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# LAW





# LAW

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## ORIGIN OF LAW

Address delivered on May 5, 1940

During the winter of the year 1901 a group of archeologists uncovered at Susa, in Persia, three fragments of a broken column of black stone on which was found inscribed the oldest known code of law. It was the famous Code of Hammurabi, a wise ruler of Babylonia, and was written more than two thousand years before Christ.

This Code of Hammurabi is severe—perhaps too harsh for modern man, and many of the laws may seem unjust to us. However, in general it shows that the law-maker understood the inherent rights and duties of man, and so it shall always be revered as a body of great law.

In the Sixth Century the Roman Emperor Justinian commissioned ten learned men to write a code of law. This, together with other collections, is the renowned Corpus Juris Civilis. The importance of this code is well known to all students of law—the European student finds it still necessary to begin his studies with the Code of Justinian, and it would be well for the American law student to do likewise. Perhaps no document has had more enthusiastic supporters and severe critics. Some find it the perfection of legal enactments; others attribute the absolutism of the temporal power, past and present, to it.

In more recent times, the saintly Pius X gave to the best minds in the Church the tremendous task of codifying the law of the Church. This is the Code of Canon Law, which gives in brief the doctrines, and extensively the disciplinary law, of the

Catholic Church. There are those today who feel the hope of the future lies in this Code of Canon Law. Professor Roscoe Pound, of Harvard University, has said:

“Perhaps the civilized world may yet be unified by law. . . . it may be unified by an idea of law which came to us from Rome, was preserved for us and developed by the Roman Church . . . and is, it may be, being preserved for us by juristic faculties and law teachers of the Roman Church in many lands, who are bringing the philosophy of the Church to bear on the problems of the Twentieth Century.”

No one wishes to contend that the Code of Hammurabi, or that of Justinian, or even the Code of Canon Law, is perfect in all details; but what makes all these Codes great law is that they all recognize the real source of law, they understand that all law finally comes from God. These Codes are fundamentally sound in their philosophy. The tricks of lobbyists—graft, influence, and selfish interest—are not the starting point from which these began.

The social and political chaos about us must have some starting point, and more true than it seems at first, this condition has arisen out of contempt for law and the misuse of legislative function on the part of many rulers of peoples. Is there not some deep significance in the expression of many persons today concerning the laws of both Church and State, that “After all, these are merely man-made laws?”

It is well known that certain theories coming from false leaders find their way by a process of infiltration into the background of thought of the

average man who may never have heard either the name of the one who first pronounced the theory, or by what label the theory is known to the academic world. Rousseau—Marx—Hobbes—Spengler—these names mean little to many persons, yet their theories have supplanted the genuine Christian and Catholic concept of law, and the result can be easily discerned by any one who takes the time to think the matter to a conclusion.

If we but mention briefly some of the theories concerning the origin of law, these will be recognized without any need of academic labels or identification. There are those who hold that the State is the source of all existing rights and duties; others hold that laws are to be disobeyed because they destroy the natural rights of man; some others maintain that some explicit or implicit pact among men causes law to exist, or that economic needs alone determine law; that customs and manners alone account for law as well as for morality.

Fill the thinking processes of man with these theories, and the result is a lack of respect for law on the part of the subject, and a misuse of power on the part of those who have gained the leadership of nations. Return to the Catholic concept of law and you have a return to God, in whom we find the source and the sanction for all law. Law, then, in a very practical sense, brings God down to man in man's relations with himself, his neighbor, and society.

A Catholic always starts with certain principles—the existence of God, the Creator and Designer of all things; the existence in man of an intelligent and spiritual principle called the soul. For us God is an intelligent being—not a blind force—

and in His creation of the universe there must be a design and plan. This is well said by the writer of *Ecclesiasticus*:

“God created man of the earth, and made him after his own image . . . He created of him a helpmate like to himself: he gave them counsel, and a tongue, . . . and a heart to devise: and he filled them with the knowledge of understanding.”

This intelligent plan and direction of creation on the part of God is the final source of all law. The artist and the workman always leave some mark of themselves on the work of their minds and hands. The eternal ordering of things is marked on every work of God. All things that live reflect the life of God; the strength and swiftness of created things, the power of God. All harmony found in the works of nature, the subject and the source of scientific discovery, show the beauty of God; while the moon and stars tell us of His glory.

No one believes that the plays of Shakespeare are the chance grouping together of words, or that the symphonies of Beethoven came into being by an accidental putting together of the notes of the musical scale. Behind this dramatic manipulation of words producing the penetrating dramas of Shakespeare, and behind Beethoven's lofty grouping of notes we know there was a mind that planned, that designed, and finally left the very personality of the artist in these stirring poetic measures and in the mighty chords of that masterful music.

It would be much easier to imagine these artistic works without a designer than it would be to think that the world and man could exist without some plan, some design, and some purpose. This plan,



this design—this end for which things have been created by God—is what is known as the Eternal Law. The reflection of God in His creation—man—is called the Natural Law. Man, by the light of his reason, comes to know of this plan and this eternal ordering of things as reflected in his own being. It is not a reflection, as of an image in a pool—it is the impress and the stamp of the mind of God in the very soul and being of His creature.

This truth is so much a part of man's nature that men of all times have known it. Aristotle and Cicero speak of it; it is recognized by Thomas Aquinas just as it is by the Supreme Court of the United States.

We speak sometimes of natural rights, and these rights we maintain cannot be ignored or denied. These rights are derived from the Natural Law. We have a right to life, and to realize this right we have a right to freedom of action. We have, further, a right to own property so as to defend this right to life. Man has a right to marry and to beget and to educate children, and these rights are derived primarily not from human legislation, but from the design and the plan of God found in man and the Natural Law.

As soon as we recognize the right to life and property, to marry and beget children, we immediately recognize that murder and thievery, and adultery, and defamation of character, and all forms of injustice to others, must be evil. These acts do not become evil simply when they are prohibited by the laws of Church or State; they are wrong because they offend the very nature of man, destroying his rights and nullifying the plan of God.

The Natural Law is capable of being seen in

other ways. Upon the man who breaks the laws of temperance by a drunken debauch, the law will take its toll by nervous depression and other physical ills. Even in the economic field the law will come into action after our wild speculations and orgies of spending and throw society into the doldrums of economic defeat and depression.

But because of the very limited power of man's intellect, and because of his tendency to error, and because of passion and selfishness, the Natural Law is not too clear to all men and it becomes necessary to have it clarified and affirmed in such a manner that no man can overlook it. This is what God did amid the thunders of Mount Sinai when He gave to Moses the tablets of stone containing the Ten Commandments; for the pith of the Ten Commandments is simply the Natural Law clarified for us by brief and precise expression.

Natural Law being another name for the expressions and adjustments used by the Creator, the positive enactments of State and Church must be founded on it. This expansion of the natural Law through positive enactments is required because the Natural Law is not sufficiently detailed for the proper control of the complexities of human life. When those in authority make laws in conformity with and not in opposition to the Natural Law, then their enactments cannot be dismissed simply as man-made laws, for laws so made are from God. In no sense, then, can the laws which properly govern the preservation of life and property, and those that protect the purity of family life, be considered the imposition of another's will upon the multitude; nor are we allowed, by cleverness and corruption, to disobey or circumvent them.

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Just laws must be observed then because they come from God. This is true not only of the immediate obligations recognized as a perception of the Natural Law, but of the positive enactments of properly constituted human authority as well. The binding force of law—the sanction of law—is God Himself.

Society has been likened to a city built upon a mountain within whose bosom are confined a thousand volcanic fires. These fires are the millions of individuals with opposing interests and varying inclinations. The ambitions and passions of men must be restrained and their indolence excited to action. This is the purpose of the laws of Church and State, that the end of civil and religious life be directed to procure the peace and happiness of all. Without just laws, and the proper notion of the binding force of law, no one can live in security; and without God as the source of authority, only chaos and crime are the inheritance of man.

Only in this concept of the origin of law will society be saved. The subtle and false doctrines of what law is and whence it comes, account for the despotism, fear, and force, which are crushing the world today.

Because of these false and evil theories of the origin of law, the effectiveness of law is lost, and hence there are devised varied methods of appeal to promote the observance of law. Self-interest is proposed as a reason, but this will not make men observe law. The ambitious and licentious man will only scorn that which stops the free progress of his individual aims. The poor, and those who in many cases have been deprived of the essentials of living, are not in the name of self-interest likely to defend

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either the property or the lives of those who live in plenty. Will you, then, find the binding force of law in the fear produced by violence, prisons, the gallows, and exile? Force will not only defeat the peace and well-ordered lives of the people, but in the end will destroy itself. When the temper of the people has been sufficiently tried they will seize the weapons of force to destroy the leaders who so trusted in these means to compel obedience in their subjects.

Every appeal, except the appeal to God in law and authority, will bear evil fruit. God and religion are the beginning and end of all things, and in God alone we find the answer to the problem of law as well as to every other problem that confronts the human mind.

Despots and dictators; the cruelty of life; the disturbance of peace by bloody wars—all these are the fruits of the exclusion of God from the councils of men. Only a return to God as the foundation of all right, and an acknowledgment that law is from God, will save the nations of the earth.

## MEANING OF LAW

Address delivered on May 12, 1940

Louis XIV, King of France is reported to have said: "The State, I am the State." Whether he used these words or not, his despotism in affairs of state was in full accord with the expression.

He was not the first ruler to impose his arbitrary will upon his subjects as if it were the law; nor has he been the last, for the whole doctrine of modern totalitarianism comes to this, that the will of the ruler is the law of the people.

Absolutism is by no means a new theory in law. It was the doctrine of Nero and Caligula, despotic emperors of ancient Rome. Henry IV of medieval Germany in his bitter quarrel with the Papacy attempted to stretch the prerogative of the crown to the point of making the Church and her bishops his pliant tools. James I of England, who was something of a philosopher of law, wrote a treatise defending the "divine right of kings." Chancellor Von Bismarck by his tyrannical May laws attempted to destroy the Catholic Church in modern Germany. All these were totalitarians and the Catholic Church was forced to resist their despotism as she is now resisting that of Hitler and Stalin.

Constantly in the past critics have attempted to use these incidents to accuse the Church of opposition to the State or to show that Catholics could not be, in reality, patriotic. But now since the despotism of rulers is directed not only against Catholicism but every form of religious worship, there is

beginning to exist a better understanding of the historical position of the Catholic Church.

The Catholic Church has been conscious from the beginning of her long and eventful history of the divine mandate in spiritual matters. She heard the words of Christ: "And I say to thee: That thou art Peter; and upon this rock I will build my church, and the gates of hell shall not prevail against it" (*Matt. 16:18*).

She was likewise commissioned by the Lord: "Going therefore, teach ye all nations: baptizing them in the name of the Father, and of the Son, and of the Holy Ghost. Teaching them to observe all things whatsoever I have commanded you" (*Matt. 28:19-20*).

Fully aware of the divine origin of this spiritual authority, the Church has never overlooked the fact that there is still another society, the State, with authority from God to rule over temporal matters. She remembers what her Founder said when asked if it was lawful to pay tribute to Caesar. Looking at the image of the emperor on the coin, Christ pronounced that rule making clear the duty of the Christian to the lawful authority of the State: "Render therefore to Caesar the things that are Caesar's; and to God, the things that are God's" (*Matt. 22:21*).

The divine origin of authority in civil society, however, requires some thoughtful consideration. The law of nature requires man to live in the company of his fellowmen. A normal man cannot even supply the needs of his body through his own unaided efforts. His instinct of sociability cries out for the presence of others; when alone, he hungers to be with those who understand and love him. No

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other creature of this earth possesses the power of communicating thought by speech, thereby proving that man is intended to live in the society of others.

That all men are created equal is a Catholic concept, in spite of the fact that some are more abundantly endowed with talent, with strength, and with beauty. For beneath these externals no man is more than body and soul, and what really matters after all is this, that all men are essentially equal. Absolutism in government holds that men are born unequal and that those with the ability to seize and use power over others, have this power by divine right. Divine right here does not mean authority from God, but some pretended divinity they find in worldly power and domination.

The Catholic teaching is that no man by his nature possesses authority to rule over others. He may not rule except with the power which comes from God. The Sacred Scriptures are evidence of this teaching:

“By me kings reign, and lawgivers decree just things,  
By me princes rule, and the mighty decree justice” (*Proverbs* 8:15-16).

The writer of the Book of Proverbs is speaking of Divine Wisdom. St. Paul lays down the basis for civil authority and calls disobedience to lawful enactments of the State a sin: “. . . for there is no power but from God . . . Therefore he that resisteth the power, resisteth the ordinance of God. And they that resist, purchase to themselves damnation” (*Romans* 13:2).

The cynical belief that God is on the side of the largest army with the best weapons of warfare

never found a place in Catholic thinking. Authority does not automatically descend upon a ruthless conqueror who, by violating every right of decency and justice, enslaves a people against its will.

Catholic philosophy teaches that the ordinary condition on which heaven conveys lawful authority to a ruler is through the consent of the governed. The people must decide on the form of government and select the ruler before God invests that ruler with sovereignty.

The people at times even have the right to revolt against tyrannical rule: "A revolution, the subversion of authority, the Church holds, and rightly, to be a fearful occurrence. Society quakes to its deepest foundations from the shock; with difficulty will it afterwards recover its equipoise; and yet when despotism lowers its heavy hand over a people, and representation, counsel, and entreaty fail to stay it, the nation, rather than let liberty die for evermore, may rise up with all its might, and in a supreme effort for life, hurl against despotism the thunders of war. This right belongs not to an individual nor to a few; the people only may say when the time for insurrection has come" (Ireland—*The Catholic Church and Modern Society*. pp. 48-49).

Seldom, then, will revolution be allowed; but there can be times when it would seem to be the only means to justice. Our own government was changed in 1776, when after many futile appeals, the colonists were answered only with further tyrannies from George III. As Americans and as Catholics we are proud of the men whose courage transferred this land from servitude to liberty. In the Catholic principles already mentioned our fathers were ethically justified in their extreme action.



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Law, then, means an ordinance of God and consequently the authority that makes just laws must come from God. Laws to be laws in the true sense must be made by properly constituted authority; the laws themselves must be circumscribed by justice and goodness, they must correspond to all that God requires or else, in spite of the authority from which they proceed, they fail as ordinances of God.

The great philosopher and teacher of the Catholic Church, St. Thomas Aquinas, has put what we have said and more in a short and famous definition of law: "Law is a mandate of reason having for its aim the public good and promulgated by him who has the care of society."

St. Thomas does not mention the *will*, but the *reason*, of the legislator, to exclude the notion that any despotic *desire* of authority can become a law. The legislator is obliged to weigh his *reasons* and ponder well the situation before he makes a law. He must consider the abilities of his subjects to observe the law and he must take into consideration their inalienable rights over which he has no control—he must seek to do good to all the citizens. Laws made in the heat of passion, for the benefit simply of some favored group of citizens, are not laws but the perversion of law.

The Jewish question that has assumed so much importance today and which seems to be vexing the sentiments if not the minds of certain persons could be solved in great part by the application of the Catholic definition of law. Mass as many emotional reactions as you can to justify the disabling enactments of Germany and Italy towards the Jew, nevertheless when a Jew is deprived of his possessions, barred from business and the professions,

simply because he is a Jew, we have a violation of Natural Law, and such enactments cannot be said to be mandates of reason.

Laws then mean the voice of God and authority bears about it the light that comes from God; for the authority that makes laws and thereby governs, though human, by a consecration has God dwelling in it. It remains human while partaking of the strength and beauty of divinity.

It has been said that one of the greatest troubles in government today is the apathy of the people. Why should there not be apathy towards government when men are no longer taught the divinity in law and authority? Teach men that law and authority are the union of the human and divine and there might be hope of an enthusiastic observance of law and of respect for the leader even when, for partisan reasons or through defect of character, he hardly deserves in his person the respect which his office should otherwise command.

There is still this healthy social effect to be derived from the Catholic meaning of law—the distinction between the man and his office. In olden days the saints of God found reasons to rebuke those in authority but it was a rebuke of the person and not of the office. There was not present in Catholic times the modern tendency to consider every criticism of a person in authority as a criticism of authority itself. In the Middle Ages there was criticism of persons in authority in words, in sculpture, and in painting. This has been misinterpreted by many writers who seek to find forerunners of religious revolt in Dante and even in the builders of the great cathedrals.

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Fra Angelico, the most spiritual and reverent painter of all time, depicts bishops and priests both in heaven and hell in his famous "Last Judgment". No one could possibly accuse Fra Angelico of rebellion against authority!

The answer to all this is that the writers, the sculptors, the painters, the saints and people of the Middle Ages understood the divine origin of law and authority and it was possible for them to see defects in a person without feeling disrespect for his office.

When the Catholic sense of law and life is lost, historical feeling, humor, and freedom seem to perish at the same time. This tottering, humorless, seriously cruel world of today needs the refreshing spirit of Catholicism to make it live once more, pulsating with joy and laughter.

At this moment the world may not be ready to return to Catholic concepts of law and authority but we can pray that civilized men may again be happily united by a Catholic philosophy of law.

## POSITIVE LAW—CHURCH AND STATE

Address delivered on May 19, 1940

The American Declaration of Independence states: "We hold these truths to be self-evident that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness."

No man of sane mind should doubt these eloquent words; for as is pointed out, the natural rights mentioned are perceived by a simple intuition of mind. These rights flow from the creative plan of God reflected in the soul and being of His creature, man; in other words they come from what is called the Natural Law.

The fundamental principle of the Natural Law is "to do good and to avoid evil"—this principle can be difficult of application especially in the manifold social relationships of human life. It seems that this principle of the Natural Law can be applied in an unjust and wrongful fashion as when some savage tribes out of a perverted sense of parental love, believing, perhaps, that they are doing good, put their aged parents to death.

From this can be seen the need of positive law, a law beyond that written in the heart of man, a law that proceeds from properly constituted authority in Church and State. The task of making positive laws is a difficult one and the history of positive law is full of vicissitudes. These difficulties arise out of ignorance, fear, and that undying love of power among men. The narrow philosophies into which so much bad political theory has been crystallized fre-

quently sway the minds of legislators. At times God shines out as their guiding light and as often the neglect of God and the substitution of some theory such as man existing for the State rather than the State existing for man, appears to be the principle on which positive law is founded.

Laws need some vitalizing force and the law-maker needs a light to guide him. In very truth it can be said that this force and this light is God—but, for a clearer and more practical guide it may be better to bring forth something that God gave the world in order to guide it aright in the dangerous and difficult task of making laws for men. The principle, the light, the vitalizing force of positive law, must be “an eternal principle of justice”.

This eternal principle of justice was given by Our Lord Jesus Christ in that command to His Apostles: “Go ye into the whole world, and preach the gospel to every creature” (*Mark* 16:15). In view of the spirit of the times in which this was said, in view of the provincialism of both the Jewish and Roman mind, this statement of Jesus Christ was unusual and startling.

Philosophers of law are seriously speaking to-day about the need of universality in law. They deprecate the merely local character of law that does not see beyond the confines of its own State and which tends to reduce law to the character of local ordinances. They hope to see men again united by a universal theory in law, and they welcome every attempt at the unification of laws as a step forward in this great accomplishment.

This lack of universality in law, therefore, since it is rooted in tragic nationalism, plays its part in plunging the world into the conflagration of

war in every generation. Men and nations are constantly fighting today for some nationalistic notion, and although patriotism is admirable and a man without love of country contemptible, patriotism should not be identified with hatred of other men. Pride of race within certain limits is a protective and beneficial emotion, but the desire to elevate one race above another, to speak of superior and inferior races, is not only nonsense but a thoroughly pagan concept besides.

This idea of national and racial superiority flourished in ancient times, it is thriving again today—it is buttressed now as then with laws that lack the sense of the universal and the understanding that all men were created by God and redeemed by Jesus Christ.

But in the height of the Catholic Middle Ages, as described by Dean Pound of Harvard University, a remarkable and desirable social condition was produced by the idea of universality in law:

“ . . . we read,” he says, “in Froissart’s Chronicles how knights came from many lands to take part in tournaments, how men passed freely from land to land, thought of as Christians rather than as subjects of some particular authority. The knight, the scholar, the merchant were, one might put it, in secular political speech of today, citizens of Christendom”.

The internationalism of the Middle Ages was effected by the idea of universality in law, as the deep-rooted nationalism of today is caused by the absence of that universality. The basis for medieval universality was the teaching of Christ—Christ

who never claimed or boasted of nationality, but who said, instead: "I am the Son of man." Indeed Our Lord was so above the pettiness of race and nationality that it has been aptly said of Him: "He was born outside the walls of Bethlehem as He died outside those of Jerusalem, so that no city could call Him its own."

The process by which this universality in law and understanding came to light in the Middle Ages is sufficiently complex; but if we analyze briefly the means by which it was produced and the manner in which it decayed, we may be able to see how we can cause a return to it with all of its attendant blessings of peace and understanding.

As has been said, it began with Christ; and St. Paul, who knew the mind of Our Lord so well, gave utterance to it in these sublime sentences: "There is neither Jew nor Greek; there is neither bond nor free; there is neither male nor female. For you are all one in Christ Jesus" (*Gal. 3:28*).

These notions of universality were imbedded deeply in the spirit and thought of the Catholic Church. The Catholic Church has never considered herself a loose gathering together of individuals but an organism; nor has she considered herself as something invisible even though her end is directed towards the spiritual and eternal. The Church is proudly aware that she is a visible society and within the spiritual realm independent and never subservient to the State.

The Kingdom of Christ on earth, then—the Church—is an organic body which for the proper maintenance of discipline requires laws and legal procedures for applying these laws. The Roman civil law was admirably adapted, because of its pre-

cision, for many things in the government of the Church. These were adopted, other points were modified and changed to bring them into conformity with the teachings of Christ. There was no slavish following of the Roman law, it was an intelligent "canonization" of what was good, the rejection or reform of what was evil.

In turn the Roman law was deeply influenced by the teachings of the Church. This influence is apparent in the Code of Justinian but there is reason to believe that Christian teachings were felt even in the law before Justinian. The harsher aspect of the Roman law was softened, and particularly the idea of universality was brought into it, so that finally it became accepted not only as the law of the Roman citizen, but a sort of universal law for all men.

As a general statement, although volumes could be written on the question, the following is true: With the missionaries of the Catholic Church went the gospel of Jesus Christ; and with the extension of the Roman civil influence the two great bodies of law, the Roman in the civil sphere, the Canon Law in the religious field, slowly conquered pagan individualism and nationalism—and although nationalities did not disappear, nationalism was corrected and restrained by Christian teaching.

In all the positive law before Christ there was absent that fundamental eternal principle of justice—the equality of men before God, before other men, and before the law. All ancient law was steeped in the spirit of nationalism—the pagan, because it deified the State and made the emperor a god; the Jewish, because of its divine mission to keep alive



the monotheistic notion of God until the coming of Christ.

Not only the pagans but the Jews were in almost constant conflict with the surrounding peoples; to the foreigner there was extended no equalitarian regard. Even as late as Justinian all outside the empire were considered barbarians. Only the citizen in earlier Roman law possessed the full dignity and rights of a "person". Slaves were not even considered "persons"; they were listed and juridically considered "things". The "people" did not exist; Christianity created what we now know as "the people".

If one contrasts Dean Pound's description of the Middle Ages already quoted when men passed from country to country, "thought of as Christians rather than as subjects of some particular authority . . . citizens of Christendom", with Count De Maistre's description of conditions today—"In the course of my life I have met Germans, Frenchmen, Italians, Persians, but I have never met—man", we can see that we are returning not to Christ but to pagan notions of nationalism and racial distinction.

The Middle Ages were, indeed, not perfect. There was that limitation which affects all things human beings are called upon to administer; but it is significant that in a few centuries the Catholic Church had civilized Europe and had brought with her such ideals as that of universality in law creating international understanding, and had been able to institute a system of relationships between master and servant producing domestic peace as well.

The progress of these ideas was halted when many countries of Europe withdrew themselves

from the teachings and influence of the Catholic Church. The decline from that time on has been rapid. Christianity in any form has ceased to have any control over great numbers of men. Philosophies of every sort have been substituted—the State again is deified and hatred now takes the place of the worship of God. The world has in many essential things reverted to a condition that existed before the coming of Christ.

In man's darkest moments, in deepest despair, his heart will still yearn for better days—and although the present moment is particularly dark, we can still look at an ancient past that was made better, with the hope that the future will be brighter than this dismal present.

We can receive some encouragement from that phenomenon in world affairs recognized by men in the adage that "history repeats itself." Conditions prevailing at one time in history are inclined to recur again, not exactly—because of varying influences and the passage of time itself—but the return is at least a proximate one. For instance, the Renaissance of the fifteenth century was in many ways similar to the conditions which once flourished in ancient Greece and Rome. But in spite of the passionate desire of the men of the fifteenth century to cause a complete return to a distant age, it was impossible due to the many forces existing in the fifteenth century that did not exist in the days of Roman and Grecian glory.

Without doubt universality in law will bring about a new era of peace and understanding among men, it will break down the barrier of nationalism which is throwing the world into hate and periodic wars. Universality in law was derived from the

teachings of Christ, and there is hope of peace again through a return to the Church that communicated this Christian thought to men.

This is a real program of international peace. It does not seem that peace can be obtained by a description of the horrors of war, nor by stressing its economic foolishness. There is some chance of peace when men again recognize their universal brotherhood through the teachings of Christ.

But the historical law of "occurrence and recurrence" or that "history repeats itself," is not automatic—it is conditioned by and effected through the thinking of men. If we keep our pagan concepts of law and our pagan morality we will be unable to cause a return to peace and happiness among men whereby the tragedy of war will be averted.

Restore the bond of fellowship—repair the rent in the garment of Christ—let all men again receive His Body and Blood at a common table before a common altar: "For we being many, are one bread, one body: all partakers of one bread". And then again we shall see verified more fully than ever before: "There is neither Jew nor Greek; there is neither bond nor free: there is neither male nor female. For you are all one in Christ Jesus."

## LAW AND CONSCIENCE

Address delivered on May 26, 1940

Isaias from the watch tower of prophecy looked down through the ages of time and in vision beheld not only the Child in the manger at Bethlehem, The Man of Sorrows on the cross of Calvary, but also the glory of the Church of Christ and its mission to the gentiles. And of the Church he said: “. . . the mountain of the House of the Lord shall be prepared on the top of the mountains, and it shall be exalted above the hills, and all nations shall flow unto it” (*Is. 2:2*).

This visible kingdom of Christ on earth, the Church, directing the souls of men unto the glory of God and eternal life, is ruled by an invisible king, Christ Himself. Christ like most rulers administers His empire through servants—through those who by consecration and appointment have been so placed to lead men to God. Briefly the Church is a society with power from God to make laws in furtherance of His Kingdom on earth.

We are so accustomed to have the State make laws and to enforce them, that we find little difficulty in accepting its right to do so. The laws of civil authority ordinarily bind in conscience. One can except of course the cases in which the civil power in matters not evil in themselves does not wish to bind the conscience and feels that the penalty imposed for the infraction of the law is sufficient to produce good order. In such cases where violation of the law of the State is by the State itself exempted from moral guilt, the law would not bind in conscience.

It may be difficult for some persons to understand that the laws of the Church also bind in conscience, but a little reflection will convince them that this must also be true. The Church has been commissioned to teach all nations those things commanded by the Lord. Unless there is authority to bind conscience the end for which the Church was instituted would fail for lack of competency.

The Church then must teach not only those eternal truths about God and His Divine Son, Jesus Christ, but the Moral Law as well—that is the law of right and wrong action. The Moral Law contains the Natural Law and its deductions and conclusions—the condemnation of contraception is based primarily on the teachings of the Natural Law. The Church must make clear the Positive Divine Law—the law which comes directly through the revelation of God—for this reason divorce is prohibited because of the command of Christ: “What therefore God hath joined together, let no man put asunder” (*Matt.* 10:9). Whenever the Church appears to some persons to be severe in her teaching, it will be found on investigating that she is insisting on the law that comes by divine command either by the law of nature or by the positive decrees of God Himself. But this does not complete the Church’s function as a visible society—for in the work of leading men to God there is still need of legislation for her own internal order and here we find the human legislation which is known as the commandments of the Church. This legislation is extensive. The more important of these laws are often stated for the layman in five or six commands, dealing with attendance at Mass, the reception of the Sacraments, fast and abstinence, and material

support of the Church. In reality, however, the commandments of the Church are more numerous—the Code of Canon Law contains two thousand, four hundred and fourteen laws or canons, and the greater number by far are commandments of the Church.

If we could keep at all times our eagerness for God at high degree; if our love for Christ were such that we should never cease to think of Him and His mercies—then love would be its own law and there would be no need of Commandments to spur us onward and upward to God. But, unfortunately, the tempo of human life is not so highly pitched except in those rare and heroic characters, the saints; for the rest of us, selfishness, sloth, and passion too easily draw us away from our duty to God, and the laws of the Church are needed to support us in our weakened and failing condition. If there were no rule concerning attendance at Mass on Sundays, it would not be long before any miserable excuse would suffice to keep us from offering a necessary service to God; if there were no laws regulating fast and abstinence, the need of penance would easily be forgotten notwithstanding the injunction of the Lord: “Except you do penance, you shall all likewise perish” (*Luke 13:5*).

Enthusiasm and love are founded on discipline and not on the lack of it. A great art must also be a great love. When in the tense moments of a famous opera, a voice is heard—sweet, clear and vibrant even above the melodic thunders of a great orchestra—only the enthusiasm of a deep love of art could communicate such depth of feeling to us. But that voice we know had to be trained, disciplined through many years before it came to the present

perfection. And so it is with our service to God—we begin by observing commands; from these we are led to love, and some with God's grace will outgrow the need of discipline and finally even in this life, live for God alone.

The Canon Law has shown more understanding of human nature than has any other body of law. With the passage of time the Church has constantly modified the law to meet varying conditions; in individual cases there is a great generosity in relaxing the law by dispensations; interpretations of the law are always broad and equitable.

The Church teaches the doctrine of "epiky" which holds that if the circumstances are such that the lawgiver could not have been expected to envision them, and if the general law should be applied in this individual case injustice would arise, then the law is considered not to have been made for this particular case. Constantly in ecclesiastical decisions we find the application of equity—"summum ius non raro est summa iniuria"—the strict application of the law is not rarely the greatest of injuries. If all lawmakers would study the philosophy of the Canon Law, and make laws with its spirit of justice and understanding the world would enter into a new era of legal enactments.

In spite, however, of the broadness of the law and its interpretations, there are those who say that Catholic morality is merely an ethical obligation imposed by law from without—a sort of brutal overpowering of the individual without any interior acceptance. This notion is entirely and completely false. There is no denial of external authority but there is always required an internal acceptance on the part of the individual of that external

command. We speak of an external norm of morality—this is the law; but we also speak of an internal norm—this is conscience.

This internal norm of morality, or the conscience, has been subjected to some rather peculiar and fanciful interpretations. Not only has it been considered a distinct faculty independent of man's intellect but there has been thrown about it greater mystery and sacredness than has ever been attributed to that power of mind with which we make a deduction in mathematics or the thought required to make a sound business investment. Even that metaphor—proper, if understood to be a metaphor—"the conscience is the voice of God", has been taken literally to add more confusion to a subject already amazingly complicated. Conscience is nothing but the intellect in judgment on the question of right and therefore good, of wrong and therefore evil, concerning an action to be performed.

Errors of judgment are frequent; our thought is colored by emotional attitudes; hate and love, conscious and unconscious likes and dislikes, frequently sway the reason and lead it into error. This psychological fact will come to bear upon the question of right and wrong action, and it is not strange that we find the conscience at times in error—in disagreement with the objective law.

Conscience is the personal application and inward response to the law and this is true not only when the conscience is in agreement with the law, but also when it is in error, and therefore in disagreement. When the conscience is honest even though erroneous no one may violate it, for then that erroneous judgment has become the inward law for the individual. We are not our own



supreme law—only God is that; but through conscience and this personal and interior application of the law, it can be said that we become a law unto ourselves. In this sense is understood the supremacy of conscience which has always been the forceful teaching of Catholic moralists.

To call on God to witness the truth of a statement—that is, to take an oath when circumstances require it—we rightly hold not to be a sin, but an act of religion. However, if a man honestly believes that taking an oath at any time is wrong, he would sin if he violated his conscience by so calling on God. On the other hand if a person does that which is really against the law but does so in good faith, without suspicion that the action is evil—if there is no violation of the interior law even though the exterior law is broken—there is no sin.

The internal law, the subjective norm of conscience, should of course be orientated to the objective law, and through education and training be brought into conformity with it; nevertheless the decisions of conscience for an individual even when erroneous are binding. It becomes therefore one of the great works of the Church to bring the conscience into complete harmony with the external law.

The Church recognizes in herself an authoritative teacher of the truth of God, and while there is no power to compel or force conscience, the conscience can never have such complete independence or autonomy that it can establish its own law without reference to God or the teaching of the Church.

When this is understood the preaching and teaching power of the Church is better understood; but the Church goes further in the demand on con-

science—even by ecclesiastical penalties the willful offender is urged to return once more to the truth and to the law.

There are those who find fault with ecclesiastical penalties as an imposition on conscience. But even in this vigorous defence of objective truth and law, there can be found only the discipline of a strong and loving mother—protecting the personality of the House of God and doing a service as well to the supremacy of conscience itself.

Excommunication is an example of what is meant. This penalty is used only rarely and in extreme cases of deliberate violation of the law. By excommunication there are withdrawn from the offender some of the spiritual blessings which the Church so generously bestows upon her children. The penalty is of divine origin. It was Christ who said: "If thy brother shall offend against thee, go, and rebuke him between thee and him alone . . . if he will not hear thee, take with thee one or two more: that in the mouth of two or three witnesses every word may stand. And if he will not hear them: tell the church. And if he will not hear the church let him be to thee as the heathen and publican" (*Matt. 18:15*).

Ecclesiastical penalties are the expression of a vigorous discipline, but they are neither violent nor tyrannical. A Catholic first of all accepts the authority of the Church. If then he desires to range his own notions against her divine mandate to teach, is there any injustice if by warning and even punishment she tries to recall such a sinner to the truth? Is there not present the vindication of the supreme right of conscience if she

allows the offender to follow his own path, he having already deserted her ways?

The Church then makes a direct and definite demand on conscience, by teaching and in extreme cases even by penalties. The Catholic on his part has an obligation towards law and conscience. With whatever abilities and lights he may possess he must try to bring law and conscience into harmonious action. He must seek to know the law according to his vocation, station in life, and education. He must always remember that conscience has a definite relationship to God's law and the teaching of the Church. He must clearly distinguish the accusations of conscience from that natural discomfort which arises in sensitive and cultured men who by some fault, feel they have betrayed their dignity or position. Virtue is more than graceful conduct and sin is more than an offense against politeness and human dignity. There is a type of self-reproach that has nothing whatsoever to do with God. The pangs of conscience must include the feeling that God and His goodness have been outraged. There is an obligation not to stifle conscience or to lie to it. To imagine that the law was made for others but not for ourselves, to create convenient standards for a partial morality, are two ways of many in which this is frequently done. In the first case it is accomplished by assuming that by education, or position, or by unusual attachment to some work or person, the law has become inoperative. The second case is to create an attitude of mind that distinguishes between the stealing of a penny from a servant which would be very wrong, and refusing to see wrong in a dishonest contract.

In closing this series today on Law, we hope that we have been able to bring to light the reasons for the perennial youth of the Church of Christ in spite of a life that has been longer than any institution, civil or religious, that now exists on the face of this earth. It has been our desire to enter into the real reasons why the greatest thinkers of all times have stopped to admire the unfailing correctness of the Church in the analysis of world problems, and to allow you to see why the vision of the Church is always keen and sure.

All this may be summed up as follows: The Church of Christ has the law and teaching of Divine Wisdom—She knows what law is and whence it comes; she understands the relationship between the law and freedom as manifested in conscience. Fully aware of all this she must necessarily be a disciplined organization upon which has grown the enthusiasm of sanctity. Because of her mission and organization she defies time and conquerors. Pius VII, while a prisoner of Napoleon, a broken and homeless man, a captive in a foreign city, captivated the hearts of the Parisian crowds.

In this tragic moment when the whole world seems ready to fall before injustice and barbaric cruelty, when Macauley's prediction, which we pray God to avert, may yet be seen by us who live today—"the broken arch of London bridge" "the ruins of St. Paul's"—there is one thing we can still be sure of, that the Church of Christ will still be standing in undiminished vigor when the storm has passed because she bears in her the wisdom, the strength, and the goodness of God.

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