

Propositions Concerning The Christian's Attitude Toward Justice

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This problem is far from being solved, in spite of the numerous theological studies undertaken in recent years. The following text was prepared for a meeting of jurists and theologians in the United States. It does not seek to summarize contemporary studies, but rather to take one step forward on a path which has already been explored. We must remember that justice is part of what the Bible calls "the World;" but that at the same time it stands in men's sight for a certain number of "values" of strangely Christian tone, which Christians claim are profoundly related to the Work of God in Jesus Christ. This is the source of our difficulty.

1. It should be repeated that in spite of the near-unanimity of theologians, since Augustine guided Christians in this direction, the theory of "Natural Law" is in no sense Christian.

a. Biblically there is no textual basis for speaking of Natural Law. Only Romans 11:14 might be interpreted as an allusion to such a concept. The entire Old Testament conception of justice is opposed to this idea.

b. The construction of a system of Natural Law is based upon a particular philosophy. It represents an attempt to find an agreement between the facts of this world and the norms of theology. This leads to, or presupposes, three serious errors. First of all: in the formulation of Natural Law one never deals with Jesus Christ. It is in fact hard to see what the Work accomplished by God in Jesus Christ could have to do with such a construction. The Incarnation, the Death, and the Resurrection of Christ have nothing to do with the theory of Natural Law; in such a theory one has to do therefore with a "Christianity" apart from Christ.

Secondly: such a theory leads to an elimination of the Doctrine of Justification, for this doctrine when properly understood puts an end to every pretension of Man to know Justice naturally by his own means --- to say nothing of achieving it. If God alone is just and does not impart his righteousness to Man except in justification --- if He does not make known to Man His work of justice except by revealing Himself to Man --- then we must conclude that Man knows nothing of justice apart from this act of God; that there is no justice written in the nature of Man. The Doctrine of Natural Law is an aspect of that constantly recurring heresy in which one attempts to find agreement between grace and nature by attaching an autonomous value to the latter.

The third error is one of method. It is the transposition of the theological into the philosophical, the transformation of the living Event of love and grace into a principle upon which a system is constructed and by means of which an explanation may be unfolded. This is the use of Revelation to satisfy Man, who crystallizes and immobilizes that Revelation to introduce it into his own system and thereby robs it of all revelatory value.

c. One more question demands attention. Believers in Natural Law believe in an existence of a "Nature of Man." Modern thinkers still speak ceaselessly of "the essential Nature of Man." But where does one get this "nature"? Who makes it known to us? If what is meant is a philosophical conception (as is the case for the origins of the notion of Natural Law in Aristotle and the Stoics), we must take into account the fact that contemporary philosophy (existentialism, phenomenologism) rejects the concept and perhaps the whole

problem should be reviewed. If on the other hand it is understood to be an idea derived from science (psychology, history, sociology), we must once again be very careful because these sciences, which fifty years ago affirmed the existence of such a "human nature," today contest it. Neither psychology nor history admits any longer the idea of a permanent and stable "nature" of Man. If lastly one claims here (even though it must be said that such a conception does not seem to be taught with clarity by the text of Scripture), but we make simply the point that here the Bible is being appealed to as a decisive authority. But if the Bible is to be appealed to in this question it must be accepted as authority for the question of Justice itself. But we have already noted that the Bible says nothing about Natural Law. Consequently, if the idea of "human nature" is founded on the Bible, it is in any case impossible to draw from it proof of the existence of Natural Law.

Thus, it seems to us that the notion of Natural Law must be radically rejected. But in any case i.e. even if it were an acceptable doctrine it provides for Christians no answer to the problem of justice.

2. An attitude of Christian realism would seem to be the primordial condition if we are to seek true understanding. We must therefore reflect upon the consequences which such realism may have for justice.

a. Realism means first of all the elimination of idealism, one of whose aspects is Natural Law; this need not be repeated. But it is worth remarking that this drives us to the awareness that the real problem is not that of a Doctrine of Justice, but that of the existence of justice itself. The temptation of theologians and of philosophers is to reduce the discussion to a debate about doctrines, ideas. One will discuss Natural Law, positivism, historicism (Savigny), romanticism, or the Marxist theory of justice. Doubtlessly the theories are very interesting, but they are never more than theory; i.e. a reflection of reality and an attempt to explain. But the truly important debate takes place not on the level of theory but on that of reality. The Question is therefore not, "what should we think about positivism or historicism?" It is rather, "what should we be in the face of the reality of justice?" We may note in passing that this is the level on which we find the truth of Christianity. Christianity is not a doctrine which may be set over against another doctrine. It is living reality, incarnation, salvation, grace, and if it does not live it is nothing. Since Revelation is one of God's modes of existence, it has to do with the reality of creation and not with ideas. Therefore, it is a false problem when we think we must discuss theories of justice. Such a discussion has interest only when we seek to relate ourselves to our contemporaries, who believe in theories and want to apply them --- but that is not our present concern.

b. Realism leads us to consider that Law is Law as it exists. Though this would seem self-evident, many Christians deny it. They think too often of Law as they would wish it to be, or else they post a-priori criteria of what Law should be; an ideal content, perfect forms, and intention (whether it be based upon the Decalog, or Natural Law, on the Command of Love, etc. . .), and then they pronounce a moral judgment on laws which exist. They say, "What corresponds to our criteria is Law; what does not correspond may have been legislated by the State but it is not Law. Thus one is forced to eliminate from the realm of Law the entire legal organization of primitive peoples (which manifestly violates the Law of God) and in modern times Communist Law, Nazi Law, etc. . . . These must be referred to as "non-law." Thus one rejects three quarters of humanity beyond the pale of Law. We must note as well that in thus ruling, the Christian is taking the same attitude as any other doctrinaire person; the Communist believes in just the same

way that everything which is not proletarian is not Law. . . . The Christian attitude should rather be to consider as Law the Law which exists in every people and nation, what is considered to be Law by (natural!) men, whatever its content may be. As a result the strictly theological position which denies Natural Law and declares that there is no such thing as a Christian Law leads one to be more open, more "liberal," to the fullness of human and social reality. Furthermore, it must be seen that this attitude is the only one which makes it possible to state the problem which Law poses for the Christian. It is much too simple to condemn and to reject outside of the sphere of Law everything which does not suit us. The only reason there is a problem is that Law is part of the world, of society. It is derived from society and tends to impose upon society a specific form. But this form does not come from God, it is voluntarily established by Man. This is why there is a problem in relating the Law of God to this human order, the truth of God and this reality, the Christian life and this social structure. It is impossible to consider this relationship without considering Law in its concrete reality.

c. Lastly, realism forces us to admit that it is unthinkable to base a legal system on Christian love or to translate Christian love into legal forms of expression. We have here to do with two incomparable quantities. Law, valid for non-Christians as well as for Christians, cannot include in those demands anything which is inspired by or which signifies the mystery of God himself. This is not the purpose of Law; its aim is not to express the love of God. It is the converted individual and the Church which are charged expressly with this task. The imperative and rule-bound nature of Law is contradictory to the liberty and the spontaneity of the love of God. It is clear that a Christian may apply the Law in a spirit of love, and with the intention of testifying to the love of God, but this is quite a different thing from believing it is possible to manifest this love in the rule of Law itself.

3. Without our taking time for a fuller development it seems that we must affirm that for Christian thought the State and Society should be secular (lay); consequently, Law which is the expression of State and Society must likewise be secular.

a. This means first of all that the Law must be valid for all; no discrimination must be made between individuals or between legal systems.

b. This further means that the Law does not have a religious value. It does not express pure justice, and should not be attributed a super-human authority. The Law is a collection of human rules, made by men and applied by men. Here we are arguing on solid Christian ground: the combat against idolatry. There is an idolatry of Law, as of the State, which is exactly comparable to the idolatry of the times of the prophets. Now the consequence of the idolatry of the Law is always absolutism. When Law is given ultimate value pluralism is no longer possible (even if the Law is liberal in its emphasis), there may be no more diversity; and absoluteness of the Law leads to the absolute affirmation of its value and to authoritarianism. Secular (lay) Law is unavoidably a Law which has been called back to the modest status of a servant of human order; it is forced to be a truly liberal Law tolerating diversity. Therefore, the combat which the Christian judge or lawyer must wage to keep the Law secular is a combat for tolerance, which is one of the signs of love. But his purpose is not that the Law should correspond to a predetermined Christian outline. He wants only to prevent that the Law be made Divine, and thereby to combat its absolutism.

c. Its secular character implies as well that this Law has little to do with the Decalog or with the Law of the Kingdom of Heaven which Jesus has made known to us. It is a human, not a Divine Law. How could we expect of men who are not Christian that they should be able to formulate in legal terms what belongs to divine Revelation? How could we admit that the Law of the Kingdom (which is exactly the opposite of all "normal" Laws and of all customary behavior), which is the expression of faith and of love in Christ, of the New Life, should become in any way the source of inspiration of legislation which cannot express Society's faith in Jesus Christ, but only her need for a certain amount of order, a certain amount of peace, a certain mutual equilibrium called justice, without which man cannot live.

4. The meaning of Law. Human law has a different significance, depending on whether men are Christian or not.

a. For non-Christians Law meets, as we just said, a very concrete need for order, peace, and equilibrium. Man can only exist if society is organized as smoothly as possible. Man knows this and he has created Law to obtain this result. But at the same time it is an expression of a certain desire for perfection (the conception of Law as an ideal harmony), for permanence (the conception of Law as a guarantee for the future), and for righteousness (even if man does not know the meaning of this word he is aware inwardly the need it points to). Therefore, Law is not only useful, but of value in itself, because it expresses Man's striving toward an ideal and spiritual goal.

For Christians the utility of Law must be fully recognized. But the idea of "value" has no meaning. This attempt of Man to fix his spiritual goal, like the similar attempt we see in the creation of human religions, is doomed to failure because it is one expression of a desire to return to Paradise; Man attempts to lay his hands on what belongs to God alone. This desire in the heart of Man is ultimately his desire for true Peace and Justice; but Peace and Justice may never be conquered by Man, never built by him in his own force. They are given to him in Jesus Christ. As long as Man seeks to create them by means of Law he is following a road which leads nowhere.

b. Yet when seen from the prospective of Jesus Christ the value of Law for Christians is not simply utilitarian. On the one hand it is connected to justification in Jesus Christ, and on the other hand it has the promise of "recapitulation." The Christian sees human Law between the cross and the return of Jesus Christ, and related to each of them. Law finds its meaning in justification. It is because Man is justified in and by Jesus Christ that his desire for justice is not doomed to futility; this desire is always the desire for "my" own justice and by the death of Jesus Christ I have been proclaimed just. Henceforth every system of Law which concludes by affirming some kind of justice is a reflection --- deformed, clumsy, incomprehensible for anyone but a Christian --- of the justice of God himself in Jesus Christ. At the other extreme justice, like all human works, has the promise that it will be "assumed" by God, that all things will be gathered up (recapitulated) in Christ at his return in glory. Justice which is done by Man, every legal system in which Man expresses his desire and his hope for righteousness, peace, or order, every legal system by which Man has attempted unsuccessfully to reach these goals on earth --- all these have the promise of this consummation, not because of their own inherent justice and conformity to The Will of God but because God in his grace pardons this human striving. Placed in the light of this promised Law it takes on a new value: it is the waiting posture of the Man situated "between the Times." In this prospective Law is one element of reality. This reality can never be the truth but it seeks to be truth, and should it become truth in God's new creation. Thus, the concrete reality of

Law can never express the righteousness to which it aspires but Law shall be true righteousness when it is recapitulated in Christ, when reality will have become one with truth.

5. The value of Law. If this is the Christian way to understand Law then Christians must take seriously every human attempt at Law, even if it be contrary to Christian ethics or to the demands of God. Every such effort is related to the two points of orientation which we mentioned above, which gives it its meaning without being subject to it. What we must then do with this human effort toward Law is not to raise an ethical question but simply to know whether and to what extent it maintains its place "between the Times." Every Law has a value which is relative, humble, secondary, limited, servile --- but every Law receives a hidden value from God in Jesus Christ. Therefore, no legal system can be considered to be deprived of any value or importance. Likewise Law should not be ennobled, made sovereign, thought to participate in the nature of God. Christian faith should teach us to consider humble things as important; every struggle for justice, whatever may be the cause and the form (even if Communist), is at the same time both relative and nevertheless essential. Every searching for a livable order for Man is at the same time both unsatisfactory and nevertheless precious. This is why Christians do not need to be convinced of some absolute Law in order to share in such seeking. But this is also why they should be involved in its movement and not in its static satisfaction. Law must be constantly in process of creation and Christians should be in a way the "uneasy conscience" of the existing Law. They must carry on their criticism of it not with the intention of destroying it or paralyzing it but in order to cause it to evolve and respond to new perspectives. This does not mean the achievement of legal progress, nor coming near to some ideal Law, but simply preventing it from stopping with the satisfaction of having completed a system, stopping because it expressed at a given moment the collective ideal of justice. More than anyone else the Christian should know that legal forms are not immovable and he should bring about their evolution for the sake of justice itself.

6. Tension. This does not mean that any legal system should be accepted just as it is and made permanent and authoritative. Society should remain secular but the relationship between the Church and the world remains one of tension. The same would apply with reference to the realism of which we are now speaking. Our acceptance of legal reality as we find it does not mean approval of it. But how will this tension express itself with relation to the Law? In any case the basic form of this tension is that of dialogue: dialogue of the Christian jurist within himself, dialogue between the theologian and the jurist, between the Christian and the non-Christian jurist, between the Christian and the political authorities, between the Christian and legislators. But we must again say that this does not mean judging what the non-Christian does on a moral basis, nor seeking to impose upon the legislature "Christian laws." What then can the Christian say in this dialogue?

a. More than anyone else the Christian should be aware of the irreplaceable value of every man, because Jesus Christ died for every man. For this reason man must be defended and respected. Consequently, it is not enough to see that some men (the good ones) or some part of man (his body for example, or his possessions) should be respected, but rather all of every man. Now experience has proved that no system can successfully insure the respect and defense of everyone, even with the best of intentions. . . . There is always the bourgeois, the negro, the Fascist, the Communist who is not considered worthy to be respected or protected. It is precisely at this point that the Christian should renew his demands unceasingly. He should not be content with Declarations of Principle but must insist on practical applications of the respected for all men which he demands. Here we notice another aspect of Christian realism: because he is

concerned for the real condition of this neighbor the Christian jurist will not be satisfied with legal texts or with principles; he is more interested in seeing the concrete application and implications. It is common knowledge that there are Laws which are theoretically satisfactory and just but which do not have a determining influence on practice. For instance, when one examines the Soviet Constitution or Hungary's legislation concerning the Church one can have the impression that this law is perfectly just. But the application must be investigated. We should be warned that this applies just as well in the Western Democracies. Respect for Man must be obtained concretely and not only in declarations. In our day this demand is seldom made by Christians.

b. Another example is that of Man's responsibility. The Christian should affirm that Man is capable of being responsible and it should be placed in such a condition in which he should be able to exercise his responsibility. But the general evolution of Law in Western Europe and Communist world is moving in the other direction. This takes place on many very different levels and in many different forms. One such aspect worthy of attention is the increasing intervention of the State, whose society and economical assistance weaken the sense of responsibility. Likewise in penology the criminal is treated more and more as irresponsible: the entire theory which claims that the criminal is ill, socially inadapted, a product of his environment, etc. . . . is doubtless well intentioned but means ultimately that Man is irresponsible, and from the point of view of Christian faith this is highly questionable. Likewise we must give attention to certain technical advances whose psychological effect is to destroy responsibility, since responsibility is connected to the capacity for personal judgement and reflection; television is such a case.

c. A third example: the Christian is called by the Lord to love his neighbor. On the legal level this means that he will give legal assistance to whoever needs help. But this should go much farther in a dialogue with the authorities. The authorities do not hear spontaneously the complaints of the weak, the humble, those who have no way to make themselves heard. The authorities will not spontaneously give attention to the needs of the poor and powerless. But the Lord has called us to be always on the side of the "have-nots," the humble. The Christian jurist has a very special calling to represent the poor before the authorities, not only individually, but also collectively. This means that he must express publicly the needs and the complaints of those who, within society, cannot express themselves and make themselves heard, whether it is because they have no money, because they are too few, or because they are not organized. He should be their interpreter and their ambassador before the authorities. This means that he must be first of all attentive to every weakness, seeing them when others forget, and sufficiently courageous to speak of them. In this dialogue he should lead the authorities to take the necessary action so that the voice of the humble should be recognized and heard. He should not place his confidence in the fact that as voters they should be able to express themselves. It should be remembered that this is not simple because the "powerless" are not always the same. When in the Communist party the workers represent a real force then the workers are not necessarily "the poor." Puerto Rican farm workers, disinherited bourgeois in the people's republics, racial minorities, the Egyptian fellah, the Spanish peasant what matter is knowing how to hear those whom no one hears and not necessarily those who, although in the minority, are powerful because of their organization.

We could give many more examples of the attitude of the Christian jurist within this dialogue, as he participates in the workings of the Law of which he knows both the limits and the significance. This must be done in relation to the practical situation in every time and place. What we need is especially that

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jurists, like other Christians, should show imagination, inventiveness, and initiative in order consequently to discover new ways to incarnate this vocation and never obey old stereotypes and the ready-made formulas of a static theory.