

## LAW AND CONSCIENCE

THE age in which we live presents a rapidly growing cleavage between law and conscience; and this cleavage is resulting inevitably in the destruction of both. It is due almost entirely to the subjectivism which has been steadily gaining ground for the last four hundred years. Once private judgment is admitted as a principle in the conduct of human affairs the objective norms of human action cease to function as such and both conscience and law are deprived of their vitality. As early as the sixteenth century an incipient subjectivism made its appearance in Philosophy as well as in Religion; it is possible, indeed, that the effort to segregate Philosophy from Religion was the source of the whole evil. For when Religion has ceased to provide a philosophy of life it is no longer true religion, and its sanctions lose their compelling force. Moreover, Philosophy unallied to Religion is as a ship without rudder; it follows the caprice of any intellectual wind that blows. The purpose and the very content of human nature is lost sight of; law becomes an unstable shadow of its real self; and conscience, left to stand alone, is no more than a blind guide leading the blind. This cleavage was not suddenly wrought; nor has it come about without protest; Thomas More, whom we now rejoice to call Saint, was amongst the first to protest against it and thought it worth while to seal his protest with his blood.

In the ideal state of things conscience and law are coincident. It is true that the one is subjective and the other is objective, but there is an essential interdependence between them. The precise nature of this interdependence I hope to make clear later. For the moment I wish to maintain that, as a result of subjectivism in Religion and in Philosophy, the link between them has been broken; conscience has become almost entirely subjective in the narrow sense of the word, law almost entirely objective and formalistic. The former has thus tended to have less and less moral force, whilst the latter has become more and more atrophied. Without one or the other, a man finds himself in a tragic state, running as at an

uncertainty, fighting as one beating the air. He is made false to his own nature, blind to its glorious possibilities, and precluded from that perfecting of himself which is the only purpose of his existence. To remedy this unhappy state of things conscience and law must be reinstated in their full force and vitality; and this cannot be brought about until the cleavage between them is healed.

The link that binds together conscience and law is morality. It is a pity that this important word has come to have a technically religious implication, for with the illogical separation of religion from everyday human affairs morality has come to be regarded as a system of irrational restrictions, in the nature of taboos, superimposed on human activities from the outside. It is no longer regarded as the law of human life dictated *ab intrinseco* by the very nature of man; it is looked upon more as an arbitrary interference with human liberty, based upon the dubious authority of traditional superstition. Yet the very word "morality" gives the lie to this interpretation. In both its Greek and its Latin origins its true significance is underlined. The word *ἔθος* or *ἥθος*, from which *ἠθικὴ* or ethics is derived, means, first, "accustomed place"; hence "haunts or abodes of animals, of men"; secondly, "custom," "usage," "habit." Similarly with the words *mos* and *mores*. The customs or habits of men, therefore, the things which men do because they *are* men, appear as the material of morality; its formality is the more or less scientific codification of these customs or habits, and the norm of their classification must be looked for primarily in man himself.

Habits imply activity; their classification implies a rational appreciation of the causes of this activity. The significance of morality, and its authority, therefore, is to be sought in man himself, in his nature and in the capabilities of that nature. It is not sufficient merely to catalogue human activities; we must *know* them and, as Aristotle wisely observes, "we are said to know a thing only when we know its ultimate causes." The causes of anything are to be divided broadly into intrinsic and extrinsic: the intrinsic are material cause and formal cause; the extrinsic are efficient or effective cause and final cause or motive. As the nature of anything exhibits

itself in its activities, we may take it that the *rationale* of human nature is to be found in human action; the correct approach, therefore, implies an enquiry into its general causes.

The material cause of human action includes all the faculties or powers of body and soul; its formal cause is found in the differentiation of these various faculties according as they are directed towards diverse objectives. The effective cause of human action is initially desire, desire for the completing or perfecting of a nature that is in need of and capable of this perfection. This proximate effective cause must obviously be subordinate to the First Cause which, in creating human nature, gave it both this need and this capability of completion. Lastly, the final cause or motive of human operation is the purpose or end to which it is directed, and represents precisely that need of which we have spoken, a deep-seated and urgent need towards the fulfilling of which all human activity is aimed, wisely or unwisely, effectively or ineffectively.

What this essential need of human nature is can be discovered by examining its capabilities. Accepting the provable fact of an intelligent First Cause, we may justly conclude that what a man *can* attain to he *needs* to attain to. By an examination of each of the faculties of man we can discover all that a man is, of himself, capable of; and by a correlation and co-ordination of them all we can discover what is supreme and ultimate, what is, in short, the truest and best motive for all human action. It is obvious that in so complex a being as man the immediate end and purpose of each of his diverse faculties will have to be considered not merely in itself but in relation to all the others. In other words, the need of the whole will modify and, if necessary, limit the need of each individual part; and the need of the whole man will best be seen in the need of the highest faculties which belong to him precisely as man. Many things will appeal to a man as good, in the sense that they fulfil the need of this or that faculty; but only one thing will satisfy the need of his whole nature, and that is the ultimate end and purpose of that nature. This is the one purpose to which all lesser pur-

poses must be subordinated, the one human good which is the norm of all human good. However good a thing may be in itself, it is good for man only in so far as it furthers his attainment of the ultimate purpose of his existence. What that ultimate purpose is in fact, there is no need for us to specify. It is the *principle* involved that is of more importance in the present context.

Any action that is in accordance with this ultimate purpose is a right action, and any action that is contrary to it is a wrongful action. And morality is nothing more than the classification and co-ordination of all the species of human action according to their relative degrees of goodness or badness, rightness or wrongness, following their precise relation to the ultimate end. If morality implies restriction, it is not a restriction imposed arbitrarily from without, but one arising from the essential needs of human nature; it does not imply a restriction of human liberty but an exercise of human liberty.

Having thus outlined the nature of morality, we can easily establish the inter-relation of law and conscience which it links together and which, in point of fact, spring from it. The *raison d'être* and justification of all law is that it recognizes and ministers to man's attainment of his ultimate end. (This is true of the laws which govern the animal and inanimate kingdoms too; but we are concerned here only with law as it affects man.) Law is none other than the authoritative intellectual tabulation of means to ends, and its validity derives ultimately from the recognition on the part of the legislator of the final purpose of man and of the need of regulating all his activities to the attainment of that purpose. There is a sense, therefore, and a true sense, in which all law that concerns man is moral law and only that law is true and valid which is moral in the proper sense of that word.

Law essentially implies what St. Thomas calls "practical" intelligence. This is required for the making of law, for the recognition of law, and for its acceptance. God, the First Cause, is the supreme law-giver, and the divine intelligence has determined certain fixed and immutable norms of action which we call the Natural Law. This does not represent a series of arbitrary decrees imposed without rhyme or reason

by the Creator; on the contrary it is the reflection in things themselves of that divine intelligence which has determined the nature and purpose of each thing and provided each with the means best suited to the attainment of that purpose. The precepts of the natural law are written in man's nature where all may read them who have eyes to see. Human intelligence is required for the recognition of this law, not only that it may be accepted but also in order that other and more detailed laws may be enacted for the welfare of men, for if these latter are not a development of natural and divine law and consonant with the ultimate purpose of man they are no true laws at all. That development and consonance must be the result of practical human intelligence, and all true law, therefore, whether divine, natural or human, is in its immediate origin the outcome and expression of an intellectual appreciation of man's destiny implied in its nature and faculties, and it crystallizes either in general or in particular the various means whereby that destiny may be realized.

Conscience enters into this same sphere as a ruling made by individual human reason, as a preliminary to a particular action here and now contemplated, touching the rightness or wrongness of that action. It is subjective, but it implies an external legislator and its whole force lies in its inseparable relation to standards of conduct which it did not itself constitute. It is defined by St. Thomas Aquinas as the "dictate of the practical reason." But, from the foregoing, it is clear that law too is the dictate of the practical reason. It seems therefore, that conscience and law are one and the same; yet this cannot be so, for conscience presupposes certain accepted norms of right and wrong—that is to say, it presupposes at least some law. The determining factor of both likeness and difference between them is that of authority, which is an essential characteristic of the law-giver. Law is concerned, or ought to be concerned, directly or indirectly, with the ultimate good of humanity of which men are a part. Therefore he who has the right to guide the community has the right to make laws. Where the whole of mankind is concerned, God alone has that right; where a particular nation or group is concerned, the ruler or government has

## BLACKFRIARS

some right. But it is clear that the divine right must take precedence, and further that all law, to be valid, must have the authority of God. This means, in practice, that the human legislator must recognize the law of God, at least the natural law, and must legislate precisely in view of it for the welfare of those under his control. To the extent that he fails to do so he is abusing his authority and enacting unjust or useless laws.

Law, then, is concerned with the common good of the community; it does not provide for the individual as such, but only in so far as he is a member of the community. It is objective and takes no account of particular circumstances. Conscience, on the other hand, is subjective and individual. It provides the norm of human action in particular cases; its precise function is to take cognizance of present circumstances and to decide the relation of a given proposed action to the common, objective law, divine or human. It is, indeed, a kind of private law, originating in the practical reason of the individual; but it does not stand for "private judgment," for it is stringently bound by the objective law of God, as well as by just human laws. It includes, nevertheless, the undeniable right of the individual to judge human law in the light of the divine, to reject human law that is manifestly unjust, and even to oppose the ruler or government where the ultimate good of the individual or of the State clearly requires it. Further, conscience plays a necessary part in the making of all human laws. The ruler or the governing body has no right to pass laws except such as are recognized to be in conformity with the ultimate end of man and therefore in line with the law of God, natural and/or divine. This conformity, or the lack of it, can be discovered only by the intervention of the conscience of the individual legislator, and upon this the validity of all human laws depends.

It should be evident, therefore, that conscience and law are the subjective and objective elements respectively of morality. Hitherto we have tended to treat them as two separate entities linked together by morality; it is now possible to speak of them more accurately as the complementary

## LAW AND CONSCIENCE

constituents of morality, and the relation of the three terms may be summarized as follows: Law is the codification of morals, that is to say of human action viewed in the light of the capabilities and ultimate needs of human nature. The objective validity and truth of law implies, therefore, a recognition of human nature (a) in respect of its intrinsic constitution, and (b) in respect of its ultimate end and purpose. Both these respects imply, further, a primary recognition of man's essential relation to and dependence on God, and law is ultimately to be deemed valid to the extent that it is a dictate, direct or indirect, of the divine intelligence. The intermediary between the divine intelligence and human action is the practical human reason in contact with the law of God expressed either positively or in the nature of things. Conscience is the norm of action which results from this contact of reason with law. Law, considered in itself, is objective and takes no heed of individual circumstances; conscience, considered in itself, is subjective and correlates individual circumstances with objective law; but all human law, notwithstanding its objective character, depends for its validity upon the conscience of the individual legislator.

Except for a casual mention of it, I have deliberately refrained hitherto from introducing the notion of divine law properly so called. The introduction of revelation and the supernatural at an earlier point might have clouded the issue of my argument. But once the natural foundation has been truly laid, the supernatural may be introduced with less fear of misunderstanding. For grace is, as St. Thomas profoundly observes, the perfecting of nature. It is true that divine revelation has made known, and grace has made possible, to man a destiny infinitely superior to that indicated by the needs of his nature as grasped by human reason. Yet the difference in the ultimate perfection of the supernatural man is rather one of degree than of kind, and his human faculties and powers, notwithstanding the immeasurably greater scope implied by the infusion of supernatural virtues, remain materially and formally the same and the sole means to the attainment of that perfection. Even granting the fact of man's elevation to the supernatural order, law, conscience

and morality retain the same proportion one to the other, and the principles governing their relations remain unchanged. God has revealed the ultimate end and purpose of man, the otherwise unsuspected needs and capabilities of human nature in its supernatural state; yet the *rationale* of natural and human law is substantially unaltered and conscience plays precisely the same part in regard to both; but certain divine positive laws have been added by God as the supreme general norms of human conduct, so that there may be no ignorance or uncertainty at least as regards the essential means whereby a man is to find the completion and perfection of his being.

The point is that, notwithstanding the new orientation arising from man's supernatural end and the absolute supremacy of divine positive law, his human nature remains unchanged in its essentials, and its needs and capabilities constitute the starting point of any investigation into law, conscience or morality, for they represent in actual reality the reason and the justification of all three. Therefore the argumentation and conclusions which we have outlined in respect of natural and human law hold good after the introduction of the notion and fact of divine positive law. Indeed they not only hold good but are strengthened, for the fallible judgment of human reason is replaced, or at least backed, by the infallible certainty of divine revelation. To obey the divine law, and all law that is subordinate to the divine law, is to be true to one's own nature; to disobey is to be a traitor to one's nature: *Qui facit iniquitatem odit animam suam*, and the retribution which follows is in reality self-induced. Following the absolute dependence of man upon God, sin is an offence against God; but, because of the essential purpose and need of human nature, it is also an offence against oneself. If the former truth carries no weight with the materialist, at any rate he cannot escape the force of the latter.

It should be clear, therefore, how pernicious a thing subjectivism is. It strikes at the root of morality, divorces conscience from law, and induces that tragic materialism which is the outstanding characteristic of our own times.



Once divorced from law, conscience withers and dies; once law ceases to command the conscience of ruler and subject it becomes entirely objective and formalistic, without force or value. A vicious circle is started in which the unreality of law deadens the conscience and the lack of conscience militates against the making of true and valid laws. Each man becomes a law unto himself so far as his ultimate end is concerned; as a result morality steadily disappears, and there remains only the fiction of penal law which is materialistic in content and purpose, takes no official cognizance of man's real need and ultimate end, and has no binding force but fear of the penalty attached to it. Even if this state of affairs does not already prevail, undoubtedly the marked tendency is in that direction. Subjectivism has spread its evil roots into every department of human life and affairs, infected every branch of our civilization, and as a result materialism has to a very large extent supplanted morality.

It is tenable that all our recent modern legislation is either amoral or immoral, either merely penal or else invalid. It is at any rate questionable whether the more modern enactments of civil law or of international law emanate precisely from a rightly informed conscience in the individual legislators, are dictated by an appreciation of the ultimate destiny of mankind, are nothing other than resolutions of the natural and divine law. It is hardly likely that anyone will be found to maintain that a Belisha Beacon is a symbol of man's eternal destiny or that Income Tax forms are the certificates of his progress in perfection. I should think it could be maintained that such laws as are here implied are in fact either merely penal or at a poor best materialistic, being directed only to the physical well-being of society. Certain it is that other definite proposals, based upon this same purely physical well-being of society, are essentially immoral, and if and when they become law that law will be immoral and without binding force because it is directly contrary to divine and natural law. I refer, of course, to such things as Birth Prevention, Sterilization, Divorce, and Euthanasia. Even if one is prepared to pass over their contrariety to divine positive law, it seems impossible not to recognize that

## BLACKFRIARS

they are contrary to natural law in the sense in which we have viewed it.

I imagine it is true to say that there is no more noble and admirable body of legislation than that of the Common Law of England, and no more incorruptible administration of justice than that to be found normally in the English courts. So fine are the majority of these laws, largely, it must be admitted, relics of a more Christian past, that they are well able to stand on their own merits, carrying within themselves their own moral sanction. The difficulty is that where conscience is lacking in those who make and administer the laws, as well as those who are under the law, this moral sanction plays no part; the laws must be enforced by the threat of penalty and, what is worse, must themselves be regarded as sacrosanct by their administrators, not because they are good laws but because they are "the law." It is difficult to see what part conscience can play where the moral sanction of law is overlooked or ignored; but equally difficult to see how that moral sanction can become a reality where conscience is excluded. This is the vicious circle to which we have already referred, and it is not easy to see how this circle can be broken. In the administration of the law it would demand the recognition of equity, based upon at least natural justice, as a paramount principle. So far as it is now recognized equity tends to produce merely case-law, whereby cases themselves become laws and subsequent cases tend to be decided on a point of law rather than on a point of justice. But equity, which might be called the law of cases, the practical use of the virtue of Justice on the part of the lawyer, would have to be what it was in the view of Aristotle, a corrective (*ἐπανόρθωμα*) of positive law. But this again is not possible without an entirely new or renewed vision of human nature, of its needs, capabilities and purpose; of man's obligations to himself, to his neighbour and to his Maker; of the spiritual as well as the material aspects of life. Granted this, law and conscience might then renew their vitality in a partnership that they both urgently need, and many of the major problems that threaten our civilization would automatically resolve themselves.

HILARY J. CARPENTER, O.P.