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LEGAL ASPECTS OF TRUTH IN A WORLD AT WAR

THE appalling spectacle of global strife relentlessly waged with intricate weapons which only rationality could devise and directed toward the destruction of humanity and of its civilization has vast philosophical significance. It is possible, of course, to discuss the justice and injustice of the actions of the two belligerent groups of nations and to place the moral onus of proximate cause upon the Axis powers. The dominant opinion which has long prevailed in scholastic circles that the causes of certain belligerents are just and hence consonant with the divine will may be construed as giving unilateral immunity from moral culpability to the non-aggressor nations, although the ethical weighting of the ensemble of facts and motives preceding the acts of aggression is admittedly a delicate process. But in a broader sense, the condition of the present international order is a scathing indictment of humanity itself for its failure either to heed the truth of the divine plan, communicated to mankind through reason, inevitably recognizing an ought of human behavior, individually and collectively considered, or to act upon that truth in forging adequate juridical institutions of peace in the field of international relations.
There are causes for this failure which militate against any prolonged period of world peace. The chart of anthropological development discloses evidence to substantiate the conclusion that the freedom of the wills of nations and social groups upon which nationality has been created, even though they do strive to give effect to the content and implications of the natural law, may become highly restricted. Largely in consequence of this restriction and resulting despair, masses of tribally or politically organized mankind have developed psychopathic symptoms. These in turn have been followed by morbid mental states and attempted escapes by recourse to the violence of war. Any discussion of the problems, therefore, involved in proclaiming truth in a world at war, in exhorting its universal acceptance as a norm of action, both in war and peace, and in seeking to have it acted upon in the international legal sphere must face the fact of unpredictability in human behavior.

But certainly unless a knowledge of the scholastically essential factors for an enduring world peace is given universal currency and unless the antidote of scholastic wisdom is used to assuage the recurring fever of war which has systematically afflicted the nations, no amelioration of the situation may be expected. This is so because scholastic philosophy perceives a maximum significance, as compared with other speculative systems, in the moral phenomena arising out of the actions of men in groups. Political scientists and jurists who believe in this form of philosophy are to-day charged with unprecedented responsibilities. Their duties assume great proportions and enlarged contour in a world at war, as such, and as a stage preceding the period of reconstruction, because of the efficacy of their message. They are custodians of an intellectual and moral inheritance which is best able to correlate the dualism of truth as an abstraction and as an external fact in the affairs of men. During the war and in the peace to follow, their emphasis must be on the dynamic expression and application of the accumulated body of concept, rather than upon a repetition of its abstract principles.
LEGAL ASPECTS OF TRUTH

International legal and social justice after victory is the declared goal of the United Nations. But the condition's precedents in laying the groundwork for such justice are, first, the maintenance of the democratic ideal in internal national affairs as elaborated by States reared on the concept of man's intrinsic worth and supernatural dignity; and secondly, fidelity to the dictates of the natural law as applied to social organization in those parts of the earth which are being conquered by the United Nations and which will continue to be won. These two phases of truth in war-time will have a vital connection with the international social regime to be adopted after the war. In the no-man's land of the active battlefield, there are only the opposing orders of military discipline of the belligerents which resolve themselves into the disorder of anarchy. Hence this phase of war has no link with the peace-vision of the future.

First, the rational equilibrium which ought to exist between the exercise of the war power in a nation and the democratic process may not be determined without reference to the decisive objective of State-survival. That process may not be delimited beyond the irreducible minimum prescribed by the natural law. While the interest of State-survival is not absolute, its claim may be so great, however, as to delimit or completely prevent the exercise or enjoyment of inalienable rights of the individual in war. When the threat to State-survival has been removed, the enjoyment of these rights must be restored. Sovereignty fighting for its existence through the exercise of the war power is amenable not to the positive legal order of the nation but only to the ethical dictates of the natural law which confers abnormal rights and privileges upon a State at war.

When democracies are at war, actions deemed essential by those in authority for the continuation of State-sovereignty are acceded to by the people without the need of elaborate rationalization or philosophical justification. A point may ultimately be reached when these actions become such that
they may be justified as conforming either to the implications of scholastic or anti-scholastic philosophy, more specially the doctrine of the infallible State. The end, namely, the preservation of the State, is good and the means may be permissible, but the causative political philosophy may be that of scholasticism or agnostic pragmatism.

When radical measures are undertaken in a great national crisis, their significance and inner meaning as determinants of future political, social, and juridical conduct are eventually analyzed and expressed. But their true meaning may not be fully perceived. They may be erroneously presented later on as sanctionable only by the philosophy of the absolute State.

If retroactive rationalization successfully imputes to a society which has been at war a specific type of political philosophy as the basis of its victorious modus operandi, the intellectual momentum so generated may carry such philosophy to a place of dominance when new choices of political values are made in the period of reconstruction. A present attitude of philosophical laissez-faire as to the relation of American economy at war to ethical norms and values may well create later on mental blind spots enabling devotees of anti-scholastic thinking to exploit the situation by attributing the successful functioning of the war program to the abrogation of a natural law philosophy of the State. If juridical realists should succeed in creating this illusion after the war, their next step would inevitably be to recommend an extension of a philosophy of State-absolutism in the post-war period of winning the peace.

The growing war rationing of consumable property and progressive taxation imposed upon the rights of acquisition retention and transfer of property have been accepted by the American people as necessary to win the war. Historically these trends are departures from the traditional powers exercised by American sovereignty even at war. It may be assumed that the rationing and taxation program is a temporary limitation imposed upon the exercise of the indivi-
dual's right of property rather than the assertion of a newly acquired absolute right on the part of the State to create or with-hold the ownership, use, and enjoyment of property. But would not the interests of truth be served if a greater attempt were made to inform public opinion as to the true source and scope of the right and power of sovereignty now manifesting itself in original ways in a highly regimented economy. It is true that the objective and methods of America's war time economy are now valid under both a scholastic and a non-scholastic attitude. But would not the danger of a subconscious shift after the war from the traditionally American conception of property rights to an alien notion be best removed by universal acceptance of the explanation that the present delimitation of property rights is temporary and subject to the controls of natural law.

Secondly, what is done during the continuation of the war in the matter of building an adequate and just social order in those parts of the world which the United Nations will seize from the enemy and hold prior to ultimate and complete victory will affect the quality of the peace. This stage presumes two earlier intervals: that of the active battlefield and that when government will be by sheer military authority dependent wholly upon the will of the general who commands the victorious army. What are the minimum requirements for compliance with the truth of the natural law in these two periods?

When all the disputes between two great sections of humanity have been lumped together so as to produce the final single issue of physical survival, and when this issue is put to the test of blood and steel, areas of the earth constituting the actual battlefields become incapable of supporting any social order. Human life there is largely a matter of instinct. Scholastic philosophy though abhorring such a situation, nevertheless will concede the necessity of such instinctive existence on the grounds of self defense and physical necessity. It will decree, however, that such instinct must not be com-
pletely detached from rationality. It may not be the instinct of the beast, if the ideals of scholastic philosophy are followed, although the rational faculty may be suppressed to abnormal limits.

The stage of the active battlefield is followed by the period of martial order. It exists and functions by sheer force of armed men, acting under discipline prescribed by the physically non-inhibited will of the supreme command. Legally this command is subordinated at least in theory to the dictates of the President of the United States, as Commander in Chief of the armed forces. Morally it should be restricted in both theory and practice to the ethics of the natural law. The extent of this restriction, however, in virtue of the difficulties implicit in overcoming chaos and initiating order will not be identical with the moral constraints applicable to the succeeding period of military government.

Whereas the purpose of martial order is to terminate jungle rule, the objective of military government is to perform those functions which are sociologically imperative as a result of the gregarious nature of man impelling him to live in some kind of society. Such government begins *de facto* in consequence of the possession and acceptance of the enemy's territory and becomes *de jure* as soon as it has shown its capacity to govern. It is based upon the wielding of sovereignty directly by the sword. The ethical limitations upon the exercise of military authority are not identical, therefore, with those upon the manifestations of civil sovereignty. This difference springs from the variation of circumstances under which the two types of sovereignties are exercised.

The State as normally constituted wields supreme civil authority over its members. Its aim should be the common good of its members, i.e., their physical well being and happiness. Its military aspects are subordinated during peace and relate to the internal administration of government only in cases of grave public disorders, riots, or insurrections. Ultimately, of course, the existence of the State and the exer-
cise of civil authority are dependent upon military might. But the emphatic criterion of the common good as applicable to the wielding of civil authority tends to become subordinated to the good of weakening the enemy and strengthening the dominating martial sovereignty of the military government in question by all means not *mala in se*.

According to American precedent, the authority of military governments is to be limited only by the international laws and usages of war. But it is doubtful whether these continue to exist. Only a scholastic conception of the natural law can supply an objective set of moral standards as a substitute for these practically non-existent laws and usages of war. If this is rejected, upon what moral norms, if any, will future American military governments base their administration? This is a basic problem to be solved as part of the governmental program already under way to train American administrators for posts in foreign service. The practical consequences of this problem were revealed in part by the political situation following American seizure of Northern Africa.

From the American point of view, when military governments are established, they supersede the processes of civil positive law. The future responsibilities of this nation in the matter of international justice when it sets up or participates in establishing military governments may be realized from the following quotations. Chief Justice Chase, in his address to the Bar,¹ at Raleigh, North Carolina, in 1867 stated: "The national military authorities took the place of all ordinary civil jurisdiction or controlled its exercise. All courts, whether state or national, were subordinated to military supremacy, and acted, when they acted at all, under such limitations and in such cases as the commanding general, under the directions of the President, thought fit to prescribe. Their process might be disregarded, and their judgments and decrees set aside by military orders. * * * The military tri-

¹ Chase's Decisions, 133.
bunals, at that time, and under the existing circumstances, were competent to the exercise of all jurisdiction, criminal and civil, which belongs under ordinary circumstances to Civil Courts.” The Supreme Court of the United States has declared \(^2\) that: “There is no limit to the powers that may be exerted in such cases, (namely, in instances of military government) save those which are found in the laws and usages of war. \(*\)** In such cases, the laws of war take the place of the Constitution and laws of the United States as applied in time of peace.”

While the fires of war rage, it is impossible to do more in the field of action than to continue to adhere to the democratic concept of the State based on scholastic doctrines of the natural law at home, and to apply principles of justice in the creation of military governments to be set up by the United Nations. But in the field of thought and study it is now feasible to discuss the legal aspect of truth in the post war period.

Unquestionably the wisdom of the peace which will follow an American victory can be augmented now by adequate preparation through study and discussion. The three major competing ethical doctrines of the right world order which have vied for supremacy since the inception of western civilization have been the scholastic, the contractual, and the realistic. These doctrines have greatly influenced the conduct of nations and the choice of juridical institutions of peace. Their consideration will be of value in aiding architects of future world orders to profit from the experience of the past.

The doctrine of the Catholic Church which for the first time in human history elevated the concept of peace through love and the brotherhood of man under Christ to a supernatural level paralleled the notion of peace among nations through justice, a basic part of scholastic philosophy. The

States of the world are moral and juridical persons, and as subject to natural law as individual persons. Just as God has willed what is good and evil in the field of behavior for each human being, so likewise has He willed an ethical, external norm to which men in groups or civilly organized societies ought to conform. The tranquility of order based on law, design and pattern should prevail among nations as it does in nature.

With the advent of the Reformation in the sixteenth century, the traditional body of international justice, which had been accumulating under the inspiration of a distinctive notion of natural law, began to be rejected in many parts of Christendom. The trend was from scholasticism to contractualism. In those parts of Europe wherein an infallible nationalism made headway, each nation claimed and put into effect its own standard of morality as between Church and State, between ruler and ruled, and between nation and nation. Since the doctrine of an unchanging body of ethical norms to which all men were subject, whether considered individually or collectively in distinct racial or political groups, was rejected by many, it was necessary either to abandon the whole idea of international law, or else to improvise from time to time international agreements which derived their sanction from the wills of the contracting sovereigns.

The League of Nations and the World Court were the maximum achievements in the international order during that period in which the morality of contractualism enjoyed its greatest prestige. But these juridical institutions hardly coincided with the scholastic blue-print of law and world order. They were founded upon a morality of covenant and contractualism between the consenting parties, rather than upon the enduring objective ethics of the natural law which binds all nations, irrespective of their wills, in moral matters.

The concept of a union of peoples, as distinguished from a league of political units, was excluded. In this regard, the organization of the League ran counter to the experience of
the founders of the constitution of the United States who realized that a mere association of political entities, such as was contemplated by the Articles of Confederation, would either obey the centrifugal force of anarchy and fly apart, or else would rotate like planets around the strongest state. The first alternative took place with reference to the League.

The morality of contractualism in the international domain broke down under the impact of political and juridical realism which became more and more a mainspring of action for several powerful nations after the initiation of Japanese imperialism in the early thirties. Realism denies the existence of a metaphysical order, among other things, stresses behaviorism and the economic interpretation of law, and denies ethical values, except the norm of materialistic utility in the satisfaction of interests or desires. The present war may, therefore, be interpreted as the inescapable effect of the destruction of the moral order of contractualism, upon which were grounded the League of Nations, the World Court, and the body of positive law which governed the actions of States, by those nations which embarked on a policy of realism.

The significance of the political and military phenomena observable at Munich may be expressed in terms of legal philosophy. It marked a crucial stage in world affairs because it was a recognition, by one of the contracting groups, of the moral weaknesses of the then prevailing legal and political world regime. A policy of appeasement may well be construed as an indication of a moral inferiority complex. These weaknesses had been articulated by the under-privileged nations on the grounds of economic necessity. The issue was made to appear as a clash between an analytical theory of international law and politics and some form of natural law thinking. Had it actually been such, Munich might have been a turning point toward the reconstruction
of the world order along the lines of Thomistic philosophy, which stresses good faith in the cause of international social justice, reasonable distribution of rights of substance, and adequate access to sources of natural wealth.

Actually Munich represented a decisive victory for a snarling realism which masqueraded under the guise of natural law idealism, and appealed to traditional notions of good faith, sanctioned through the centuries largely as a result of the fidelity of the occident to the scholastic ideas of natural law. Thus realism sought to make truth an instrument with which to destroy those who believed in truth and gave it expression. It endeavored to demonstrate that reliance upon metaphysical order was a liability in the struggle for existence.

International realism has not and will not achieve final victory in human relationships. But its early successes are a challenge to scholastic philosophers, who failed to obtain acceptance of the world wide sociological and economic, functional and utilitarian implications of a natural law in the sense of a divinely willed regime. Realism could succeed when pitted against the weak opposition of an analytical jurisprudence. It would have failed against a system of thought capable of supplying direction to the evolution of juridical institutions of peace.

Final victory in the field by the Allied Nations will afford them an opportunity to forge a new world order, based upon the morality of realism, contractualism or scholasticism. They will not directly and deliberately choose realism. But there is no assurance at this time that they will not adopt contractualism. It is imperative that a scholastic campaign should mould public opinion within the Allied Nations so as to make it favorable toward the proposition that international humanitarianism, when detached from the correlative of divinity, morbidly turns in upon itself. There it either
discovers no final norm of morality, so that it ultimately rejects all ideals and embraces realism; or else it accepts realism by making itself the ultimate ethical norm, and permitting those who exercise sovereignty to create their own moral order.

A future world State, responsive to the demands of charity and justice according to natural law with its authority derived from God and conferred by the express or implied act of the constituent sub-sovereign nations, as well as by each and every individual person in the respective states, directly or indirectly, is apparently the goal of scholastic wisdom. That this union shall be sustained by force in addition to moral sanction must be assumed. That it shall preclude secession by individual states or peoples, as long as it endeavors in good faith to govern justly as determined by world public opinion, is essential. That it shall ultimately evolve the power of eminent domain, to be exercised in a just way over the goods of the earth, both natural and created, is a corollary of political institutional progress, in view of the attributes of mature, democratic forms of State-organization.

The task confronting scholastic philosophy as applied to juridico-political science is not easy. Wars disturb established systems of law and social instruments of order. In a world at war, the opportunities of realism to create and extend a spirit of agnosticism are improved. The most opportune time for legal realism to attack the truth of scholastic jurisprudence is when there is an inevitable diminution of faith in traditional juristic values, as a result of the turmoil of war. Then does realism obtain its greatest audience when it proclaims the message that there is nothing truly significant save animal, physical reaction to social phenomena.

Hence if the scholastic effort to influence future social behavior is to be successful, every available agency must be utilized. Since this country is thus far removed from the theatres of combat, the major contribution to the effort must
come from American sources, principally Catholic universities and law schools. The paralysis of the university tradition during that pause of peace which was followed by the greatest of all wars and the simultaneous choice of political leaders alien to this tradition in Europe contributed to the unbalanced policies of political realism. It is important that the University tradition assume a leading role in determining the nature and function of future sociological activity. The domination of this tradition by scholastic philosophy must be restored.

The challenge to scholastic jurisprudence by realism in the class-room of the American law school is actual. Thus two rather recent authoritative Reports on law school curriculum, teaching and examination methods, which originated in Committees of the Association of American Law Schools, one of the two principal accrediting agencies in the domain of American legal education, seek to recognize American law school curriculum and teaching upon an experiential basis. It was suggested that Dewey's conception of logic, treated as social phenomena, should be introduced into the first year of the study of law. From the kindergarten of the law school, onwards, it was recommended, that emphasis should be on problem solving, not on ethical norms, and that law should be represented to law students not as an attempted embodiment of an "ought," but rather as a tool to be utilized for the satisfaction of economic wants.

In Catholic law schools, adequate scholastic curriculum and pedagogy must recognize as facts man's animal wants in so far as he is an individual and also a member of complex groups, economic and social. These necessities must be given proper perspective, however, in relation to his spiritual.

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3 See the Memorandum on Curriculum, written in November, 1942, by the Chairman of the Committee on Curriculum of the Association of American Law Schools and submitted to the members of the Committee for their consideration; and the Report on Suggested Procedures for Small Classes, issued about the same time by the Committee on Teaching and Examination Methods, of the Association of American Law Schools.
needs which cannot be satisfied if material ends are reached by the coercive power of positive law at the sacrifice of justice and equity, the ultimate true ends of legal systems. Scholastic adaptation of law-teaching technique to present day unstable world conditions means that the areas of the classical divisions of the Common Law, which were manifestly constructed as a result of the sociological necessity of fusing law and morals to a certain extent, must be re-appraised in the light of natural law values. It implies that the positive law must not only be taught on an informational basis, and as an instrument of litigation and social discipline, but also re-examined in this chaotic period in order to determine how well its institutions and doctrines have reflected the metaphysical order of scholastic idealism and truth in the sense of the content of the will of the Creator as to the social conduct of man.

The time has come to articulate the prime necessity of testing legislative, executive and judicial processes, as well as the whole body of positive law itself, in the national and international domains by the extent of conformity with natural law. At the same time scholastic jurisprudence must now demonstrate the superiority of its own utilitarianism. The supremacy of the scholastic method of appraising effects springs from the truth of its starting point, namely, that man is a union of body and spirit. A utility which ignores spirit is delusive. Things truly useful to man are such because they promote his spiritual, as well as material, happiness.

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