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METAPHORS, LEGAL AND THEOLOGICAL

Scottish Evangelical Theology Society
Finlayson Lecture, 1992

FRANCIS LYALL, UNIVERSITY OF ABERDEEN

Introduction

First it is an honour to be asked to deliver this lecture. My predecessors are distinguished, and I am proud and flattered to be asked to follow in their train. Although occasionally I dabble in foreign streams of thought, these limited and spasmodic occurrences prove me no theologian or biblical scholar. I am an amateur in these fields – albeit, I hope, in the best sense of the word. It is, of course, both the privilege and the duty of a Christian to seek to understand the faith, but amateurs are not often *au fait* with the full range of an area, nor with recent scholarly developments (and fashions). They may, I hope, in necessity shelter in their status as amateurs. Others can later do me the gentle kindness of telling me of my errors of omission or commission. But even with all these caveats I am sensible of the honour.

Secondly, I am glad to acknowledge publicly a debt to Professor R. A. Finlayson. I remember his visits to the then Evangelical Union at the University of Aberdeen. From a tradition different from my own – and that itself was a lesson – he brought insight and cogency. His was a mind both congenial and challenging. I wish I had told him so face to face. Indeed, as I get older, there are others too that I regret not having thanked in person when that was still possible. But that apart, let me here record my debt to one from whom I learned.

Thirdly, today's title is not perfect, but it will suffice. We will run broader than metaphor, but to have given a title such as 'Figures of Speech in Law and Theology' would have been too bland.

Law and Theology

The disciplines of law and of theology go back into the dawn of history. Indeed, the two are intertwined in the Bible, and are found as twins in other ancient writings. Law for the

regulation of society, and the theological underpinnings of that society, are close fellows. It is therefore not surprising that there are similarities between the two as to how they go about their business. It is also not surprising that, as I would submit, each of our houses can learn from the other.

My discipline is law. In what follows, please imagine me leaning over the wall, looking into the theologians' garden. You are somewhere within speaking distance, I hope, beavering away or leaning on your spade. I have stopped to pass the time of day. You theologs have, you know, some interesting features in your garden and some attractive plants well chosen for their sites. There are also one or two areas that Sellar and Yeatman would have characterised as 'Unpleasaunces'.¹ I am aware that various of your number have similar reservations about parts of the limited area of law that they can descry from where they are standing. And perhaps there are points for discussion between us as to those overhanging branches and burrowing roots.

I hope that you will not consider the preceding paragraph flippant, and unworthy of the Finlayson Lecture. It has been written deliberately. I want to communicate. I have taken a concrete image with various associations, and have used it to put across a statement of what I am attempting to do in the following pages. I want to conjure from within you the idea of two estates running cheek by jowl, and of neighbours in conversation. I reckon I have a reasonable chance of evoking a generalized image on those lines, although no doubt each of us forms a slightly different picture as precise colour and depth are added by personal experience and understanding to the impression generally elicited. The actual colours and depths depend upon your own notions of gardens.

Metaphors in Law and Theology

What I want to speak about is one of the similarities between the way our two disciplines go about their tasks: 'tasks', plural, not 'task' singular, for there are two major tasks that both law and theology have, and which interact in the realm of the vocabulary and syntax that are used in

¹ W.C. Sellar and R.J. Yeatman, *Garden Rubbish and Other Bumps* (London, 1936).

discharging them. Both law and theology are concerned to explore ideas, and to express them to others in, one hopes, a sufficiently convincing form. The minimum is that the expression of the idea is intelligible, though often the intention is that the imagery also helps lend cogency to the expression. What I think each discipline can learn from examples from the other is how helpful metaphors can be, and also how damaging a failure to treat metaphor as metaphor can be. I am aware that analogies and such matters are studied among my theological friends, and perhaps what follows is quite unnecessary: but I have some hope that we can help each other – novel examples freshening one's appreciation of familiar points.

In both law and theology discourse often uses imagery. We freely employ metaphors, similes, analogies and other figures of speech as aids to comprehension. The most abstruse ideas are grappled with and made usable by being expressed in metaphor. Of course the Holy Spirit can use what is, on the human level, the most pedestrian, halting and woolly. But the best preachers and orators are marked by their use of concrete images. The striking phrase – the stuff of the sound-bite with which we are bedevilled – is often metaphorical encapsulation of the point it makes. The images make their points readily graspable. They strike home because they already have root in our minds. That is one reason why C. S. Lewis's writings have found such acceptance. His imagery is both easy and sticks in the fuzz of the mind like a burr. I found many of Professor Finlayson's addresses to the Evangelical Union at Aberdeen struck home, not because of their philosophical or theological elegance, but because he used images which meant something to me.

But words are not only means of communication.² They are the medium in which we think. Vocables, as the specialists call them, are essential for thought on any matter above the most general or most primitive. We tend to think of words as the means of communication between us, but that forgets the stage before communication, the thinking that we engage in

² Cf. Glanville Williams, 'Language and the Law,' *Law Quarterly Rev.* 61 (1945), pp.71-86, 179-95, 293-303, 384-406, 62 (1946), pp. 387-406.

on any matter. Words and syntax are important in thinking as well as in communication. This is the exploration of ideas that I indicated as the first task of our disciplines. It must therefore be a matter of concern in both our disciplines that, from where I stand (and I have no reason to suppose divinity schools any different), the mastery of language is not something which schools impart in the way they used to. Good grades in Higher or 'A-Level' English cannot nowadays be taken to assure facility in syntactical construction or an extensive vocabulary. Not enough of our intake to Universities possess in advance the words with which to think, with which to differentiate fine shades of meaning, with which to turn over and hone a concept. They lack the words in which to formulate a concept with clarity so as to detect its flaws, and then to fracture it by a few precise taps – perhaps to make a few smaller baguette and crown-cut jewels out of a lumpen idea, or perhaps to show it as entirely worthless.

Yet figures of speech do help even in these cases, allowing the communication of enough to permit the transmission of ideas, and of sufficient argument so as to initiate comprehension.³ And there lies an important word. Figures of speech aim at comprehension, not at explication. The idea is grasped sufficiently for it to be used, without there necessarily being a complete understanding. And if that is important in my area of operation, the law, how much more so in yours, where almost by definition the fundamentals are unknowable in the completest sense, although they can be comprehended if the meaning of the imagery is grasped.

But there are dangers, huge dangers, in figures of speech. Are these dangers avoidable? Probably not. Only were law or theology reducible to pure music (not song or dance), or to some mathematical expression, could the dangers be avoided. But music and maths may not be suitable vehicles for the expression of theological truth. Certainly they would not work to convey legal principle.

One danger is that the expression of the theological truth or legal principle by metaphor is unnoticed, by which I mean that what is metaphor is taken for reality. The incidences, the

³ I omit here the question of symbols – semiotics: that is a cognate field of great interest.

accoutrements, the baggage of overtones that accompany the metaphor, are taken up and explored, to the extent that they dominate, and eventually pervert and distort the kernel of the truth the metaphor conveys.

An opposite danger is that the depths of the metaphor are not perceived, and the whole is taken too superficially. A third danger is that the metaphor takes meaning from something current at its time of first use, but comes to be outdated. It may then develop a quaint charm that stultifies it, blunting its impact. By this comment I express occasional disquiet with some preacherly use of Paul's armour analogy (Eph. 6:10-17). The picture of the sword of the Spirit, the breast-plate of righteousness and so on is wonderful – shining knights, venturing out from the postern to strike a shrewd blow or two, before retiring to safety. That sort of passage had a rather different impact on Paul's audience, an impact which we can approximate only by reference to the horrors of modern war. Bear in mind that warfare by sword and javelin was not glamorous. Paul was speaking of being prepared to be hacked at by an iron edge wielded by a strong arm. The modern equivalent of the 'fiery darts of the wicked' is an Exocet missile or some cross between napalm, a cruise missile and a 'smart bomb'. Remember the TV pictures of the Iraq war!

Metaphors need careful handling. Let me now show you what I mean from areas of my own discipline and from yours. I take two examples of baggage and accoutrements, and then two examples from theology, of, perhaps, unperceived depths. The first idea is taken from U.K. Constitutional Law and I will deal with it at some length, so that its nature may become clear to those perhaps unaccustomed to working with legal thought. Seeing metaphor at work in such a milieu may help perception of metaphor in another discipline.

Parliamentary Sovereignty

Are you for or against the European Community? Are you concerned about the effect that joining the Community has had upon the ability of Britons to order their affairs as they choose? Do you hanker for the days when Parliament in Westminster and not Brussels ruled? If so (and given the heat of the debate over the last few years, I suspect even if not),

you will be familiar with the argument about Parliamentary sovereignty. I express here no view about the rights and wrongs of entry to the Common Market. I merely use the argument that rages on the matter as fuel to engine this lecture.

The doctrine of Parliamentary sovereignty is the notion that Parliament in Westminster is supreme, that it has no legislative rival, and that whatever it enacts is the law of the land which will be enforced by the courts of this country. This 'doctrine' – note the word – was enunciated in Victorian times by the first great writer on constitutional matters, Albert Venn Dicey.⁴ Dicey was seeking to crystallize and explain the generalities of the constitutional position of Parliament and of the courts of the Empire in relation to it. He found this gorgeous figure of speech, 'the sovereignty of Parliament', which carries with it a misty impression of power and authority, of history and legitimacy. It has an aura of benevolence and wisdom still.⁵ There is a remanent nostalgia for the days of Victoria, when the sun ne'er set on Empire, and dedicated colonial officers administered that curious mixture of justice and mercy that brought so much peace and order to those many and extensive red areas on the globe.⁶ 'Parliamentary sovereignty' explained much of the practice of the courts in their approach to the legislature and to what the legislature had laid down. It was a good phrase.

It was also a slogan. Stripped of its overtones, it meant that the reviled doctrine of the Stuarts, the Divine Right of kings, was metamorphosed. The Divine Right was the invincible and unchallengeable right of the monarch to determine law, because he had a direct line to the God who had put him and

4 A.V. Dicey, *An Introduction to the Law of the Constitution*, (1885), 10th ed. by E.C.S. Wade (London, 1960); Part I (chs. 1-3) is on 'The Sovereignty of Parliament'. See for modern discussions Wade's Introduction to his edition of Dicey, and C.R. Munro, *Studies in Constitutional Law* (London, 1987), pp.79-108.

5 Dicey may have taken some seed from John Austin's theory of law, expounded in *The Province of Jurisprudence Determined* (1832), in which law is seen as the 'command' of a 'sovereign' who himself owes no obedience to any higher authority.

6 Charles Allen, *Plain Tales from the Raj* (London, 1975); *Tales from the Dark Continent* (London, 1979).

not someone else on the throne.⁷ It drew its strength from Romans 13. The Divine Right of the king transmuted into the Complete Right of Parliament, Parliamentary sovereignty. Yes, there are other voices in our Scottish past. There is the Declaration of Arbroath, 1320, and the Claim of Right, 1689 (c.28). There are the terms of the Treaty of Union between Scotland and England, 1707, and the Acts of Union of the Scottish and English Parliaments that gave effect to it.⁸ But that did not prevent Scottish judges – not only English judges – from being beguiled by the power of Parliament. They had been only too willing to chant the incantation: the function of the courts is merely to apply what Parliament has enacted.⁹ Dicey encapsulated that notion in a simple phrase, and enough judges have repeated it often enough for it to have been impossible for the courts in modern times to review an Act of Parliament even when someone offered to establish that the Act had been obtained by someone misleading Parliament.¹⁰ In short, in formulating his concept, Dicey left out some of the original data he should have taken account of, and, once his theory was stated and accepted as being correct, later data have been distorted in order to fit the concept.¹¹ More

7 J.N. Figgis, *The Divine Right of Kings* (Cambridge, 1896) and 'The Great Leviathan' in his *Churches in the Modern State* (London, 1913).

8 Union with England Act 1707 c.7, Union with Scotland Act, 6 Anne c.11.

9 *Edinburgh & Dalkeith Railway v Wauchope* (1842) 8 Cl. and F. 710; *Lee v Bude and Torrington Junction Railway* (1871) L.R. 6 C.P. 577. Some judges have indicated that the Treaty of Union may still impose limits on the power of Parliament but we await a proper decision: *MacCormick v Lord Advocate* 1953 Session Cases 396; *Gibson v Lord Advocate* 1975 Scots Law Times 134.

10 *British Railways Board v Pickin* [1974] Appeal Cases 765.

11 Cf. Stephen Jay Gould, *Wonderful Life* (London, 1989), for a similar proceeding in the realms of scientific thought, where in the early years of this century the famous American palaeontologist Charles Dolittle Walcott failed to perceive the importance of the Burgess Shale fossils because he too swiftly applied his prior expectations as to their taxonomy.

importantly, what was a legal principle has been taken up as a political incantation.

Parliament was never as powerful as 'Parliamentary sovereignty' seems to imply. It could legislate only within British jurisdiction, or to instruct British courts. Even within its apparent jurisdiction, when it was unwise in what it tried to do, that jurisdiction might be thrown off. Unwise legislation gave birth to the United States. Dicey spoke during a period of relative calm. He would not have phrased things in the way he did had he been writing in, say, 1815. He wrote at the peak of Victorian times, and his seed fell on willing ground. Then the Empire began to crumble. First the Dominions began to resent Westminster being able to legislate for them.¹² Then the colonies became independent. But still the phraseology of metaphor is mouthed, Parliamentary supremacy, Parliamentary sovereignty. Some said that what was important was 'legislative supremacy', that is, that within the U.K. there is no higher legislature or body to call Parliament to account, and that the concept should be understood only within the walls of the law.¹³ It has not remained so. We entered the Common Market and have been there for nineteen years, but Parliamentary sovereignty remains a slogan, a 'principle' to be appealed to by those who want us out.¹⁴

12 The Statute of Westminster, 1931, indicates conventional limitations on the power of Westminster to legislate for the Dominions which were agreed at Imperial Conferences in the 1920s.

13 It can be argued that parliamentary supremacy, a concept dealing with the place of Parliament within the legal system, is different from the concept of sovereignty: see E.C.S. Wade and A.W. Bradley, *Constitutional and Administrative Law*, 10th ed. (London, 1985), pp.60-90, but this reinforces my point. The phrase 'the sovereignty of Parliament' is not always used with legal circumspection.

14 In *R. v Secretary of State for Transport ex parte Factortame* [1990] 3 Weekly Law Reports 898 (H.L.), the House of Lords finally accepted it could and should as a matter of interim relief suspend the operation of an Act of Parliament in conflict with an obligation under Community Law. This could be a useful power if broadened to a general power to hold invalid Acts in conflict with fundamental legal principle.

You may agree. It may be intolerable to you that we are in the Community, and you may consider that precisely by virtue of our Parliamentary sovereignty we can easily get out. Unfortunately, the law of the European Community has no such concept. Any move to secede would be fraught with difficulty. It would be irresponsible to minimize that difficulty by appeal to what started life as a Victorian metaphor, albeit that the metaphor has gained a life of its own.

And that life has had other effects. In part because of Parliamentary sovereignty, we do not have a Bill of Rights, a statement of fundamental rights and freedoms. Again, I leave aside whether we should have a Bill of Rights. That is a separate question. But one problem of enacting a Bill of Rights is Parliamentary sovereignty, for an aspect of Parliamentary sovereignty is that one Parliament cannot bind its successor.¹⁵ A later Act contravening an article of a Bill of Rights might be held implicitly to repeal the earlier article, merely by being an Act of Parliament later than the Bill of Rights. It would certainly be possible, within the doctrine of Parliamentary sovereignty, to have an express repeal in a later Act. And if that is the case, how secure is any statement contained in a Bill of Rights passed by Westminster? How secure is the much vaunted recognition of the independent jurisdiction of the Church of Scotland indicated by the Church of Scotland Act 1921, which schedules the Articles Declaratory of the Constitution of the Church of Scotland in Matters Spiritual and declares them to be lawful for the Church to hold?

Dicey had looked at the cases, and like many distinguished writing lawyers, he sought to express what he perceived as a principle underlying them. But the words he used were metaphor, and went beyond what was strictly necessary to formulate his idea. He could have said: 'It seems that the courts ordinarily apply the law which has been expressed in an Act of Parliament, although there are some statements, one

¹⁵ It is accepted that one Parliament can bind another as to the 'manner and form' of subsequent legislation; that is why an Act passed under the Parliament Acts 1911 and 1947 would be reckoned as law although the Lords would not have assented to the Bill.

or two cases, certain constitutional documents and international law treaties which indicate that there may be limits to the power of Parliament.' But he did not. He went for the succinct but grandiose formulation, Parliamentary sovereignty. That slogan changed our later legal history, making any notion of judicial review of Acts of Parliament impossible.¹⁶ It also means that we have no legal controls to prevent or at least make difficult sudden constitutional change. We could abolish the House of Lords. We could abolish the monarchy. We could introduce a colour bar, and send all immigrants back where they came from. The defences against that sort of development are not found in the law, because of the doctrine of Parliamentary sovereignty. And it is now a 'doctrine', a matter of belief as much as of practice. The language in which Dicey formulated the concept has taken over. Politicians use the concept to oppose developments they do not care for. The root of the concept, the facts that it purported to encapsulate, are ignored.

What can that teach us as to the use of metaphor in theology? Examine your theological reading bearing the example of Dicey in mind. When I look at Scottish church history, I find myself occasionally thinking that an idea which originally was useful, has developed attractions by being too simply expressed in metaphor, and then has become a principle, and even a doctrine, that has distorted. Examples would, of course, be contentious: but what about 'the Crown Rights of the Redeemer'?

The Wall between Church and State

Now, let me get up on the wall between our disciplines, and let me talk about exactly that – the wall between church and state. It was Jefferson who coined the phrase that has bedevilled the relationship between church and state in the United States. The First Amendment to the Constitution of the United States provides *inter alia* that 'Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.' In a letter to a friend Jefferson said that these words were intended 'to build a wall of separation between church and state' in the U.S. Much has flowed from

¹⁶ But note for the future n. 9 above.

that small comment. The words were first quoted judicially in the U.S. in 1878,¹⁷ and then almost by accident. They are the context of Jefferson's noting that the law can reach only actions, not thoughts. The phrase was disinterred in *Everson v Board of Education* (1947) 330 U.S. 1, and since then the notion of the wall has taken wing. What was the intention of the drafters of the Constitution? Was the wall to be high or low? Was it a great gulf or a line? Was it even a semi-permeable membrane? In construing the ambit of the 'establishment clause', the harmonics and overtones of the metaphor of the 'wall' have been important. Can public funds be given to an institution which is conducted on a religious basis? How far does the prohibition go? Is it lawful to start the day in a state-financed school with a school prayer? Can such a school have a Christmas crib? The list of questions seems not yet to be complete.¹⁸

Now let me climb over the garden wall and take a few faltering steps into the minefield. What about theology? There too metaphors are used regularly. Sometimes they are perceived, and sometimes they are not. Some metaphors, even biblical ones, have lost their impact. As I indicated already, the 'armour' passage in Ephesians has developed a quaint aura, has it not?

Other biblical language needs explication. There is a lot of 'Law in the New Testament'.¹⁹ Some of it I have explored elsewhere, seeking to show the Roman law bases of much

17 *Reynolds v United States* (1878-9) 98 U.S. 145, 25 L. Ed. 244, citing Thos. Jefferson, *Works*, vol.8, p. 113. The case involved Mormon polygamy and Brigham Young's Secretary.

18 John J. McGrath, *Church and State in American Law: Cases and Materials* (Milwaukee, Wisc., 1962); John J. Noonan, *The Believer and the Powers That Are* (New York, 1987). See also D.H. Oaks, (ed.), *The Wall between Church and State* (Chicago, 1963), particularly R.M. Hutchins, 'The Future of the Wall', pp.17-25.

19 See J. Duncan M. Derrett, *Law in the New Testament* (London, 1970); *Studies in the New Testament*, 4 vols. (Leiden, 1977-86).

METAPHORS, LEGAL AND THEOLOGICAL language in the New Testament Epistles.²⁰ That discussion is still available, but let me indicate its tenor.

Roman Law in the Epistles

The New Testament Epistles contain many figures of speech that are clearly legal in origin. Consider a famous passage in Romans:

For you did not receive a spirit that makes you a slave again to fear, but you received the Spirit of sonship. And by him we cry, 'Abba, Father'. The Spirit itself testifies with our spirit that we are God's children. Now if we are children, then we are heirs – heirs of God and co-heirs with Christ, if indeed we share in his sufferings in order that we may also share in his glory. (Rom. 8:15-17)

These words make a lawyer sit up. There are slavery, adoption, witnesses and inheritance, all woven together. But what do they mean?

Paul was, of course, trained in law, and was a Roman citizen. It is my contention that he used many figures of speech drawn from Roman law. I can see them in epistles written to Roman cities like Corinth, or to places where there was a significant Roman presence, like Ephesus. Romans, the epistle to the seat of Roman law, is full of such language. Paul speaks of slaves and of freedmen, of citizenship and aliens, of heirs, of adoption, of children and their Father. I would even argue that he uses the concept of trust.²¹ Others, for example the non-Roman Peter, use language they would have cause to know from personal experience – citizenship and the alien (1 Pet. 2:9-11).

Of course there are other contenders for the root of the legal metaphors and language, but there are greater difficulties with a non-Roman referent. Adoption, for example, was unknown among the Jews, and indeed was still unknown in British civil law when the Westminster Divines formulated Chapter 12 of their Confession. Adoption came into UK law only with the Adoption Act 1930, some three hundred years later. For their concept, the Westminster Divines drew on their Bible and the writing of theologians. But at root the concept is one of law,

²⁰ F. Lyall, *Slaves, Citizens, Sons: Legal Metaphors in the New Testament Epistles* (Grand Rapids, MI, 1984).

²¹ *Ibid.*, pp.131-41.

with overtones and connotations that must be considered, and if the legal background is properly considered it will be found significantly to deepen the ideas being expressed.

Adoption is a Roman notion. In Greek law it was used as a succession device, usually occurring at a death-bed: the new 'child' would succeed the dying father. In Babylonian law adoption was used to place someone as an apprentice, for traditionally it was the duty of a father to pass on his knowledge to his child and he should not train someone outside his family. Adoption got round that social norm. But such adoptions were terminated at the end of the apprenticeship. Neither Jewish nor Greek nor Babylonian law, therefore, provides an acceptable meaning for Paul's use of the term, adoption.

Roman law does. In Roman law adoption meant that one entirely ceased to be a member of one's former family and came under the power and authority of a new head of family, the *paterfamilias*. And the *paterfamilias* was quite a figure. In civil (but not public) law he had total control over the affairs of his child. The child had no property of 'his own'. Hurts and damage done to or by the child were legally done to or by the father. Social relationships, including marriage, were at the father's pleasure. And there was no legal 'coming-of-age'. Irrespective of age, the child remained the child of the *paterfamilias* until the *paterfamilias* died, or himself terminated the relationship. That is what lies behind the notion of 'adoption', those simple words used five times by Paul, and expanded by Westminster Assembly into a magnificent chapter.²²

Confusion, Composition and Conversion

We pass to post-biblical matters for our final example. Consider the early heresies. Think of the debates as to the nature of Christ and the relationship between Christ and God. There surely we can see profound thought in verbal form. We can also see that some of the heresies do what Dicey did: they come to conclusions that omit some of the data that have to be taken into account. Being, essence, and will are human or

²² *Ibid.*, pp.67-100; F. Lyall, 'Roman Law in the Writings of Paul Adoption,' *Journal of Biblical Literature* 85 (1969), pp.458-66.

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physical characteristics but their interplay gave incessant difficulty. Indeed, have these things been fully clarified? I suspect not, because they are discussed in figures of speech. The words used had immediate referents at the time they were employed, and the sense which they thereby contain is applied to explicate theology. I read of the debates about the *hypostasis* and *physis* and see on occasion terms with which I am familiar creeping in to the discussion. I find myself wondering how the debates would have been conducted if they were being conducted now. In commercial law we have such interesting ideas as the company and the partnership, which we speak of as 'personality' for certain purposes. We are aware of the concept of the trustee, and even of the individual acting in several capacities. Of course the notion that ideas from law might intrude into theological discussion may appal. The fact is that legal ideas were used back then as tools of thought and discourse on profound matters.

'On the Nature of Christ' the Westminster Confession declares as follows:

The Son of God, the second person in the Trinity, being very and eternal God, of one substance, and equal with the Father, did, when the fulness of time was come, take upon him man's nature, with all the essential properties and common infirmities thereof, yet without sin; being conceived by the power of the Holy Ghost, in the womb of the Virgin Mary, of her substance. So that two whole, perfect, and distinct natures, the Godhead and the manhood, were inseparably joined together in one person, without conversion, composition, or confusion, Which person is very God and very man, yet one Christ, the only Mediator between God and man.

(Westminster Confession of Faith, 8:2)

It reads well. I get a special tingle from five words: 'without conversion, composition, or confusion'. (Elsewhere – although I have been unable to find the reference²³ – I have read that the two natures exist 'without commixtion'.) And I recognise that the thinking going on and into these matters was borrowing from my patch, the garden of the law, for the words, and therefore also for the concepts that were employed.

23 It would be a kindness to inform me.

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I understand the Westminster language traces back to the Definition of the Council of Chalcedon of AD 451.²⁴ There we read that the two natures of the Lord are to be acknowledged:

without confusion, without change, without division, without separation; the distinction being in no way abolished because of the union, but rather the characteristic property of each nature being preserved and concurring into one person and one substance, not as if Christ were parted or divided into two persons, but one and the same Son and only-begotten Son.²⁵

Confusion, change, division, separation. The *New Dictionary of Theology* says that Chalcedon represents the definitive statement, albeit in Greek ontological language, of how Jesus Christ was God and man at the same time.²⁶ It may be Greek ontological language; it is also the language of law. Confusion, change, division, separation, are legal concepts to be found in Roman law, the law of the Empire by the time of Chalcedon. The *Edict of Caracalla* (the *Constitutio Antoniniana*) of AD 212 had given Roman citizenship to all born and resident within the Empire. Roman law was in force throughout the Empire. The so-called *Law*

24 H. Denzinger and A. Schonmetzer, *Enchiridion Symbolorum Definitionum et Declarationum de Rebus Fidei et Morum*, 23rd ed. (Freiburg, 1965); translated by R. J. Deferrari (with *imprimatur*) as *The Sources of Catholic Dogma* (St. Louis, MO, and London, 1957); T. H. Bindley, Rev. F. W. Green, *The Oecumenical Documents of the Faith* (London, 1950), pp.191-3.

25 I quote the Bindley translation. Deferrari puts it that the Lord is to be acknowledged in two natures 'without mingling, without change, indivisibly, undividedly, the distinction of the natures nowhere removed on account of the union, but rather the peculiarity of each nature being kept, and uniting in one substance, not divided or separated into two persons, but one and the same Son only begotten God Word, Lord Jesus Christ ...' The Deferrari translation of the Rusticus version may contain an error, the word 'nowhere' being omitted from the passage. The other change in the version of Rusticus is that 'uniqueness' replaces 'peculiarity'.

26 B. Demarest, 'Creeds', S.B. Ferguson and D.F. Wright, eds., *New Dictionary of Theology* (Leicester, 1988), pp. 179-181 at p. 180.

of Citations of AD 426 had recently been issued by Theodosius II and Valentinian III to regularize the weight given by courts to the citation of Roman juristic writing. Some of the Chalcedonian thinking comes from the *Tome of Leo*, that is from Rome itself. And the Council of Chalcedon itself indicates that many in holy orders were familiar with the law – they were discouraged from embroiling themselves in civil matters to the detriment of their ecclesiastical functions.²⁷ We may therefore suppose that they knew the legal meaning of the concepts they employ.

Confusion, change, separation or division; or to return to the Westminster words, conversion, composition or confusion, and the two natures: we are in the realm of property law and ownership rights. We are in mainline Roman law. Let us take the simplest factual cases. If I sew your buttons on my jacket, what is the legal position? Have you lost ownership of the buttons? If I weave with your wool, to whom belongs the cloth? If I make bread with your flour, to whom belongs the loaf? If I make bronze with your tin and my copper, to whom belongs the bronze? If I make the bronze into a goblet, to whom belongs the goblet? If I solder your spout to my container, to whom belongs the kettle? If I write on your parchment, to whom belongs the document? If I paint on your wood, to whom belongs the painting?

Under Roman law property could be acquired in a variety of ways. One was *accessio*: a building belonged to the owner of the land on which it was built. That was clear, and remains Scots law. Title to the building goes with the land, irrespective of any claim for compensation for the use of materials. But what about the case of movable property, the kettle, the bronze? Where the two elements are readily separable, the solution is to separate the elements. I take your buttons off my coat. There is no problem. But if separation is not possible, what then? In that case, there might be *confusio* or *commixtio*, and common ownership of the property. Confusion occurs usually in fluids where the mixture is not reducible. In commixtion separation is possible in theory, but

²⁷ Canons of Chalcedon, Canon 3. Other of the Canons similarly imply a familiarity with the secular law; eg. Canons 4, 10, 12, 21, 23, 27.

not in practice, as where two herds of sheep, neither marked, graze together and mingle. In both confusion and commixtion cases the resultant mixture is owned in proportion to the input. That common property may then be divided, with new property rights being constituted in the new parts: one would not get back the same sheep as one's original herd. But until that is done there is common ownership of the whole mass (or mess?).

Such ideas do not exhaust the possibilities. There also might be *specificatio*, where the essence of the argument focuses on whether a new thing is created by the mixing of the elements or the undergoing of a process. If there were a 'new thing', then there must be new ownership, and that need not be common.²⁸ This is where we come to the question of the woven wool, the new loaf, and, some would say, the written-on parchment or the painting on the wood panel. The 'new thing' cannot be resolved into its component parts without its destruction or at least major detriment to it. It is a 'new thing' and as such will have a new owner. I cannot forbear to note that another word for *specificatio*, specification, is conversion. What nuances may be there!

Confusion, commixtion, change and conversion. The language that the Fathers employ in thinking of the two natures of Jesus, human and divine, show them grappling with that difficult question. The tools of legal thought which they use deal with essences, and consider whether there is

28 On *accessio*, see W.W. Buckland, *A Textbook of Roman Law*, 3rd ed., revised by P. Stein (Cambridge, 1963), pp.208-15, *specificatio* is dealt with at pp.215-18; Justinian's *Institutes* II.1.19-34; Gaius, *Institutes*, II.70-9. For the concepts in modern law see, D. Carey Miller, *Corporeal Moveables in Scots Law* (Edinburgh, 1991) (confusion/commixtion, pp.71-4; specification, pp.64-70). Glanville Williams (cited n. 2 above) considers that the concept of *specificatio* was 'largely a product of erroneous Greek philosophy' that 'every tangible thing was supposed to be a combination of matter (substance) and form' compounded by dispute 'as to the relative importance of the two supposed elements', *Law Quarterly Rev.* 61 (1945), p.293. At pp.293-299 he argues that the complexity of *specificatio* is unnecessary, artificial and best avoided by a legal system. I am not so sure.

something new, something joint, or something which is still separable into its components. The Fathers deal with each systematically. No, there is no 'new thing' created for that would be to change God. Neither is Jesus something which can be disassembled into two component elements. There is no 'confusion' involving common ownership of Jesus by God and Man. Nor is there that change which the Westminster Confession speaks of as composition, a putting together of element. There is no 'conversion'. There is no commixtion. These are the possibilities which the civil law concepts of property and property rights raise in the Chalcedonian minds. These are the possibilities which they hasten to exclude.

In so doing, the Fathers provide an example of metaphoric thought and explication which is useful. Yes, they leave the question of the two natures mysterious, but surely by their careful excluding of the normal legal categories of thought they do provide a better representation of what the Bible says of Jesus.

The Westminster Divines, drawing on the law of their time,²⁹ take up the point. Their 'without conversion, composition or confusion' also uses legal terminology. As we have seen, conversion and confusion are terms from *accessio* and *specificatio*. Composition is also putting things together: what the result is in law depends on whether there is *accessio*, specification or separability. The two natures are 'inseparably joined together in one person', but the results that would normally follow in the legal realm, do not occur. Westminster follows Chalcedon, albeit in fewer words.

Finally, where does this fit into my discussion of metaphor? I have used 'Parliamentary sovereignty' and the 'wall between church and state' to point the dangers of figurative language, the potential that figures of speech have to distort thinking. I have indicated the depth of the legal imagery in the Epistles. What of the two natures of Christ? This is an example where knowledge of the background again increases one's appreciation of the point being analysed,

²⁹ Stair's *An Institute of the Law of Scotland* (1692), which discusses *accessio* and *specificatio* in Book 2.1.41-2, is evidence of the law of the time of the Westminster Divines.

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discussed and then made. Confusion, commixtion, change, separation - there is an approximate level at which these words can be appreciated. But take the legal depths they imply, and the nature of the discussion changes. There were good reasons why Eutyches had to be dealt with. It was not just a debate about words: it was a debate about fundamental matters.

But I have said enough. I leave it to others to explore examples from more modern theology.