



Law And Conscience

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Some years ago, the rector of an English seminary received a decree from Rome the purpose of which was to update and standardize seminary curricula throughout the Latin Church. The implementation of this decree would have required approximately eighteen lecture hours for each year of the seven year seminary program.

The practice at this particular English seminary at that time was quite different from that envisioned by the Holy See. Perhaps influenced by the pedagogical methods of Oxford and Cambridge, the rector had devised a weekly program which included only six to eight hours of formal lectures. The remaining time was given to private study and occasional conferences with the professors. The faculty, as well as its head, were convinced of the merits of this plan.

When the Pontifical decree reached the rector's desk his young assistant watched him read it. He read it slowly, several times.

When he had finished, he laid it on his desk, looked up, and said: "Thomas, obviously this does not apply to us."

Conscience, Law, The Ultimate Practical Judgment

It is not our intention to analyze this particular moral decision. What concerns us here is the insight which this incident can provide for determining the difference between law and conscience. Law is an objective, obligatory norm of human action, issued by the proper authority. In this case, law was the Roman decree. Conscience, on the other hand, is a subjective, personal norm. It consists in an act of the practical intellect, a judgment which applies a general law to a particular case. When the English rector decided that the decree did not obligate the seminary under his care, that decision was an act of conscience. He was acting "conscientiously." He had passed a judgment on the application of a law to a particular case.

Conscience, then, differs from law. Law is general, conscience is particular; law is objective and impersonal, conscience is personal and subjective. Conscience also differs from what is called the "ultimate practical judgment." Preceding every genuinely human act, there is a final judgment of the intellect which decides whether or not a particular action is here and now worth doing. For the young man about to select his bride, the ultimate practical judgment might be: "This girl would make me a good wife." For an executive, interviewing a candidate for a key position, it might be: "This is the man we want." These are not moral judgments. They say nothing at all about morality. The only thing that is here being judged is whether or not this particular action will satisfy this particular desire. When the young man declared to himself that this was the girl for him, he was not immediately concerned with the morality of having such a wife. He was only affirming that as far as he was concerned this particular girl answered his desires for a life's companion. The object of such judgments is not truth, but goodness; and not goodness in general, but the particular, personal good.

The ultimate practical judgment may or may not coincide with the judgment of conscience. In the virtuous man, they will generally coincide. Indeed, for him the "moral good" constitutes the "personal good." But this is not so true of those without virtue. For them, the "personal good" might be that very third martini or second wife

which is a "moral evil." Ignorance and untamed desire can cause a man to judge that something which is objectively evil is subjectively good for him.

Conscience and Divine Law

With these distinctions in mind, we are in position to investigate the responsibilities which law imposes on conscience, and conversely, the rights of conscience in regard to law. Basically, there are two kinds of law: those which God has authored (the eternal law, the natural law, the divine positive law, and grace) and those made by men (church law, civil law, etc.). As regards the laws which God has made, they always oblige in conscience, that is, no one can ever presume to judge that here and now this particular divine law does not oblige. This is true not only because of the authority of the divine lawgiver, but more properly, because of His wisdom. Human lawgivers are not able to foresee every set of circumstances in which their subjects will be placed, and hence it can happen that their laws will not always oblige. But God's vision is not so limited. There never has been, nor will there ever be a set of circumstances which escapes his all-encompassing view. This being so, God's laws are universally applicable. To affirm the contrary would be to disparage the infinite wisdom of God, would be to imply that the divine Legislator had framed an imperfect set of laws.

However, the simple statement that God's laws always oblige does not automatically solve all moral difficulties in this area. The modern question concerning the morality of using oral contraceptives is a case in point. Among Catholic theologians, no one denies that artificial birth control is contrary to divine law and that therefore it is never permissible to do such an act. But this alone does not solve the problem of the pill, because the question still remains as to whether or not, under all circumstances, the pill is an unnatural contraceptive. Pope Paul VI has recently announced that the "question is under study as broadly and profoundly as possible . . . It is under a study which, with the collaboration of many illustrious experts, we hope to conclude soon." In the meanwhile, the legislation of Pius XII—that such pills can be used for the treatment of uterine ailments, but not for the prevention of pregnancy—still stands.

Nor is this the only kind of difficulty that can arise in regard to God's laws. Occasionally, situations arise in which two divine laws seem to command contrary actions. Suppose, for example, that an Oregon man is asked to fight a forest fire on Sunday. The Third Commandment obliges him to "keep holy the Lord's day." The Golden Rule requires that he assist his neighbors. Obviously, the latter command prevails because of the primacy of charity.

Whenever divine laws seem to be opposed to one another, it is time to prune them of their human accretions. For God's laws can never contradict each other. Truth cannot be opposed to truth.

Conscience and Human Law

Human laws are not as perfect as those which God has made. For human legislators are blessed with only finite intellects. Situations can and do arise in which their laws cannot, in justice, be applied. For instance, many states prohibit the unskilled to perform surgical operations, but no one would ever be condemned for amputating an arm or dislodging a bullet in dire necessity. Similarly, the Church has a law which forbids clerics to engage in seditious or revolutionary activities, but it is not impossible to imagine situations in which this law would not oblige. Father Delp's collaboration in an effort to overthrow the Nazis might well be an example of this.

Despite the occasional necessity of excusing oneself from the strict observance of some law, such judgments of conscience are full of danger. For the more a man wants to do something, the more inclined will he be to justify it morally. Senator McCarthy's chairmanship of the Senate Subcommittee on Investigations might be cited as example of this. Desiring to uproot communists from government posts, many political analysts think he justified intrusions on civil liberty. The same kind of thing, only on a much larger scale, happened under Hitler and Stalin.

Safeguards of Law

Because of man's tendency to justify his wayward desires, prudence dictates that certain conditions be verified before an individual can presume the right to interpret the mind of the lawgiver. First, if the legislator is available, his actual interpretation should be sought. This seems to have been what happened recently when one of Amer-

ica's large inter-continental airlines petitioned to serve their Catholic patrons meat on Friday. For long, the necessity of stocking fish for an uncertain number of Catholic passengers had caused the airline considerable inconvenience. They judged that the Church did not mean to impose this kind of difficulty. The Holy See seconded their judgment, and granted their Catholic customers a five year dispensation to eat meat on Fridays. If a similar situation were to arise in which recourse to the legislator were impossible, the advice of experienced individuals should still be sought. For, as the ancient adage runs: "No one is a good judge of his own case."

A second condition which must be present before it is licit for one to interpret the law to his own advantage is that the law's observance must involve a serious and extraneous hardship. If the hardship is not both serious and extraneous, the law continues to oblige. For example, Canon Law forbids Catholics to read books placed on the Index. An individual Catholic might be morally certain that he could not be deceived by the vagaries of some indexed work, and he might conclude from this that the obligation not to read the book did not exist for him. Though his premise might well be true, his conclusion would probably be false. For the moral inability to read a book would not ordinarily constitute a serious hardship.

The reason why prudence requires that the hardship be serious before the law can be relaxed is that law itself is a social good which must be respected for the well-being of the whole society. If it were possible to disregard a law for minimal reasons, society would soon become disorganized and anarchic. The observance of annoying and seemingly useless laws is a small price to pay for the privilege of living in a well-ordered society.

The excusing hardship must not only be serious; it must also be extraneous, that is, it must involve a difficulty other than that intended by the legislator when he framed the law. Henry VIII, for instance, might have argued that the Church's matrimonial legislation imposed an intolerable burden upon him. But this did not excuse him from the observance of these laws. For the hardships under which he labored were the very ones which the legislator intended. The Church meant to make rules which would eliminate adultery.

An example of an extraneous difficulty would be the case of a Catholic who excused himself from attending Sunday Mass because of

ill health. The Sunday obligation was meant to entail a measure of sacrifice, but not to the extent of endangering one's health.

The third and final area which must be investigated before one can benignly interpret a given law is the danger of scandal. Even if the permission of the legislator has been obtained, and if even observance of the law was seen to constitute a serious extraneous hardship, care must be taken not to place such actions as would give rise to scandal. St. Paul formulated this principle in his letter to the Romans when he urged them to "do nothing by which your brother is tripped up, or scandalized, or weakened."

I know, and I am convinced in the Lord Jesus, that nothing is in itself unclean; it is only when a man believes a thing to be unclean that it becomes unclean for him. And if thy brother's peace of mind is disturbed over food, it is because thou art neglecting to follow the rule of charity. Here is a soul for which Christ died; it is not for thee to bring it to perdition with the food thou eatest. . . It is not for thee to destroy God's work for the sake of a mouthful of food. . . It is a noble thing not to eat flesh, nor to drink wine, nor to do anything by which your brother is tripped up, or scandalized, or weakened. (Romans 14:14-16, 20, 21)

This is but one instance in which the law of charity obliges the Christian to go beyond the requisites of justice. If justice alone were involved, a man could excuse himself from the law after he had verified the two previously considered conditions. But charity imposes the additional obligation of sacrificing one's own rights for the sake of those who might be scandalized. A woman, for example, would be wholly within her rights if she wished to remarry on the same day in which her former husband was laid to rest. But the danger of scandal, the danger of providing a cause for gossip and calumny, would render such an action uncharitable and imprudent, and therefore, immoral.

The Erroneous Conscience

Despite all of these safeguards, it is still possible for men to form their consciences erroneously. No amount of care can completely overcome human ignorance and man's unique ability to justify his illicit desires. There are, for example, citizens in the United States who are absolutely convinced that there is nothing wrong with keeping the Negro in his place, and that therefore the 1954 decision of

the Supreme Court does not apply to their schools. There are Catholics in Europe and in South America who are perfectly aware of the Church's legislation regarding membership in the Communist party, and yet, who sincerely believe that in their straightened circumstances this law does not oblige them.

Such consciences have erred. Having applied the general law to their particular case, they have made the wrong conclusion. Where does their obligation lie? So long as they have formed their consciences in good faith, that is, so long as they diligently sought to know and to do what is right, they are obliged to follow their consciences, even if mistaken. St. Thomas is clear on this: "Every choice which departs from the judgment of consciences, whether that judgment be right or wrong, is evil, so that as often as a man acts against his conscience, so often does he sin." (Quod. 3 q. 27) It could happen, therefore, that a man would sin by obeying the Supreme Court directive. And if a Catholic contrary to the dictates of his conscience, left the ranks of the Communist party, that too would be a sin.

The possibility of such errors, and indeed their historical actuality, make it necessary to emphasize the obligation that all men have to form a true conscience. By reason of the fact that God has given them intellects and will, all men are held to inform themselves of what is genuinely true and right. In the concrete, this means that whenever a man begins to wonder where moral goodness lies, he must seek out the wisdom of the wise. This is what Augustine did when he visited Ambrose; what Karl Stern did when he met Maritain. To use Newman's phrase, men must be "true to the light." They must seek the good not only with their wills, but with their minds as well.

We regret that printing difficulties have made it impossible to include the Chronicle in this issue.