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*The following was a sermon delivered at the Votive Mass of the Holy Spirit of The Catholic Lawyers Guild of the Diocese of Covington, Kentucky, September 21, 1957.*

# GOVERNMENT UNDER LAW

RIGHT REVEREND MONSIGNOR ROBERT J. WHITE\*

IN GOD'S PLAN OF LIFE for men, the individual is *dependent* upon cooperation with others — not only for his peace and safety — but as well for the means of gaining the necessities of life and the development of his mental and moral faculties. This dependence is evident not only in the individual's necessary cooperation with the institutions of religion, the family, and social and economic society, but also in his necessary cooperation with law and government. Consequently dedicated men who conscientiously carry the heavy responsibilities of law and government may feel assured that God's blessing will be upon them.

Law in our time is as broad as life itself — a seamless web which weaves its influence through all the important areas of living — education, commerce, labor, and the mass media of communications. For proof of this, we need look no further than the present phenomenon of our times — an unprecedented assault upon the Supreme Court for decisions covering issues in these diverse areas. Such attacks reflect deep and wide cleavages in public feeling. Now criticism is recognized as one of the powerful safeguards of American democracy. However, such criticism is valid only when it is rooted in honesty, fairness, and charity. Violence as a weapon of criticism or resistance must always be outlawed and condemned. If eternal vigilance be the price of freedom, then likewise a constant and willing acceptance of a constitutional law enshrining a divine truth is the surest guarantee of the reign of law in this nation.

The final determination of these difficult issues will determine the law's function in such fundamental fields as the relation of federal and state authority; the scope of the jurisdiction of the legislature to investigate independent of judicial or executive delimitation; the law's proper balance

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between the protection of the individual's rights and the protection of the government itself against subversive threats; and the regulation of the evils of legal entities such as corporate monopolies or giant unions. All are practical and momentous problems affecting the lives of all Americans. Indeed, these problems pose questions the solution of which will test our intelligence and character and may even determine the durability of the democratic process in its power of peaceful persuasion through the force of law.

Where the power of the government is lodged in the people, as it is in our nation, leadership is a matter of vital concern. Indeed, a critical period such as ours, cries aloud for the sound leadership of honest and courageous men, trained in the law, broadened by a knowledge of history, and dedicated to the sound progress of law and government. For only such leaders can expose dangerous demagogues who rely upon the use of hate, denunciation and threats in arguments devoid of logic and sometimes even lacking honesty. Certainly, no aid in the solving of these problems can be expected from those of faint heart who seek refuge in their intellectual caves, bemoaning the present in a longing for the past. Nor can we expect real assistance from selfish men who would measure the law's proper sphere by a yardstick of non-interference with their vested political or financial power.

Now our age might be characterized as "the quest for security." In this period, our nation has written a notable chapter in social justice. Law has lifted labor from the slavery of economic bondage. The right to organize, to strike, to be protected from the physical hazards of employment, from the gnawing fear of unemployment, and

from the specter of poverty in old age, all have given laboring men and their families new hope — and democracy is the better for it. This social progress was achieved by the moral power of public opinion through the peaceful sanction of law. Consequently, it is disheartening to read present disclosures which must shock all true friends of labor. However, hasty restrictive laws upon labor *are not* the answer to these distressing revelations. Labor needs to be reformed, not destroyed.

However, individual union members can no longer delay in recognizing and in implementing the stern duty, *binding in conscience*, to participate actively in ridding unions of evil influences and firmly establishing honest and responsible leadership. The comparatively recent accumulation of huge union trust funds should, either by voluntary initiative or by law, be subject to such uniform accounting, supervision, and public scrutiny as the law now demands for securities and insurance trust funds. Finally, let all the wavering doubts of confusion be resolved in the firm conviction of all the American people, including labor, that no single monopoly shall ever be permitted to gain a life-and-death power over all transportation with the menacing threat of a tyrant more powerful than the American people.

If we study the complex of the causes of our present difficulties, it becomes plainly evident that we have fallen victim to the *uncertainty of confused thinking*. In one way or another, we have succumbed through indifference or inaction, to the prevailing schools of thought in education, including higher learning, which strip away from the philosophy of life and law the essential nature of man as a creature of God — morally responsible — not only endowed

with civic rights but also burdened with the corresponding duties of self-discipline in citizenship.

In such a moral vacuum, it is not surprising that a generation of youth now matured is so confused by an emotional appeal, essentially atheistic and communistic, that they pursue the material welfare of man as the only goal of living. With some, this nihilist philosophy which denies the reality of moral duties has released the inflated ego. Feeling freed from divine law, they indulge in the grossest libertarian excesses which spread misery in family life and fill the juvenile courts, orphanages, and insane asylums.

The basic cause of this catastrophe is the evil which inexorably follows from the *uncertainty of confused thinking* about man, his relationship to God and to government. For example, we have recently been shocked by the defiance of a group of young people in the face of the Government's considered refusal to allow them to be used as pawns of communist governments in Russia and China. They chose to be paraded in an outward show of friendship while communists concealed from their immaturity the dagger of death intended for this nation. The one or two who naively viewed their venture as a mission for America join the ranks of historical Don Quixotes. As to the others who discount their American citizenship in sympathy with Communism, we can only view them as victims of the prevailing *uncertainty of confused thinking*. We might pass over this incident, but we identify the common denominator of their confusion with that of members of our military forces who voluntarily or under pressure betrayed their comrades-in-arms and even rejected their homeland and repudiated its citizenship. Beyond question we

can also count these young people as victims of the nihilism prevailing in modern education. Now they find themselves sinking in the morass of the *uncertainty of confused thinking*. It would be a serious error to think that this contagion touched only the uneducated. The shock of earlier disclosures of disloyalty and even treason among the well-educated, including university professors, illustrates the extent of the malignant blight which has fallen upon our nation through the *uncertainty of confused thinking*.

American law too has felt the thrust of this nihilism in the prevailing legal philosophy of life and government. Current decisions often reveal this patent *uncertainty of confusion*. And this uncertainty is greatly increased by the contemporary habit of lengthy and unduly complex court decisions. Indeed, we suffer from a locust-like plethora of cross-current concurring and dissenting opinions which appear too often as solo exhibitions of vain judicial litterateurs rather than the sound decisions of judges who interpret the law in the light of history, logic, and basic principles.

During past months the press has given many columns to the portrayal of cases involving criminal charges of libel and corporate, commercialized obscenity. Our courts have been culpably reluctant in failing to enforce laws aimed at these moral evils. With a seemingly frenetic zeal for the protection of freedom of expression, including a neurotic concern for the future of art, they have often employed chameleon semantics to escape from enforcing laws aimed at the ugly rottenness of obscenity. In strange contrast, our American forefathers — through the common law and statutes — had no difficulty in understanding the meaning and the threat of this im-

moral contagion.

Two recent Supreme Court decisions affirming convictions of publishers of commercialized obscenity give some hope of a return to sound thinking. Yet the decisions were not unanimous and suffered from a diffusion of confusion. One dissenting Justice would not convict for obscenity until after proof of resulting overt acts. Thus, he prefers the post-mortem autopsy of moral failures to the law's traditional and sound preventive measures against known moral evils.

We stress this aspect of the law's confusion because of a recent notorious criminal trial for libel and obscenity in the klieg-lights of Hollywood. The trial is of particular interest to us because of the nature of the legal defense. It asserts justification because it could produce a flood of current books and magazines which are "no more obscene," and further justifies its action by the test of contemporary "mores." Thus would the sensualists trade new lamps for old — "mores" for "morals." Ancient Greece, Pompeii, and Sodom and Gomorrah could testify that had they known the truths that made for their strength and survival, they would not have traded "morals" for "mores." Such a defiance of God's immutable moral laws brings certain degradation, destruction, and death. Yet confused thinking on this subject pervades American law. For example, the American Law Institute deserves great credit for monumental study of American law in several fields, such as Contracts and Conflicts of Law. However, it deserves criticism, not praise, for its proposed uniform draft for a law on obscenity, which is needlessly complicated by elaborate and unnecessary exceptions. But, more serious, it would reject the moral law as the criterion of obscenity and would

defer to the fashionable but false norms — "mores" and "science." Though admitting that public order depends considerably upon religion and morality, it blindly accepts the modern confusion by stating that "there is very little information as to the influence of obscenity on behavior." Thus American legal scholarship would trade "morals" for "mores" and reject the solid evidence of human experience that obscenity breeds vice which ultimately wrecks the nation's most valuable asset — character.

Tragically this should come as no surprise to a lawyer who has followed the trend of jurisprudence. For two generations, we have witnessed the gradual erosion of a sound legal tradition based upon belief in God, His natural law, and basic moral principles. It is no sudden phenomenon but rather the poisonous fruits of false legal philosophies which teach that the basis of law and government is merely "a compact of force or utility," "a blind unfolding of an historical or social pattern" in the "pragmatic experimentation of expedience." They scoff at the doctrine of natural rights, and would reduce the individual to a mere "ganglion for the benefit of the state or dominant group" and thus reduce him finally to a mere pawn of the omnipotent godless state.

Now in fairness, we should acknowledge the sincerity of many followers of those sociological and realist schools of legal philosophy. They deserve credit for their part in securing the legal enactment of overdue social reforms. We agree with them in their resentment of an earlier wrongful distortion of natural law to justify unconscionable "rights" of a status quo. We agree that positive law must change to meet new demands in changing times.

However, granting all that, we emphati-

cally disagree with the basic error of those legal philosophies which reject the natural law and attempt to build a legal structure upon the shifting sands of a pagan materialism. Their baneful effects are evident, not only in the present confusion of law, but also in the resulting breakdown of moral responsibility in such basic institutions as marriage and the home.

Happily we see hopeful signs upon the horizon. All thinkers agree that we are now passing through a period in which great numbers of people feel deeply the failure of materialism to bring order and peace into men's lives. It is too early to appraise with finality the return of vast numbers to church worship, the revival of theology and religion in university curricula, and the vast church building and mission programs.

Law too has felt a reawakening to the basic necessity of moral and spiritual values in legislation and government. For example, we may cite the recent pilgrimage of American lawyers to dedicate a monument of gratitude on the English battlefield of Runnymede. There, where the Magna Charta was wrested from King John in 1215, American lawyers renewed their profession of faith in the law as the symbol of the determination of men to be ruled, not by the arbitrary will of men, but by law and tradition. Also, to honor the two hundredth anniversary of the birth of Chief Justice Marshall, Harvard University invited over 800 scholars to attend a convocation lasting several days to consider "Government under Law." In a significant volume of the proceedings, the President of the University stated: "There have been few speeches made here that have failed to make an *appeal to moral principle*." Time and again the conference stressed the value of government as a framework of coopera-

tion whose purpose is the individual's good under *Constitutionalism which is a moral precept*. These scholars were enthusiastic in expressing their allegiance to the truth that *the criterion of goodness in law and government is fundamental*.

Such signs are truly hopeful. However, such professions of faith in moral "goodness" as the foundation of law and government are not enough. Their implementation demands a basic definition of "*moral*," not founded on transitory illusion, but rooted in the eternal truth. It is idle to talk of moral principles detached from the changeless moral law which God has ordained for governments and for men. His moral law stands as the enduring rock against the shifting tides of any era. Men and even governments may deny, ignore, or defy it, but in doing so, they court their self-destruction.

Truly then, there is an indestructible unity and integrity in belief in God and obedience to His moral commandments. Moreover, in His infinite wisdom, God has endowed men and governments with the fundamental natural law. This is the true criterion of goodness in law and in government, and is the ultimate standard of justice. For natural law reveals a fundamental order of good and evil, and rights and duties which human reason can discover. It ordains an order which binds the human will to act for the individual's necessary end as "man made in the image of God" and destined to eternal life with Him. It applies to governments as well as to men.

Only the re-establishment and dominance of natural law can lead us out from the dark shadows of uncertainty and confused thinking into the clear and certain light of God's Divine Plan for men and for governments.