

Why then the Law ?

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Predicament

It is a mark of realism that any inquiry should start from where one is and an inquiry into law should start from our everyday understanding of it. Such an inquiry would most likely register a variety of reactions, each in its own way instructive. Law may suggest 'law and order' of the sort that is usually associated with right-wing or repressive sections of the political spectrum. Law may suggest the police carrying out their duties; think of the colloquial expression, 'I'll get the law on you'. Law may suggest a judge or magistrate sentencing. Law may suggest Parliament at work. On the whole each of these spontaneous images builds on a central picture of law as a command to be enforced in case of disobedience. On longer reflection law would seem to exist to keep order, public peace and stability so that civic life can flourish and law does in some general way embody the predominant views of the community as a whole most of the time. Moreover our reflections would show that there is virtually nothing which could not be demanded or forbidden by law and in turn that there is no law which could not be changed. We have very little, except perhaps the fact that a Parliamentary majority, if not always right, can at least be changed to shield us from the possible content of law and the severity of its application.

The predicament is that although there is a case, a moral case even, to be made for law it is difficult to make it in these times. Law appears to be a very blunt instrument indeed, it is far less shaped by ideals of justice and the common good than it used to be. Law making is remote and alien to most people, it comes from outside. Law seems essentially punitive.

Turning to morality this too seems to have fallen on hard times. There are now several widespread conflicting views as to what morality is about, but two can be taken as prevalent. For many, morality is a code of conduct, a source of rules and guidance as to what is right and what is wrong and often it will include religious fragments; morality has to do with behaving correctly. On the other hand the key to morality may be that it lies in circumstances, in doing your own thing in some spontaneous way and not hurting others. This morality may involve acts of charity at times and occasionally a little sacrifice. On the whole it is a private individualistic sort of thing.

The predicament for morality is that it seems to have cut away from its traditional roots in religion and it is uncertain. Or perhaps the whole of a man's religious aspirations may have been swallowed up by morality. In addition morality seems hypocritical especially in its neglect of politics and the wider horizons of society, irrelevant especially as to sexual matters and occasionally inhuman.

When law and morality, or in particular law and the doing of truth in love, are considered together the complexity seems unbearable. Moreover to be deep in Scripture is to have doubts about the whole enterprise :

'Why then the law? . . . The law was our custodian until Christ came that we might be justified by faith. But now that faith has come we are no longer under a custodian; for in Christ Jesus you are all sons of God through faith. For as many of you as were baptised into Christ have put on Christ. There is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female, for you are all one in Christ Jesus' (Gal. 3 :19, 24-28).

The meaning is clear. What was good in its time has been overtaken by a new and wonderful gift, a gift effective and universal beyond expectation. The Old Law is no longer the standard, the bearer of salvation and repentance. But in considering the relation of Jesus to the law as embodied in the Old Testament one should beware of certain insidious misconceptions due to the ease with which '*Torah*' becomes 'law' and thus for many people the depth and range of reference is immediately reduced. *Torah* as the gracious revelation of God's will and love for his people becomes a series of absurd dietary and cultic requirements well suited to a primitive tribe. It then becomes imaginatively impossible to recapture and share the sense of gratitude and joy that Jews felt for the *Torah*, the sort of feelings hymned by the exquisite artistry of Psalm 119; 'Oh how I *love* your law. It is my *meditation* all the day . . . the sum of your word is *truth* . . . great *peace* have those who have your law . . . I beg for your *salvation* Lord and your law is my delight'.

The revelation of God in Jesus marks the fulfilment of what the Old Testament foreshadowed. The series of 'words' uttered by God in and through the history of his chosen people are now uttered in *the Word*, Jesus Christ. There can now be no other mediator as forgiveness, repentance and righteousness point to him—the new covenant cannot just be seen as a lessening of the burdens of the past, a reform of what went on before. The transgressors of the moral law, the sinners such as the woman guilty of adultery or the good thief can be saved by responding to the love and grace which are in Christ and not by being conformed to the law. The parable of the two brothers (that of the so-called 'prodigal son') makes the point with all the pungency of a good story spiced with national and legal lore (Lk. 15 :11-32). The prodigal son offends against the law and yet is restored to fellowship by a forgiving father. The dutiful son who remained at home is confronted with having to discern where his treasure lies—in the settled goodness of the law or in his father's free and boundless love. One should not weaken the drama by making the choice lie between what is bad (law) and what is good (love). The good man can be trapped by his 'goodness', if he will not submit, if he

will not let go of it. We contrast him with the journeying son returning from the dead. The ever-radical demands of law are now concentrated, displaced and overcome in the person of Jesus, dead and raised, and his outpoured Spirit. It is from this centre that we live and have our being. If we talk of communion and fellowship it is to be united to an existing union through that union.

The same thrust can be discerned in the Old Testament story of the tower of Babel. Christians have usually thought that the builders' offence was pride in seeking to reach God. But traditional Jewish interpretation compares the word *shem* (name) in Gn. 11:4 with the same word in Ex. 23:13 ('do not repeat the name of other gods') and concludes that the builders sinned in wishing to put an idol on top of the tower. The offence is not that man's religious aspirations were rising too high but that they were stopping prematurely. To be caught up in the love of God is to be called forth, to be led on to places and ways one cannot foresee and law and morality cannot chart completely. 'Cast your bread upon the water, and at long last you will find it again' (Qo. 11:1). The prodigal son journeyed on and was able to bring his sin to the light and love of the father and so was freed. The elder son stayed put in his goodness, tried to make it his with a finality that cut off recognition of where it had come from and made it a ground for bargaining with the father, 'Look, I have slaved for you many years and never once disobeyed your orders, yet you. . . .' The point is made sharper (as was often the case when Jesus attacked the lawyers, scribes and Pharisees) by a certain unworthiness verging on hypocrisy on the part of the elder son in that he was hard-hearted and questioned his father's undoubted right to deal as he had with his property.

Perspectives

Having outlined the predicaments a consideration of law and morality bring about, some perspectives for reconsidering law will be offered and also some of law's characteristics. Perspectives and characteristics, that is direction and quality.

St Thomas Aquinas provides the right kind of beginning for this exploration in a crucial passage of his *Summa Theologiae* (I-II q. 106 a. 1):

'There are nevertheless certain things in the new law which *dispose* us towards the grace of the Holy Spirit and which concern the *use* of grace. These are as it were secondary in the new law, about which Christ's faithful need to be *instructed* in speech and writing, and in matters of belief as well as of practice. This is why we should say that the new law is primarily interior but secondarily a written law'.

The impact of Galatians and of other New Testament texts has been assimilated and law, even in its most man-made sense both in the

Church and in society finds its proper, subsidiary place in the economy of salvation. Why then the law in a Spirit filled community doing the truth in love? Love is many splendoured and I hope that to select certain characteristics will not do violence to the complexity of the whole. Love is in tension, other-regarding and self-creative, want and gift, and in creating relationships it selects and discriminates. Ultimately love can be established only in regard to some good, and this is why true love purifies the lover and the beloved. Love transcends and establishes, it creates obligations and it is perpetual renewal. Not to love is not simply to be unaware of part of the world or of human personality—it is to be diminished, to be less generally aware and therefore less alive. Love gives a pure vision and an innocent eye. Love is true because it can be relied on. So love is at the heart of any true moral outlook; being in love is to most *be*, it is most life enhancing as all true things are; God is love. To appropriate the dynamism and creative force of love is not to be plunged into an amorphous world of blurred emotions, debauched intelligence, randomly open possibilities and a life shorn of its past, its monuments and its obligations.

It should now be possible to consider what place law has in this world of love and communion. Before all else one should bear in mind that law is an analogical concept not an univocal or equivocal one. A scheme such as the classic one of St Thomas, involving eternal, divine, natural and human law will soon alert us to the inadequacy of any other view. We can in some sense call the 5th commandment and the canon prescribing celibacy for Latin presbyters 'law' but not in the same sense. They have different levels of operation and mutability. What then can law contribute to a loving life? We have seen how love is related to reality; so is law. Human meaning, social and personal, arises out of a background of intelligible and normative patterning, structure and order. We may still wish to call this 'nature' or reality although its meaning is not simply read-off. Moreover nature has man at its apex and so through him is open to grace and eschatology. Now what is involved in saying that it is a divine law not to kill or that it is part of canon law that presbyters are celibate is different again from saying that an acorn will become an oak tree. Different, yes, but also analogous in that they all point to a level of reality and of meaning, they make sense and use of an experience and in this they converge. It is somewhere in the range of these considerations that Natural Law, that knowledge of conduct unto goodness which is available to all reasoning, intelligent men should be situated. The Eternal law is the principle that creates and directs all motions and acts to their proper end. Natural Law is the *sharing* by intelligent creatures of this Eternal law, the *making theirs* of Providence. Natural Law has to be handled with a certain restraint in that even at its most efficacious it is not self-sufficient unto salvation, or complete, and neither can it be handled in the way of a detailed

code without doing irreparable damage to the mystery of a person. Above all it is a voluntary, rational participation in the Eternal law as we saw. The sociability of man is rooted in his having been created in the image and likeness of God and for the restoration of that image comes the Word made flesh. It is an important task to integrate the contemporary awareness of such unifying factors as myth, depth psychology, archetypes and so on with the (not so fashionable) sense of the unity of all creation. Whatever man receives from God he receives as man; as suited to his reality and as a nature that, though flawed by sin, is good and perfectible—perfectible by grace and aided by the Scriptures and tradition especially the magisterium of the Church. Further one should look for ‘family resemblances’ in considering various cultural forms and not demand some eternal ‘essence’—a variety of perfections and goodnesses is most likely to express God’s perfection and goodness. As for reason and intelligence, we should conceive of them not as our technological, calculating sort of reason but in an older sense that resembles intuition and imagination. The limitations of the impoverished form, are well depicted in *Hard Times*. Remember Gradgrind: ‘in gauging fathomless deeps with his little mean excise-rod, and in staggering over the universe with his rusty stiff-legged compasses, he had meant to do great things. Within the limits of his short tether he had tumbled about, annihilating the flowers of existence’.

Law serves love, then, in that it too can contribute to the relationship to reality and truth that is so significant in a fully human and therefore moral act. The difference is that while love is creative and liberating and therefore the bearer of reality in a very immediate and growing way this cannot be said of law. To go against love is to go against reality in a way that cannot automatically be said of law, and above all law is largely powerless against violations and those whom it outlaws. Laws, however, do not just forbid and control. They can enable, e.g., contracts, trusts or wills enable men to project themselves into the future so structuring that part of reality we might call ‘social time’. Law has quite a strong internal momentum.

Thinking back to the earlier, rather impressionistic definitions of morality should now leave us dissatisfied. Clearly another perspective is needed. Briefly, morality should no longer be regarded as pertaining to a privatised sphere or as an individualistic creation. Morality has to do with the quality of what it is to be human, to be real in a real world and to be a sharer in a universe of meaning and values. It is like language, indeed it is language, i.e. a shared yet intimate interpretation. It is calling things by their true names. Morality is linked to politics, to the arts and to all that enhances the truly human; which includes a thirst for transcendence and the sharing of the fellowship and glory of God. In the end we can only love because we are loved—loved even by God. Sin in this perspective looks less like doing

wrong or transgressing rules or not being nice, and more like a loveless failure to be real.

Again law finds its place within this dynamism. Law is related to language and it may not be too fanciful to consider law as part of the grammar of social interaction. Law is one of the ingredients of community, of civic friendship and this is true for Christians also. Law is not external in the way a flea on a dog is. This is particularly so in the Christian life, a life lived in the depths of the Trinity and destined to partake of that most intimate, complete and transparent of fellowships. Law is in what Stan Smith recently called 'a substantial middle ground, of language, of meaningful social forms . . . that would mediate between detachment and attachment, self and others, the rigid antitheses of dichotomised consciousness' (*New Blackfriars*, May 1973, pp. 230-1). Inherent in the notion of law is that it binds and gathers, it is an integrative mechanism. Good laws are not intended primarily to restrain, to salvage something out of the wreck of lives and situations but to promote the common good and give life to those higher aspirations of justice and love. We are far from a view of law as essentially punitive or a type of efficient social engineering. Law is an achievement like architecture, it is something to be proud of as a conquest of the human spirit going beyond functional solutions. To the middle ground of a genuinely personal yet social consciousness law contributes a heritage of experience, it brings to bear the demands of justice, peace and love and it provides 'social space' by guarding rights and duties. Love as friendship will colour this aspect of law. It would be very instructive indeed to see how such ideals have in fact shaped our law throughout the centuries. The definition St Thomas gives of law, 'a promulgated ordination of reason for the common good by one who has care of the community' (*Summa Theologiae* I-II, q. 90, a. 4) was often reflected in theory and practice. Clearly what peace, concord and so on will mean in the life of the Trinity, in the structures of reality and in human laws will vary but they can be coordinated in some way—the Incarnation is a pledge of that.

'The law was our custodian until Christ came . . . but now that faith has come we are no longer under a custodian'. Faith, what we may call a hoping, loving knowledge and adherence is what makes a Christian. It is an adherence and as such it locates another function of law; law as one of the structures of fidelity, as a pledge of constancy in a collaborative undertaking. In the Catholic understanding of faith it is of course a communal phenomenon; it is essentially the faith of the Church and from and to it is appropriated the faith of each Christian. These are the integrating constant aspects of faith, love and law. But they can and do discriminate, they divide as well as unite. That law can do this is well known; and, however shocking at first, the mystery of predestination and a divine plan can be assimilated and celebrated. But how is *love* exclusive? It is so because it

purifies the perception and enjoyment of reality and because ultimately it can only exist in relation to goodness. The knife of love is double-edged. It cuts to prune for growth and it cuts to detach for destruction. Either way it cuts and a sentimentalist's picture of love would be far from the Christian or Jewish experience. Being discriminatory, adherence to faith, love and law can bring the good man conflict, opposition and a tragic vulnerability.

Focus

A final word on canon law, because if the Church is the sacrament of the unity of mankind, as Vatican II taught, then what is said about her law will throw light on the law of society. In fact to stop at the initial reactions of distaste and derision, likely to arise when considering canon law, would seriously weaken any Catholic understanding of the ecclesial mystery, a mystery in which the visible, institutional aspect is not in dissociation from, let alone opposition to, the more charismatic and spiritual themes. One has to take Christianity whole if it is to make one whole. For all the tension there is only one Church, not two churches, one of the Spirit the other of law. Perhaps our contemporary understanding of authority and institution is askew.

It may be useful to relativise the present canon law based on the *Codex* of 1917 and now in the process of transformation. This is a code, that is one coherent, fairly complete statement of the law based on divisions inherited from Roman law. This style of canon law is in fact very modern and clearly indebted to 19th century views as to what a State and law were. The Church had never had a universal code before, and how this and the medieval centralisation went with a fairly obnoxious sort of papalism has been well documented. For the moment two tasks claim immediate attention—a sketch of a theology of canon law and an account of the proposed *Lex Ecclesiae Fundamentalis* (LEF) or basic law.

Briefly, canon law is applied ecclesiology. That is, the life of the Church is given as law, specific embodiment and is structured in its institutions and organisations as is thought pastorally appropriate to any particular moment in the Church's history, her sacramental making present of Christ's life, death and resurrection. The use of the words, 'institutions', 'organisation', 'structured' and the like has difficulties because they tend to give the impression of a rather mechanical, utilitarian manipulation of ways and means, rather than a pattern of meaning and aims. Canon law can only be done by the theologically sensitive and not just the legally proficient. Tommaso Elisio, a Neapolitan Dominican who lived about the time of Trent, was quite blunt; it is harmful for *pedantes* and *idiotae* and *puri iuristae* to treat of faith and works, justification, etc. (*Piorum clypeus*). Despite his eminence he ended up on the Index. The canonist has to be deep in the ecclesial mystery, sensitive to the promptings of the Spirit in the community, able to trace the contemporary experience of tradition in

all its diversity and to be aware of the achievements and hopes outside the Church. It is at the level of canon law that one of the expressions of a lived faith, a praxis is mediated. Resting on a base of Eternal and Natural laws and shaped by other Christian sources and experience, canon law can map and sustain the God-given summons to a life of liberating yet disciplined mutuality and conviviality. Canon law, good canon law, lives in the common consciousness of Christian not as arbitrary rules or alien interventions but as a rule flowing from deeper, not easily charted and more intuitive springs—the Spirit blows where it wills. Law is more than the sum of its rules, it is the whole climate in which it is applied and assessed, the men who judge and the procedure used. Canon law is a confessing law, close to the liturgical assembly.

To talk of the Church as the universal sacrament of salvation or of the unity of mankind is particularly appropriate because it has long been recognised that canon law occupies an ecclesiological space close to (though inferior to) that of the sacraments. St Thomas indeed boldly states that *'fundamentum cuiuslibet legis in sacramentis consistit'* (IV *Sent.* d7, q1, a1). This is important. It is not the law that makes the sacraments and thus the People of God but law can contribute to the visibility, to the specific historicity of the sacramental actions though never as a rival to faith. Canon law is not the eighth sacrament. To the sacramental life of Christ, law contributes in a variety of ways some of which we saw when talking of the necessary middle ground of community. Law helps to trace the morphology of the Church in time and space. It does not smother fruitful tensions.

The existing *Codex* begins with general norms and some previous collections have included a kind of theologico-ecclesiological preamble but recently the commission drafting the new code (must it be a code?) in Rome drew up the LEF to preface that new law and in a storm of controversy the draft was rejected by the world's bishops in 1971. The commission had proposed a theologico-legal document that would express the nature of the Church and her structures. This is a very important issue and not just a technical problem for experts. The underlying false and untraditional assumption is that the Church can be given a 'fundamental law' other than the radical invitation and demands of the Gospels and that the variety, allusiveness and ever-creative power of the Trinitarian life of the Church can be pinned down at this high level of comprehensive norm. The danger in the very idea on an LEF, and especially of this version, is that it will give to law the sort of centrality, extension and self-sufficiency that no longer belong to it. One suspects that this is another unfortunate imitation of certain modern political developments.

The above objections would apply to any basic law, but it is not without value to see in some detail what the actual draft says. The following remarks are based on the painstaking work done for the Institute for Religious Sciences at Bologna (published as *Legge e*

Vangelo, 1972) which is appropriate as it was in that city that the study of canon law as a science was perfected. The LEF is in three parts. First the Church as People of God is treated; the faithful in general, a kind of 'bill of rights' and the hierarchy. Then the functions of the Church are covered. Finally the Church and the human community. The scheme is full of radical distortions and it is soon obvious that the deductions condition the premisses. A selection will be useful. In the introduction the Church as sign and sacrament comes after her definition as a society built up (*instructam*) by the hierarchy and, by a travesty of theological method, the structure of *Lumen Gentium* of Vatican II is seriously disfigured. In particular the canons relating to the pope are isolated and in general the hierarchy reemerges in a way difficult to explain. It is indicative that the verb *docere* prevails over *praedicare*. Indeed the whole language is, as we would expect, symptomatic; *societas* is preferred to *communitas*, *veritas* to *fides*, *officium* to *onus*, *potestas* or *munus* to *servitium*. One can usefully ponder the single use of *crux* or the absence of *peccator* in preference to the verb 'to sin' or 'sin'; this being part of a tendency to quantify, measures and parcel. The reduction of such a pregnant word as *persecutio* used several times in Vatican II to refer to the persecution of Christ and his Church, to mean the carrying out of an action (one of its most banal senses) makes one shudder. The last part of the LEF deals with the Church in the world and what the drafters are up to is obvious. The tentative but positive dialogue with the world begun by *Gaudium et Spes* is reduced to a relationship between two societies, each supreme in respect of its members. This is not the Church as critique but the Church as vindicating her rights against other societies by similar means. It is significant that the paragraph of *Gaudium et Spes* most cited (par. 76) is in fact that which refers to relationships between the Church and the political community. And so the vocabulary fits; *ius* replaces *gravissimum officium* (91) and *competit* replaces *debet* (94, 3). A very inadequate document. We are in fact back to the text of St Paul in which it is made clear that faith is the constitutive, generative element in the New Covenant and not the law. The Church is the body of Christ, built on him as the cornerstone and having as its foundation the apostles and prophets and living out sacramentally what will be her final inheritance. It is not law that mediates God to man; only Christ does. It is not law that constitutes the People of God; the snares of any basic law are obvious. But law can contribute to sustaining and expressing the freedom of the children of God, to their doing the truth in love because it is part of our experience of love and reality, part of our sense of community and part of our critical judgment.