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## LEGAL VERSUS MORAL JUSTICE

The phrase "Whatever is is right" has significance only when applied to the field of existing law, for right is a moral entity whose sole origin ultimately is law. Now on the theory that the State, or civil law, is the supreme and exclusive source of rights, the phrase would always be true, at least in the sense that whatever law might be promulgated would, by virtue of that fact alone, impose a moral obligation upon all to observe it until repealed, and exclude any just censure of it based on a norm considered prior and superior to civil authority. The philosophy of State Absolutism is by no means a purely historical and speculative theory. It has a goodly number of protagonists at the present time, and they have succeeded in no small measure in exerting strong influence upon public opinion. It was, for example, recently stated by a man in high public office, in a pronouncement on the national prohibition law, that it is either a good law or a bad law; but if it is bad, rigorous enforcement will be the best means of getting it repealed; and if it is good, rigorous enforcement will make it become popular. Therefore in any case rigorous enforcement is the policy to be pursued.

Now it is obvious that the assumption underlying this statement—and the statement itself caused no perceptible commotion—is that just because this law exists, citizens, if they are truly patriotic and right minded, should obey it unhesitatingly and unquestioningly, that whether you believe it is for the common welfare or not, *it is the law*, and therefore all argument about what you should do here and now is out of question. The State has so decreed. You are therefore bound in conscience to obey. For the State is supreme, and accordingly can do no wrong.

But there are some to whom this political philosophy, with its implied jurisprudence, is quite distasteful. They do not

accept the statement that "Whatever is right," either in the sense that the State is the sole or supreme source of human rights, nor in the sense that every law just because it is promulgated by existing government imposes an obligation in conscience to obey it. In reply to the argument stated above, they would say: either a law is good or it is bad; if it is good, it need not be rigorously enforced in order to become popular; and if it is bad, it should not be enforced at all, but immediately repealed. Therefore, in any case, rigorous enforcement would be either unnecessary or unjust.

The basis of this reply is found in a political philosophy quite different from State Absolutism. It holds that society exists for man, not man for society, that man both in point of time and of nature is prior to society, and that society, far from being an end in itself, is but a means to the end of man. The immediate conclusion follows that every man has certain rights and duties that are prior to and independent of any contrary prescription that may be laid down by the civil law; that it is not sufficient in order to demonstrate the moral necessity of submission to a law to say, It is the law, but that at times it is pertinent to inquire both whether a given law is contrary to the prescriptions of natural justice, or those essential relations between man and man, between man's natural powers and their proper objects, between man and society, man and God, and whether it is the intention of the legislator, even in the case of palpably just laws, to bind the conscience of men, or merely to lay down a rule of action leaving to subjects the alternative of obeying or of paying the penalty when exacted. On this latter theory it is quite possible that a civil enactment may either permit or command a social action which is quite contrary to sound morals. A four square opposition may arise between the order of justice grounded on such enactments and the order of justice which grows out of the essential needs and essen-

tial ends of human life, between what for the sake of convenience we may qualify as legal and moral justice.

In Russia the Christian religion is proscribed, education is monopolized by the State, citizens have been deprived of the ownership and of the right of ownership of their property, and of liberty of speech on political matters—all by law. But will anyone therefore say that these things are right, that no injustice has been done? Will they say that in Russia or indeed anywhere else, all argument is closed simply by saying, It is the law. A group of American corporations go into Porto Rico. By purchase and rental they gain control of the bulk of the land. They set up a one crop industry, introduce power machinery, mills and private railways. They either crowd the local owners to the wall or purchase their product on their own terms. They employ labor and pay wages on the principle of supply and demand. Result: for the corporations, millions in annual profits. For the population, in large part enforced idleness during several months of the year, a wage so small that they are left undernourished, ill-housed, destitute and ravaged by a tropical disease. But all has been done according to existing laws. In our own country at the present day, with its fabulous wealth and great natural resources and uncrowded population, only about one percent of the unskilled labor receives as much as \$1000 per year. And that despite the fact that \$1200 has been set down by authorities in economics as the least that can be considered a living wage, or one which will support the laborer in frugal comfort. Existing laws tolerate such conditions. Is one therefore going to say: Our laws do not forbid such wages. Hence it must be all right to pay them? Such indeed must be the reply of our positivistic political philosophers, our advocates of State Absolutism. For even though they may grant to citizens the right to work for the repeal of a law they do not like, they must in con-

sistency maintain that every existing civil mandate has *per se* and until repealed, the force of a law and must in conscience be obeyed. They must hold that whatever law is, so long as it is, is right, and that whatever is done in accordance with this law is just, that the only legitimate attitude toward it, and the conditions it brings about or allows is complete submission until such time as it may be abrogated or supplanted by new legislation.

But the question arises: What if the parties adversely affected by such laws—as in the case of Russia, Mexico and Porto Rico today—find themselves so hampered as to be unable to bring about an amelioration of their condition through new legislation? Are they to be branded as criminals or rebels because, following the dictates of their consciences, they practice their religion and teach their children in open or secret defiance of the laws forbidding both? If so, what can be the meaning of personal liberty? How can there be such a thing as tyranny? One is hard put to conceive of the possibility of either of these things, if it be assumed that whatever law is is right, and that there is no justice except such as may be set up by civil enactment.

Pope Leo XIII once wrote, apropos of the social injustice of inadequate wages—a condition not forbidden by our civil laws—that “there underlies a dictate of natural justice more imperious and ancient than any bargain between man and man, namely, that remuneration ought to be sufficient to support a frugal and well-behaved wage earner.” It is the phrase “natural justice” that here interests us, for it is precisely natural law, whence springs natural justice, that the protagonists of State Absolutism deny. Why do they deny it?

The answer to this question reveals at once the dependence of jurisprudence upon ethics and upon speculative philosophy. They deny it because they first deny that it is possible for the human mind to know the supernatural and the suprasensible. This of course spells positivism, i. e. anti-

intellectualism, in both religion and morality, the practical deification of society and the complete subordination of the individual to it. It means, moreover, that nothing is right or wrong in itself, that nothing is commanded or forbidden because it is right or wrong, but that actions are right or wrong simply and solely because they may happen to be commanded or forbidden. It implies that justice and right are to be determined solely by legislative power of the State, a power unhampered by any limitations, and therefore that there is no justice but legal justice.

Now defenders of moral or natural justice do not deny that it belongs to the State to lay down laws for social welfare, nor consequently that a detailed superstructure of moral order may not in that way legitimately be built up. The point in dispute lies further back. It has to do rather with the upper and lower limits of this order, with its understructure, that is, and the territory over which it may legitimately be extended. There is nothing either fantastic or forced about their position; nothing fantastic, because it rests on indisputable fact, and nothing forced, because it readily commends itself to unsophisticated minds. What are these facts?

The first fact is that man both in point of time and of nature is prior to the human society called the State, and prior too not as a mere savage, and still less as a highly developed animal, but as an intelligent and free agent, and therefore with rights and duties. Before we are citizens we are men. As men we have—like every other agent in the universe—an end which it is our duty to attain, in which we find our natural development and perfection. But if a natural end, then too we are subjects of a natural law which, like other laws, is but a means to order and ultimately therefore to an end. It is precisely this order grounded upon the very nature of man as such and consisting of the recognized and essential relations obtaining between man and the author

of his nature, between man and man, between man and Nature herself, and between man's powers and their natural objects that gives rise to the conception of natural justice, underlies and conditions the social order, and sets the limits beyond which social obligations may not be extended.

The second fact follows from the first, i. e. society exists for man, not man for society. Man understanding his own nature realizes his individual limitations, his need of cooperation with his fellows in order the more fully to develop his latent capacities. Society is the result therefore of man's spontaneous tendency toward more complete living. But it is and must ever remain a means to the end for which it was set up. It was not, and could never without stultification have been, meant to be a Frankenstein that would turn upon him and deprive him of the very things for the increase of which it was instituted.

It follows therefore with rigorous consistency that, far from being absolute and unlimited in its legislative power, the State is bound by a law anterior to itself not to forbid anything to its subjects which they by virtue of that earlier and unchangeable because natural law are in grave duty bound not to leave undone. This refers obviously to those truths mentioned in the Declaration of Independence as self-evident, "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that these are Life, Liberty, and the pursuit of Happiness." In other words, the right of life does not come from the State, but from the Creator who, having given it for a definite purpose, thereby imposes upon us the duty of using it so as to attain that purpose. Any civil law therefore which would frustrate that purpose is not a source of justice, but of injustice. The right to life is basic. Because we have that right we have the further right—which, be it noted, is at the same time a duty—to liberty, or the unmolested power of making rational choice of the means necessary to attain

the end of life. Similarly, the right to happiness. God has made man for Himself. The final end of man is God. And that also means that perfect happiness or, if you will, man's full perfection, consists in the attainment of God.

The conclusion is clear. It is that any civil law which deprives a man of the liberty of worshipping God according to the dictates of his conscience, which makes it physically or morally impossible for him to obtain from the bounty of the earth at least what may be necessary to live the life of a human being—and this means certainly above the mere subsistence level—which denies him the freedom to exercise his rational powers, to train them in educational processes as he thinks fit, and to express his ideas to others, which forbids him to marry and found a family,—in a word, which interferes with the order which Nature herself has set up, is not deserving of the name law at all, but of what Thomas Aquinas called a *vinculum iniquitatis*. In all such instances we should have what I have called merely legal justice, that is, not only no justice at all, but positive injustice. Legal justice does not always therefore coincide with moral justice, but only when the laws of the State do not contradict the laws of nature or of Nature's God.

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