impinge upon the security of the weak, disrupt the social order, or offend against common decency cannot be left to individual choice. These are all matters of public justice and aspects of the public moral order. In this sense, only morality ought to be legislated; or, you ought to have a basis for laws that protect the weak, provide social order, and maintain common decency among people. And there are various voices in our culture that have appealed to it. I go back to Martin Luther King, Jr.’s book, *Strength to Love*, where he says, “Let us never succumb to the temptation of believing that legislation and judicial decrees play only minor roles. The habits, if not the hearts of people, have been and are being altered every day by legislative acts, juridical decision, executive orders.” The law does not have a capacity to change the heart, but in changing the habits at least there is an outward conformity that it is necessary in the protection of human life and property. So we should never be drawn into the idea that we are excluded from appealing to our society to adopt just laws that are biblically informed. Although, because we recognize that there are different religions in our culture, we recognize that there is a limit to which we may impose our views. Rather, we must persuade folks of their legitimate adoption. Well, that is a sketch in terms of what I think we can say about the state in God’s design; recognizing that we belong to two communities, civil authority is established by God for a particular purpose, and that our contemporary political responsibility is in securing those five components of the public good—six if we count national security and defense.

The issue that we keep bumping into is civil disobedience. First, paragraph 4 of chapter 23 in our Confession says, “It is the duty of people to pray for magistrates, honor their persons, to pay them tribute or other dues, to obey their lawful commands, and to be subject to their authority, for conscience’ sake.” It is a rather precise statement, but “to obey their lawful commands” is an important phrase. Now, civil disobedience has different motives and goals, depending on the circumstances. Nonviolent civil disobedience, which is the subject here, concedes the police function to the state, which God has ordained to have a monopoly on the forcible restraint of evil. I think that that is an important provision. We are talking about nonviolent civil disobedience, and this position concedes the police function of the state. God has ordained the state to have a monopoly on the forcible restraint of evil. That, in itself, is an important principle.

I moved to the area of St. Louis called Webster Groves two years ago and studied a little bit about the history of Webster Groves. The incorporation of Webster Groves came about this way. It was at the end of a train line, and there was a man who was murdered at the end of the train line. Well, instead of everyone getting a gun themselves, the folks who lived in that area said, “Let us incorporate and have police force.” Well, that is the right way to go about it. It is for the police, not the individual, to be the forcible restraint of evil. I think that history is a part of the reason why Webster Groves voted against the concealed carry law. You know, it was Webster Groves and the inner-city that said, “It is the police function for the forcible restraint of evil. We are not going to be safer if everybody has a concealed weapon to carry.” It concedes the police function to the state. So that is an aside, but nonviolent civil disobedience takes various forms. And as usual, circumstances alter cases. Now, I have thought about this, because one of the reasons that led to the Presbyterian Church in America’s (PCA) formation was a blanket rejection of civil disobedience, and that appears in the literature. I think that it has become more nuanced than that, and we need to take account of different forms of civil disobedience.

I will describe these in terms of what the goal is. The first kind of civil disobedience is the maintenance of personal integrity. You get just that in the Scriptures explicitly. When the government commands what God forbids or forbids what God commands, the Christian is bound to obey God rather than men.

And there are the examples in Exodus, Daniel, and the book of Acts. So the primary issue in this form of civil disobedience is personal integrity before God. There are some, such as Dabney, who argue that civil disobedience is right only in cases where it would be sin to do otherwise. But I think that is a little too narrow.

There is at the very least the securing of constitutional rights, so with the goal of constitutional rights, you seek remedy from unjust laws through the courts by a process of appeal to the highest law of the land. And this form claims the right to peaceful, orderly protest under the First Amendment. Now, even so, they have to be clearly substantial violations of justice before you take this move, and other means of change must have been tried and exhausted. Fidelity to the democratic system is expressed in appealing to the nation to live up to its professed ideals, by not resorting to violence, and by bearing the consequences of illegal acts. It assumes a basically just society with glaring exception, and I put in this category Rosa Parks. One can submit to an unfair law with a clear conscience. Rosa Parks could have moved back when she was ordered to by the bus driver. It would not have been sin for her to move back. In fact, she did move back once. It was the second time that was too much, so she maintained her seat. There is a higher law than the law for segregation. There is a higher moral law, but her point was that it was also a higher constitutional law. Her action was in the area of testing local laws against the highest law of the land. It was not intended as a test case, but it became that. Rosa Parks had been active in the NAACP, but at this particular point she was not there for that particular purpose. She was just tired, not planted by the NAACP or any other organization. I quote King in *Stride Towards Freedom*. He said in that context, "She was tracked down by the *zeitgeist*." And she was vindicated by the Supreme Court, as were also King and Abernathy who organized the bus boycott. They were arrested for organizing the bus boycott. There was an old law that folks dragged out that prohibited economic boycott, and both the segregation law and the boycott law were ultimately overturned as unconstitutional.

Now, that form of civil disobedience is legitimate under constitutional law. The question would be, what if they had not been upheld in the Constitution? Well, they would still have a moral right to try to get the Constitution changed and to protest in that area. But I think for clarity's sake, we can recognize that, at the very least, pressing one's constitutional right within a constitutional form of government is a legitimate form of protest. Most of the point of civil disobedience in the civil rights movement was violating laws against parading without a permit. That, like the boycott law, was taken as illegitimate interference with the right of petition. The constitutional right to petition government was appealed to, the right to petition it visibly. And the denial of parade permits was a mechanism by which the forces for segregation tried to maintain that system. So within a democratic system, it is recognized there is some civil disobedience that is legitimate; it is constitutional to appeal to the highest law of the land.

The third type of civil disobedience is for political action, and civil disobedience is now commonly understood to refer to a public, nonviolent, conscientious, yet political act, contrary to law, usually done with the aim of bringing about a change in policies of the government. Civil disobedience is designed to call attention to and dramatize the abhorrence of the thing abhorred. Civil disobedience is essentially a constructive attempt to move the democratic process to needed action. So you get street theatre. That is the point of announcing protest and including, "there will be civil disobedience." This has now been largely absorbed into our culture, although it is selectively tolerated. When it comes to the pro-life movement, it was not tolerated. It was really shut down, and the racketeering law brought in all the things that you could think of to deny the civil disobedience of pro-life demonstrators who were trespassing. Largely, their civil disobedience was a matter of trespass. There is an example of this being widely accepted in Washington just a few years ago. The protestors against the IMF and the World Bank got their point across; they were visibly there. But the thing ended in a kind of kabuki dance. On the last day the police said, okay, we will remove two barriers, and you can cross the barriers and be arrested.

And so they negotiate the arrest. It was important to the demonstrators to have it on the record that they engaged in civil disobedience, and the police were very accommodating in terms of that. "Okay, we will move the barriers, you cross our barriers, and we will peacefully arrest you." Well, it is amazing how flexible a democratic society can be at times in order to accommodate that. Of course, the police were responsible for protecting access to those buildings where the meeting was, and so they reacted when that was encroached upon. They did react strongly, not lethally, but strongly as to maintain law and order.

How should we view this? I think that it has the potential for subverting the democratic process and the rule of law. Martin Luther King, Jr. never went against a federal order. In Memphis, he was prepared to do that, but they negotiated. In the garbage workers' strike, they negotiated a way of continuing the protest that would not disobey a federal injunction. He was prepared to do it, but actually he never did go against a federal injunction. It was still in the area of appealing to the highest law of the land. What he proposed in the poor people's campaign was a march on Washington that would tie up everything, from which he expected some form of democratic socialism to emerge. Now, that is political action that is not focused. That is moving the process along on a massive scale by tying up the nation's capital. And he lost his editorial support. When Ralph Abernathy took on that after King's assassination, it ended in a disaster. There are limits to what even a democratic society can regard as helpful to moving the democratic process along and subverting the rule of law. So I think it is something to be careful about. It has become almost routine. About 10 years ago the Hastings Center's report featured a section on militant morality. You have all kinds of social activists, pro-life, pro-choice, animal rights, and all sorts of groups, now feeling that this is the way to get their message across. The way that escalates has lost sight of the true purpose. It is now almost regarded as a necessary part of the democratic process. If you are not engaged in street theatre that results in civil disobedience, you are not serious. I think it points to the flexibility of democratic government, but it has the potential of anarchy.

And I still have questions about the use of civil disobedience for political action. I distinguish political action from political resistance. In two incidents in 1989, Tiananmen Square, which ended in a disaster, and in East Germany, you do not have constitutional government or a democratic system. Your only form of resistance is through nonviolent protest, and I cannot fault those who try it, but you recognize the very great risk that you run under totalitarian government. You have to be very careful about nonviolent political resistance because of the imbalance of power that you have.

Now, the fifth type of civil disobedience is circumstantial necessity. In our legal system, laws of trespass yield to eminent, real, and inevitable threat of death. The model penal code places the sanctity of life at the top of the hierarchy of values. It is this type of action that the PCA refused to criticize in relation to abortion. And it would be helpful to look at the PCA statement on civil disobedience in relation to abortion. This type of thing is selectively applied. I have in my file an article that appeared in a local newspaper on a victory for necessity, in which there was a group of demonstrators who sat in the office of a senator to protest our involvement in Central America. This was over 10 years ago. And they were acquitted under this necessity defense, although that is a stretch to think that by sitting in the office of a senator that they were really protecting people in Central America from eminent loss of life. You get the courts acting inconsistently, and one of the liabilities that came about through the constitutional appeal is that the courts gained more and more authority with an activist court, and the demonstrators recognized that they could subvert the democratic process by appealing directly to the court.

Under circumstantial necessity, the necessity defense in the case of abortion was used not to dramatize; this was not street theatre. Those who did it in the St. Louis area were not dealing in street theatre. Also, it happened in Charlottesville, Virginia. There was a PCA church that was involved there. It was not to

dramatize the issue. It was really to try to persuade women, literally at the last moment, to turn back from abortion, so they just sat down in the front of the clinic door until the police hauled them off. And they argued the necessity defense. I think that is a legitimate defense. But in law, the necessity defense is subject to legislative preemption. Technically, the case *Roe versus Wade* did not do this, but practically it did. In the case of the *State versus O'Brian*, also a Missouri case, the judge's ruling was the same, and this was a pro-life judge. Mark Bell is a PCA elder and was very much involved in this movement, and they thought if any judge would uphold the necessity defense in the case of trespass to block access to abortion clinics in order to prevent women from going through with abortion, this would be the one. But he wrote, "Since abortion remains a constitutionally protected right, the defense of necessity must be viewed in that context. In short, the defense of necessity asserted here cannot be utilized when the harm sought to be avoided, abortion, remains a constitutionally protected activity and the harm incurred, trespass, is in violation of the law. In short, if necessity were a valid defense at a time when abortion is a constitutionally protected right, the result would be an endless physical and perhaps violent impasse." Their hope was that this would be on appeal taken up by the Supreme Court. It is a dichotomy in our law. The idea was that you have in *Roe versus Wade*, with open abortion, an attack on human life that under other circumstances would justify this particular form of trespass.

It is important for us to know this background in order to understand the PCA's view of civil disobedience. It is not approval of civil disobedience as such, but it does recognize that this kind is not subject to ecclesiastical discipline. That was the main point. Some wanted to bring charges against these pro-life demonstrators for not being subordinate to the civil government. The PCA said, no, this is a matter of conscience for these folks, and they have a legitimate rationale in law even if it has been denied. Now, subsequently, racketeering laws have been used against abortion protestors and extreme financial fines have been levied so that it has practically called a halt to the mass demonstrations against abortion, and we turn to other means of seeking to move to eradicate that evil from our society.

Next time I will talk about the death penalty and just war. And we can come back to civil disobedience as well. Thank you.