

THE INFLUENCE OF CHRISTIANITY UPON THE DEVELOPMENT OF LAW

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I

I believe that all branches of the Christian Church can agree that Christ demands of His followers a passionate love for justice, a belief that law should be an instrument of justice, and a desire to convert law and justice into instruments of Christian love.

The singleness of mind of the Churches regarding the Christian's responsibility for law and justice is obscured by certain theological controversies, and especially by certain anti-legal tendencies of both the so-called liberal and the so-called neo-orthodox schools. Both schools have stressed, for different purposes, the view that Christian love is opposed to law, that Jesus Christ freed us from law and from "the legalism of the Old Testament." In emphasizing the Sermon on the Mount as the heart of Christian ethics, exponents of the "social gospel" have presented a vision of the Kingdom of God in which law is conspicuous by its absence. In reacting against the optimism of those who believe that Christian love can actually be achieved in society, exponents of the "new orthodoxy" have spoken of an absolute tension between law and love, law and grace, law and gospel.

Much of the theological discussion of the contrast between law and love confuses different meanings of the word "law." It is one thing to speak of the moral and religious law—the Torah—revealed by God in the Old Testament. It is quite another thing to speak, as St. Paul did, of "the law of sin and death," that is, the human inclination toward pride and self-love. It is a third thing to speak of law in the sense of the law of contracts or of American constitutional law. It is of course a fourth thing to speak of cosmic laws and physical laws. Moreover, law in any of these senses is one thing, and faith in law is quite another.

There is indeed a fundamental conflict between the Gospel faith in salvation through Christ and the belief that law in any sense, law of any kind, can in itself save men's souls. Perfect obedience even to the moral and religious commandments of God cannot alone redeem men. This is

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what Jesus meant when He reproached the Pharisees and said, "Woe unto you, lawyers!"¹ He was not denouncing the law, the Torah, but was castigating those who accepted the Torah as an absolute, who put their faith in the law ahead of their faith in God Himself who is the author and source of the law. "I have come to fulfill the law," Jesus said, "not to destroy it."²

What does it mean to say that Christ came to fulfill the law? It means, does it not, that the purposes of the moral and religious law of the Old Testament are realized in the life and death and resurrection of Jesus Christ. The moral and religious law is not an end in itself; it is made for man, to help him overcome the hardness of his heart and to prepare him for living in Christian faith, in Christian hope and in Christian love. The moral law is thus a preparation for Christianity; Christianity is in a very precise sense a fulfillment, a realization of the purposes, of the moral law.

As with Torah, so with the positive law, the official legal institutions of a given society. Man cannot live in society without some system of law. It is God's will and purpose—so Christianity has always taught—that the legal system by which human society is regulated should conform to the moral law and, like it, should help to create conditions wherein Christian faith and Christian hope and Christian love can flourish.

The gospel is not "reduced" to law when it is interpreted as directing that society be governed by a system of law which is conducive to the flourishing of the Christian life; it is only reduced to law if it is interpreted as directing no more than that. I think all Christians would agree that no matter how hard man strives to improve the social order, he cannot thereby achieve salvation. Salvation in the Christian sense comes only from God. We are brought close to God only by our faith in Him, our hope in the fulfillment of His will, our love for Him and for each other in Him. "Do we then," in St. Paul's words, "overthrow the law by this faith? By no means: on the contrary we uphold the law."³ St. Paul was speaking about law in the sense of Torah, but his words are equally applicable in this instance to law in the sense of contracts, torts, criminal law, the Constitution, and the like, seen as principles of order in society. By our faith in God we uphold the law.

To say that Christianity is profoundly skeptical of the power of man through law alone to achieve either moral perfection or salvation is not to say that Christianity is indifferent to law. To say that Christianity teaches that human justice is not the same as divine justice is not to say

¹ Luke 11:46, 52.

² Matthew 5:17.

³ Romans 3:31.

that human justice, in the Christian view, plays no part in God's plan of salvation. Indeed, the view that, confronted with human suffering, we may remain indifferent, or be content with a compassion that finds no reflection in social institutions, is entirely unChristian.

Moreover, the contrast drawn by some theologians and philosophers between an abstract, objective, impersonal "law" and a concrete, subjective, personal "love," misconceives the nature of law; it views law solely in terms of general rules, and neglects its institutional aspects. Law as a living social institution, law in action, is concrete, subjective, personal. There is nothing abstract or impersonal about putting a man in jail because he committed a robbery, or enjoining the School Board of Little Rock, Arkansas, from excluding Negroes from the Central High School, or awarding a man who has been run down by an automobile money damages to pay his hospital bills. Law is not only rules and concepts; law is also, and primarily, a type of relationship among people.⁴ Love in the Christian sense is no more excluded from legal relationships than from any other type of human relationships. The contrast between law and love exaggerates the role of rules in law and underestimates the role of decision and of relationship; further, it exaggerates the role of spontaneity in love, and underestimates the role of deliberation and restraint.

Both our jurisprudence and our theology are confounded by the artificial separation of law, which is thought to be cold and hard, from love, which is thought to be sentimental and uncontrolled. Aristotle's definition of law as "reason unaffected by desire" is often cited in support of this

⁴ Emil Brunner, in *JUSTICE IN THE SOCIAL ORDER* 21-22 (1945), states: "Law of necessity generalizes, it embraces in one rule a multiplicity of cases. There can be no such thing as a law which discriminates the individual, which is entirely fitted to the individual, which would admit as valid the uniqueness of the individual, for that would invalidate the very conception of law." This statement assumes that law consists of general rules, whereas in fact law is a process for *applying* general rules, and in Kant's words, "there is no rule for applying a rule." The 16th century Anglican Richard Hooker showed a more profound understanding of the relation between general and particular when he wrote: "Generall lawes are like generall rules of phisick, according whereunto as no wise man will desire himselfe to be cured, if there be joynd with his disease some speciall accident in regard whereof that whereby others in the same infirmitie, but without the like accident, recover health, would be to him either hurtfull, or at the least unprofitable Not without singular wisdome therefore it hath bin provided, that as the ordinarie course of common affaires is disposed of by generall lawes, so likewise mens rare incident necessities and utilities should be with special comitie considered. From hence it is, that so many privileges, immunities, exceptions, and dispensations have bene alwaies with great equitie and reason graunted, not to turne the edge of justice, or to make voyd at certain times and in certaine men through meere voluntarie grace or benevolence that which continually and universally should be of force (as some understand it) but in very truth to practice general lawes according to their right meaning. . . ." 5 HOOKER, *OF THE LAWES OF ECCLESIASTICALL POLITIE* 199-200 (London, 1622 ed.).

dichotomy. Whatever Aristotle meant by "reason" and by "desire," Christians cannot accept a psychology which excludes passion, in the sense of spiritual suffering or sacrificial love, from the activities of the mind. A Christian cannot treat injustice as a purely intellectual problem. In a Christian jurisprudence, love—not abstract love, not sentimental love, not secular love, not eros, but *agape*, the kind of love personified in Christ⁵—is needed to give law its motivation and direction, just as law is needed to give love its structure in society.

Let me give a few concrete examples of what it means to say that law helps to create conditions in which Christians may grow in faith, hope, and love, and what it means to say that law is needed to give love its structure in society. I have in mind very elementary things. The law which makes education compulsory and hence spreads literacy makes it possible for virtually everyone to read the Bible. The graduated income tax with deductions for charitable gifts makes it possible for our churches to receive financial support for their educational and charitable activities. The law which makes bigamy a punishable offense preserves women from oppression and strengthens the family. The law of property and of credit transactions—the law of mortgages, for example—helps to overcome the kind of wretched overcrowding which leads to family disorganization and juvenile delinquency. The law of torts helps to teach us to drive our cars with more respect for each other's safety. The law of contracts helps to create conditions of confidence in business dealings. Take away family law, criminal law, property law, contract law, housing law, tort law, administrative law, constitutional law, and the other branches of the legal system, and love would be forced to operate in a social chaos. That law alone cannot create love is obviously true; that the operation of love in society demands law both as a preparation for love and as a vehicle for love, is less obvious but equally true.

Human law, social law, may of course, and often does work against love, and against God's purposes, but it does not necessarily do so. Man distorts God's purposes when he allows law to conflict with love. For God not only commands us to love and gives us the capacity to do so; He also commands us to create law, and gives us the capacity to do so. These two commands, these two gifts, do not conflict with each other. Love is the fulfillment of law, a realization of its purposes; law is a preparation for love, a means of helping to create conditions wherein love may be shared. Seen in terms of God's will and purpose, law and love are not in tension, but rather in a dialectical relationship with each other.

⁵ "As I have loved you, love you also one another." John 13:24; 15:12.

II

If we turn away from theological and philosophical controversies about the relation of law to love, and turn toward what the Christian Church, that is, the community of Christians through the ages, has actually done to transform law into an instrument of love, we shall be able to construct a Christian jurisprudence.

In each age of the Church, Christians have been confronted with a different set of tasks relative to the secular legal system which they have confronted. A Christian approach to law in our own time must be built on the foundations of the various approaches taken by Christians at various stages in the life of the Church. It must be a historical approach and a functional approach.

Initially, Christianity came into a world in which there were two highly developed legal systems, the Hebrew and the Roman. The Biblical and Talmudic law of the Jews was an elaborate system of regulations and procedures governing virtually all aspects of economic, political, ecclesiastical and family life, founded explicitly on the moral law of the Torah and expounded, applied and developed by rabbis on the authority of that moral law. The Roman law, equally elaborate and embracing, was founded upon a Greek, and especially Stoic, philosophy of the supremacy of natural reason, and upon the Roman's practical sense of order, and it was expounded, applied and developed by a professional class of jurists or lawyers. Jesus and his followers respected both these systems of law and paid tribute to their importance. They challenged, however, the sufficiency of the moral and philosophical foundations upon which both these systems were based. The statements and the life of Jesus, and also the statements and the life of St. Paul, represent a decisive rejection of the Jewish view of an absolute moral law and of the Roman view of an absolute civil law. Both moral law and civil law, they said, are to be interpreted in the light of God's will and purpose; they are relative to that will and purpose; they do not have ultimate sanctity in and of themselves; they are not eternal and unchangeable; where they conflict with God's will they are not binding. That is the meaning of such statements as Jesus's: "The Sabbath was made for man,"⁶ "I have come to fulfill the law,"⁷ "Render unto Caesar what is Caesar's and unto God what is God's;"⁸ and the statement of St. Paul, "The powers that be are ordained of God."⁹

Is a man morally bound to obey an immoral law? However we may

⁶ Mark 2:27.

⁷ Matthew 5:17.

⁸ Matthew 22:21.

⁹ Romans 13:1.

assess the special significance of Jesus's violations of Hebrew law (healing on the Sabbath, eating with Gentiles, defying the Sanhedrin), the Christian Church in the first centuries gave a decisive answer to this difficult question, which neither the Hebrew rabbis nor the Greek philosophers nor the Roman jurists had been able to resolve. Christian worship was itself illegal under Roman law in the first centuries. The Christian doctrine of civil disobedience is thus an ingrained part of Christian history. The moral right to violate a law which infringes Christian faith is not only an inference to be drawn from our theology; it is a fundamental truth which the Christian Church has lived from the beginning of its history—a truth established by the living Church as a whole, which in the first centuries had to decide whether or not it would—literally—go underground.

With the conversion of the Roman emperors to Christianity in the 4th century, the church faced a quite different aspect of the question of the relationship between law and gospel. Does Christianity require more of a legal system than that it remove all disabilities of Christian worship? Does the emperor's Christianity have anything positive to contribute to his role as legislator? Here, too, the answer of the Church was clear and decisive. The Christian emperors of Byzantium considered it their Christian responsibility to reform the laws, as they put it, "in the direction of humanity"—to eliminate iniquity, to protect the poor and oppressed, to infuse justice with mercy.¹⁰ Under the influence of Christianity, the Roman law of the post-classical period reformed family law, giving the wife a position of equality before the law, requiring mutual consent of both spouses for the validity of marriage, making divorce more rigorous, abolishing the father's power of life or death over his children; reformed the law of slavery, giving a slave the right to appeal to a magistrate if his master abused his powers and even, in some cases, the right to freedom if the master exercised cruelty, multiplying modes of manumission of slaves, and permitting slaves to acquire rights by kinship with freemen; and introduced a concept of equity into legal rights and duties generally, thereby tempering the strictness of general prescriptions. In compiling their great collections of laws Justinian and his successors were inspired in part by the belief that Christianity required a systematization of law as a necessary step in its humanization.

In contrast to the Byzantine emperors, who inherited the great legal tradition of pagan Rome, the rulers of the Germanic peoples of the West during roughly the same era, from the 5th to the 10th centuries, knew a legal regime consisting chiefly of primitive tribal customs, rules of the blood feud and of almost continual warfare. It is more than mere coinci-

¹⁰ Cf. *The Preamble of the Ecloga*, ca. 740 A.D., reprinted in Appendix, p. 99 *infra*.

dence that almost every ruler of these various tribal peoples, shortly after his conversion to Christianity, promulgated a written collection of tribal laws and introduced various reforms particularly in connection with family law and slavery as well as in connection with Church property and the rights of the clergy.

These, then, are fundamental truths which were lived out in the life of the Christian Church in the first thousand years of her history and which have become an integral and permanent part of her story of salvation: that a law which conflicts with God's will and purpose is not binding in conscience, and that it is the task of Christian rulers to reform the law for the protection of the Church and in the direction of humanity.

At the end of the 11th century there took place in the West a revolution in the Church which resulted in its separation as a visible corporate body wholly distinct from the secular political realm, the consolidation of the political and legal authority of the bishop of Rome over that visible corporate body, and the establishment of a new kind of law for the Church as well as a new kind of law for the various secular kingdoms. Whereas previously the relationship between the spiritual and secular realms had been one of overlapping authorities, with emperors calling Church councils and promulgating new theological doctrine, and with archbishops, bishops and priests being invested by emperors, kings and lords, now in the year 1075 A. D. Pope Gregory VII proclaimed the complete political and legal independence of the Church, and at the same time proclaimed his own political and legal authority over all priests, bishops, and archbishops. The visible corporate Church needed a systematic body of law, and this was forthcoming in the *Jus Canonicum*, which hitherto had consisted of miscellaneous scattered doctrines, chiefly of a theological character, pronounced by various Church councils and individual bishops but which in the 11th and 12th centuries was for the first time fashioned into a codified body of ecclesiastical, criminal, family and property law. At the same time, in the newly created universities of the West, clerical jurists worked on the lawbooks of Justinian—conveniently rediscovered after centuries of oblivion—and developed a new system of secular law. Both the new canon law and the new secular law were developed by the technique of the scholastic method—the reconciliation of opposed doctrines and of opposed authorities. Underlying this method was the belief in the capacity of the mind, guided by revelation, to resolve the paradoxes of God's plan for human salvation (“the eternal law”) and, more particularly, to derive from that part of eternal law which is natural law the foundations of a rational system of positive law.

The "natural-law theory" of the medieval schoolmen of the 11th, 12th and 13th centuries must not be viewed solely, or even primarily, from the point of view of theology and philosophy; it must be viewed historically and functionally in terms of the challenge, the mission, which confronted the Christian Church in those centuries. In the year 1075 the peoples of Europe lived under barbarian law. Despite the earlier reforms and innovations of the Christian kings and emperors, the prevailing law remained the law of blood feud, of trial by battle and by ordeals of fire and water and by compurgation. There were no professional judges, no professional lawyers, no law books. Custom reigned—tribal custom, local custom, feudal custom. In the households of kings and in the monasteries there was Christian civilization to a degree; but without law it was virtually impossible to transmit Christian civilization from the centers to the localities. To take one example: the Church preached that marriage is a sacrament which cannot be performed without the consent of the spouses, but there was no effective system of law by which the Church could overcome the almost universal practice of infant marriage. In this situation the Christian jurists of the West were not content with a movement merely to improve or to humanize existing institutions. Instead they set out to create a whole new system of law which would embody Christian principles. They took a variety of texts—the Old Testament, the Gospel, "The Philosopher"—Aristotle, "The Jurist"—Justinian, the Church fathers, St. Augustine, the Church councils; and by the use of the scholastic method and of a natural-law theory they were able to create out of these various sources, as well as out of the existing customs of their contemporary ecclesiastical and secular society, a coherent and rational legal science.

The law which was created in the monasteries and universities of medieval Europe became the organic law of Church and of State in Western Europe. The monk Gratian's "Concordance of Discordant Canons" of the year 1140 is still the foundation of the Canon Law of the Roman and Anglican Churches. The revived Roman Law of the Glossators of Bologna is still the foundation of the secular legal systems of Europe. And although England, chiefly because of the relatively early development of a strong monarchy and a secular class of jurists, ultimately pursued an independent course, it is nevertheless true to say that English law, too, and especially that part of English law which came to be called *equity*, is founded on the legal science created in the 11th, 12th and 13th centuries by Christian jurists of the scholastic, natural-law persuasion.

We may reject, as the Protestant Reformers of the 16th century

rejected, certain elements of natural-law theory as found, for example, in the writings of St. Thomas Aquinas. We may reject, as they did, the belief in man's natural inclination to act in accordance with eternal law, the belief in the power of the human intellect, unaided by faith, to know right from wrong and to will the right, and the belief in a visible corporate Church governed by canon law. We cannot reject, however, the contribution which natural-law theory made to Christian life at a critical stage in its development. We are heirs to that theory; without it we might still be living under barbarian law.

The 16th Century Reformation broke the medieval dualism of two official hierarchies, two official legal systems—that of the Church and that of the States. In Protestant countries the Church was now conceived as invisible, a-political, a-legal, and the only sovereignty, the only law, was that of the secular State. The Reformers were skeptical of man's power to create a human law which would reflect eternal law, and explicitly denied that it is the task of the Church as such to develop human law. This Protestant skepticism made possible the development of a Christian legal positivism, which treats law as being in and of itself, as law, morally neutral solely a means of exercise of political power. But the secularization of law, and the emergence of a positivist theory of law, are only one side of the story of the contribution of the Reformation to the development of law. The other side is more important: by freeing law from theological doctrine and from direct ecclesiastical influence, the Reformation enabled it to undergo a new and brilliant development. In the words of Rudolf Sohm "Luther's Reformation was a renewal not only of faith but also of the world: both the world of spiritual life and the world of law."¹¹

The key to the new development of secular law in the West from the 16th century on is the Protestant concept of the power of the individual by God's grace, to change nature and to create new social relationships through the exercise of his will. The concept of the individual will—in Anglo-American legal terminology, of "intent"—which has been central to the development of modern contract and property law, and ultimately of all branches, is essentially a Protestant concept, though in the last two centuries it has become progressively more and more secularized, more and more divorced from the concept of divine grace.

Just as we cannot reject the contribution of Christian natural-law theory to the development of law, so we cannot reject the contribution of Christian positivism. But we must recognize that Luther's concept that the development of positive law is the task of the secular authorities, o

¹¹ Cf. RUDOLPH SOHM, *WELTLICHES AND GEISTLICHES RECHT* 69 (Munich and Leipzig 1914).

the State, and not the task of the Church as such, could only be proclaimed after more than four centuries of history in which Church and State together had succeeded in Christianizing law to a remarkable extent. A Protestant positivism which separates law from morals and finds the ultimate sanction of law in political coercion assumes the existence of a Christian people and a Christian State, a State governed by Christian rulers.

In this briefest of historical sketches, two other strands of Protestant thought, which have had profound effect especially upon American law, must also be mentioned. The first is the Calvinist effort to eliminate the dualism of secular and ecclesiastical life altogether, and to govern Christian communities by Biblical law. Though relatively short-lived, Puritan theocracy has left its mark upon our history, upon our theology and upon our jurisprudence.

Finally, 20th century Protestantism, at least in the United States, has established the image of the Christian individual living in the secular society. Implicit in this image is a gospel of Christian legal ethics, but no full-blown Christian philosophy of law. This gospel says to the Christian individual: pray for God's guidance in making and keeping your contracts, in avoiding the commission of torts, and in managing your legal affairs generally, that in all these matters you may behave in an upright and loving manner. This gospel says to the Christian lawyer, judge or legislator: pray for God's guidance in performing your official duties so that you may act courageously in the interests of justice. But this gospel has very little to say concretely as to what is justice, what is prohibited and what is permitted, or what are the specific Christian aims of a system of law. If this is a defect of modern Protestantism, one must balance against it the virtue that thereby full responsibility for all injustices is placed squarely on the conscience of each of us.

Thus we see that in different ages of the Church, and in different societies, Christians have adopted different approaches to law. Does this mean that Christianity is neutral toward law, or relativistic in its philosophy of law? It does not. It means rather that the Church has faced different tasks with respect to law in different times and places. In all times and places, however, Christianity has accepted law as part of God's creation and has sought to adapt law to God's purposes for man.

Christians may hold various theories of law, in the sense of various explanations of the relation of law to justice, to politics, to social order. A Christian may be, for example, a positivist, or an exponent of natural law theory, or a "legal realist." But he cannot ascribe eternal validity, sanctity, God-giveness, to any of these theories. God-given is only the

tradition that in every age of the Church Christians have sought to convert law into an instrument for opening men's hearts and minds to the voice of the Holy Spirit, while recognizing the limitations of law as such an instrument. Our various theories are our attempts to translate this tradition into terms appropriate to the particular historical situation in which we find ourselves.

God has revealed to us eternal truths about law, not in abstract philosophical or theological form but in the form of a living experience, a living tradition, continuous through the ages. That Christians must oppose and even disobey laws which prevent Christian worship and the teaching of the Christian faith, that Christian rulers must seek to humanize law and to give legal protection to the poor and the weak, that Christians must seek to erect a legal system based upon rational principles of justice rather than upon superstition and prejudice, that Christians may properly use law as a means of conquering nature and creating new social relationships, that the individual Christian must impose a higher ethic upon his own conduct relating to law, and insofar as the law "leads man to virtue not suddenly but gradually"¹² must fulfill it willingly—these are truths which the Church, the community of Christians through the ages, has lived and fought for. These are easy truths for us today only because they were conquered by our forefathers in crucial struggles—in the catacombs of Rome in the struggle against simony in the 11th century, in the fight between Lutherans and Roman Catholics over canon law and the sacraments and indulgences, in the carrying of Christianity to North America, Africa, and Asia, in the struggle against the new paganisms of our own times. These truths come alive in every situation in which the Church is persecuted from without or torn from within.

There *is* a Christian jurisprudence. It is not an abstract theory of law but a functional and historical approach to law. It views human law as a means of creating situations and relationships in which the kind of sacrificial love which Christ taught can be more effectively shared. In translating this view into action the Church, as the ecumenical community of followers of Christ, draws on its entire tradition for inspiration, not slavishly copying what was done in the past but adapting past experience to the challenge of the particular time and place.

III

Today, as in critical turning-points of past history, the Christian Church is confronted by a profound challenge to help create, through law

¹² ST. THOMAS AQUINAS, TREATISE ON LAW, SUMMA THEOLOGICA, Q. 96, 2nd Art., Repl. Obj. 2 (Chicago, Gateway ed., 1949).

conditions of justice in which sacrificial love may take root and grow. The present challenge arises from the fact that today we live in a world ruled by people who, for the most part, are avowedly non-Christian and in many cases anti-Christian. The implicit assumption of both Catholic and Protestant jurisprudence of the past that the secular authority is in some sense Christian is no longer valid in most parts of the new world civilization.

The non-Christian political communities of the modern world subordinate justice to goals which are not specifically Christian—goals of economic progress, of political power, of conformity to various secular ideologies such as Communism, nationalism, and humanism. At the same time, with the overwhelming centralization of the social order in modern times, the official law of the State has become a major instrument for molding people's ideas and values. Thus the Church is threatened by the use of law to help create beliefs, indeed religions, which are antagonistic to Christian belief.

In responding to this critical situation, the Church must now, as in the past, teach civil disobedience to laws which infringe Christian faith, seek reform of oppressive laws, preach a science of law based on reason and morality, and attempt to strengthen the Christian will and conscience of all who influence legal development. Indeed, I would say that Christians as never before have a mission to become lawyers, legislators, administrators, judges, and law teachers. Yet new kinds of response are also called for. I should like briefly to state two special tasks which a Christian jurisprudence imposes on the community of Christians today.

First, I believe that we must seek to redress the balance of the excessive secularization of law. It is the task of Christians today to influence legal development so that the law teaches Christian truth and not paganism, Christian love and not merely secular social welfare or secular nationalism. I think we are in danger of seeing erected in other countries of this world and, indeed, even in our own, a social order which may be more just than any we have yet known, in terms of equality, in terms of social welfare, but whose justice will be dedicated to ends that are not only unChristian but anti-Christian. We are in danger, in my opinion, of seeing in Russia, for example, a social order created which could conceivably, in terms of social justice, surpass our own, but wherein social justice is dedicated to a new religion which conflicts with the basic Christian understanding of the relationship between man and God. Professor Katz has written that "the law can do little directly to correct the major heresy of our culture: the exaltation of economic over other values. "Furthermore," he adds, "we should not look to the law to define the basic principle of our community

or directly to promote it."¹³ I challenge these statements. I believe that law *can* do much directly to correct our culture's exaltation of economic over other values, and that it *can* define the basic principle of our community and *can* directly promote it. Not, of course, by itself; not alone; but used in conjunction with education and with social and political activity. We have reached a juncture of history and of social organization where law is already used to define the basic principle of community life and directly to promote it; the only question is, in what terms will that basic principle be defined? It is up to Christians to work for a definition which is consistent, at least, with Christianity.

In seeking to promote a deeper sense of community through law, Christians will find themselves on common ground with humanists in the belief that law should help to create conditions under which virtue and brotherhood may flourish; but Christians will differ from humanists in giving a profounder meaning to virtue and brotherhood, and in stressing the inherent limitations of any morality and any program of social welfare which rests on humanism alone, which seeks to glorify man rather than God, and which accepts an ethic of aggrandizement rather than of sacrifice. Christians must be tireless in calling attention to the fact that the secular morality of Western law—its impartiality, its equality, its recognition of the binding force of promises, its punishment of fault and wrong, its promotion of trust and confidence and the like—is derived from Christian faith, Christian hope and Christian love, and that without the motive power of Christianity our secular morality becomes lukewarm, ineffectual and hypocritical.

Secondly, the Christian Church has, I believe, a special mission today to help strengthen the various kinds of law which hold together peoples of different national, racial and ideological loyalties—not only international law in the conventional sense but also various branches of national law which relate to international activities, whether of business, of travel, of migration, or of any other kind. This is a special mission of the Christian Church, which has always taught that God made of one blood all nations of the earth and that Christ died for all mankind, and which has always preached that a man should love his enemies. It is a special mission of the Church today, because today as never before in her history the Church—Christianity itself—is threatened by the religions of nationalism, racialism and ideological conformity. Christians who fight for a trans-national, trans-racial and trans-ideological law are fighting to create conditions in which the Church itself may be reunited on a universal basis.

A viable world order founded on law will not save men's souls: to say

¹³ Katz, *Natural Law and Human Nature*, 27 OKLA. B.A.J. 1373, 1379 (1956).

it would, would be sacrilege. But by helping to create such a world order Christians help at the same time to prepare men's hearts and minds to receive the Christian faith and to grow in Christian hope and love. They bear witness to their own love for justice, which is one of the marks of a Christian, to their belief that law can be an instrument of justice, and to their desire, with God's help, to convert law and justice into instruments of Christian love.

APPENDIX

THE PREAMBLE OF THE ECLOGA*

A selection of laws arranged in compendious form by Leo and Constantine, the wise and pious Emperors, *taken* from the Institutes, the Digests, the Code, and the Novels of the great Justinian, and revised in the direction of greater humanity, promulgated in the month of March, Ninth Indiction in the year of the world 6234.

In the name of the Father and of the Son and of the Holy Ghost, Leo and Constantine, faithful Emperors of the Romans.

Our God, the master and maker of all things, created man and honored him with *privilege* of free will, and gave him a law in the words of the prophecy to help him and thereby made known to him all things which he should do and should not do, so that he might chose the former as hosts of salvation and eschew the latter as the causes of punishment; and not one of those who keep his Commandments or who, save the mark, disregard them, fails to receive the appropriate reward of his deeds. For it was God who declared both these things aforetime and the power of his words, inherently unalterable, dispensing unto every man according to his deeds, will not, as the Gospel has said, pass away.

Since, therefore, having entrusted to us the sovereignty of the Empire as was His good pleasure, He added thereto this token of our love with fear toward Him in that He bade us, as he bade Peter, the supreme head of the Apostles, to pasture his most faithful flock. We can conceive nothing more acceptable¹ by way of thanksgiving to Him other than the righteous and just government of those entrusted to us by Him, so that, henceforward, the bonds of all wickedness may be broken, the unjust breaches of covenants may be stopped, and the onsets of transgressors may be checked, and thus by victory over our enemies, through His Almighty Hand, we may be crowned with the encircling diadem and more precious and honorable the royal power may be peaceably confirmed for ourselves, and the state *be* well regulated.

Whence busied with such cares and setting sleeplessly the mind upon discovering matters pleasing to God and conducive to the public interest, preferring Justice to all things terrestrial as the representative of things celestial, and as being by the power of Him who is worshipped in Her, sharper than any sword against foes, knowing, moreover, that the legislation enacted by previous emperors has been written² in many books, and *being aware* that the sense thereof is, for some, difficult to understand, for others absolutely unintelligible, and especially for those who do not reside in this, our imperial city protected by God, we have summoned hither the most illustrious patricians, our most illustrious quaestor, and the most illustrious consulars and registrars and others who have the fear of God, and we have ordered

* This translation is from Wallack, *The Spirit and Sources of the Ecloga* (unpublished dissertation, Harvard University, 1942), and is adapted from FRESHFIELD, *A MANUAL OF ROMAN LAW, THE ECLOGA* (Cambridge University Press, 1926).

¹ Literally, "first" or "better."

² Zacharia's ms. "ἐγγεγράφθαι" is preferable.

that all these books should be collected before us³ and having subjected all of these to a close critical examination, both by the measures conveniently registered in these same books, and also by those edicts of ourselves recently promulgated in matters of frequent occurrence, both in decisions on contracts and also in the relation among one another⁴ of the penalties inflicted for crime, *these* we have deemed it suitable to take up in this very book in a more lucid and detailed manner to ensure a eusynoptic^[5] knowledge of the force of such pious laws and to facilitate the decision of such causes clearly and to ensure a just prosecution of the guilty and to restrain and correct those who have a natural propensity to evil doing.

And we do exhort all those who have been appointed to administer the law and enjoin them to abstain from all human passions, and by a sound understanding to pronounce the sentences of true justice, neither despising the poor nor permitting a powerful transgressor to go unpunished, nor in appearance and work to set justice and equity on a pedestal but in reality choosing injustice and cupidity as profitable. But when two persons have a suit before them, the one having become rich and the other poor, to make equity between them, taking from the former *the amount* of which the latter has been unjustly deprived. For there are some who do not treasure truth and justice in their hearts but, corrupted by riches, willing to favor for friendship's sake, revengeful through personal enmity, importunate in office, are incapable of doing justice and illustrate in their lives the true word of the psalmist, "Do ye indeed speak righteousness, do ye indeed judge rightly, ye sons of men? For indeed ye work wickedness in your hearts on earth, your hands wreak injustice."⁶ Just as the wise Solomon, speaking by way of parable with the figure of scales concerning unjust decisions, says a weight greater or smaller is an abomination to the Lord.

These matters have been publicly decreed by us for the admonition of those who on the one hand know what is right but pervert the truth, and on the other hand for those who are wanting in good sense, and those for whom it is difficult or altogether impossible to hit the mark, and give an equitable judgment between man and man. *Folk* such as these are referred to by Jesus, the son of Sirach, "Seek not of the lord pre-eminence, neither of the king the seat of honor, and seek not to be judges, being unable to remove iniquity."⁷ Let those, however, endowed with sense and reason, and knowing clearly what true justice is, let them exercise straight vision in their judgments. For so our Lord, Jesus Christ, the power and wisdom of God, giveth unto them far more abundantly the knowledge of justice, and revealeth those things that are difficult to discover; who also made Solomon truly wise when he sought out justice and granted him the grace of successfully hitting the mark for the women in the dispute over the child. For what they said was unsupported by testimony. And he commanded to have recourse to nature and brought it about that through her the unknown was found. And while the strange woman received the command to slaughter the child without emotion, the mother through the natural affection which she bore, could not endure even to hear the sentence.

Let those who are appointed by our pious Majesty to try cases and decide disputes and who are entrusted with the true scales of our august laws reflect upon these matters, let them take them to heart. For thereby we shall strive to uphold the sceptre of the Empire placed in our hands by God. With these weapons and by His almighty power, we desire firmly to confront our foes. Thereby we strive to advance the highest happiness of the flock, sealed with the emblem of Christ, and through His authority committed to our benevolence. And by such means we hope that the ancient jurisdiction of the Empire will be reestablished for us forever. Our Lord, Jesus Christ, hath said, "Judge not according to appearance but

³ παρ' ἡμῖν.

⁴ Zacharia's ms. "καταλλήλους" (interrelation).

⁵ Perhaps "briefer."

⁶ Psalms 58:1-2.

⁷ Ecclesiasticus 7:4, 6.

judge a righteous judgment,"⁸ a judgment free from all favor of reward. For it stands written, "Woe to those judging unrighteously for the sake of rewards, who turn aside the way of the meek and take away the just due of the righteous from him; their root shall be as dust and their blossom shall go up as dust because they wished not to fulfill the law of the Lord."⁹

For gifts and offerings blind the eyes of the wise. Therefore, being solicitous to put an end to such shameful gain, we have decreed to provide from our pious treasury salaries for the most illustrious quaestor, for the registrars, and for the chief officials employed in administering justice, to the intent that they may receive nothing from any person whomsoever he be, who may be tried before them, in order that what is said by the prophet may not be fulfilled in us, "He sold justice for silver,"¹⁰ and that we may not incur the wrath of God as transgressors of His commandments.

⁸ John 7:24.

⁹ Amos 2:6, 7.

¹⁰ Isaiah 5:23, 24.