

June 2016

Editorial Comment

Rev. William F. Cahill

Follow this and additional works at: <http://scholarship.law.stjohns.edu/tcl>

Recommended Citation

Rev. William F. Cahill (2016) "Editorial Comment," *The Catholic Lawyer*: Vol. 6: No. 1, Article 2.
Available at: <http://scholarship.law.stjohns.edu/tcl/vol6/iss1/2>

This Editorial Board is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in *The Catholic Lawyer* by an authorized administrator of St. John's Law Scholarship Repository. For more information, please contact cerjanm@stjohns.edu.

Editorial Comment

This comment is offered as a brief and imperfect restatement of some of the Thomistic philosophical thought, and some few historical facts, which are necessary premises to a discussion of our late Holy Father's legacy to the juridical world order. Such a discussion is the symposium presented in this issue of *THE CATHOLIC LAWYER*.

The juridical world order actually exists.

Man is by nature social. There is in human nature a tendency, which may be called sociability, urging each man to associate with other men, and that tendency has for one of its purposes the well-being of the society of all men. That society is the necessary milieu of individual human existence and individual human perfection. Yet, to say that man is social, inclined by nature to enter society, is to state less than the whole truth. It needs to be said, not only that man is social, but that he is a *socius* – by the very fact that he exists, every man is an associate in the human society.

Societies exist where there are bonds of duty between men, which bonds serve goods or purposes common to the group comprising all men affected by those bonds. Such a society is juridical when the duties which bind its members together are not merely moral obligations, but justly coercible ones. A duty whose external performance, even when done involuntarily, contributes justly to the well-being of a society, can be socially coercible. It is socially coercible when men, as members of that society, enjoy a moral right to use force or the threat of force to compel the performance or forbearance which the duty demands of those it obliges. When the right thus to use force derives from natural law, the society is a juridical society of natural law.

Every man has, by natural law, a right to use force to obtain certain performances and forbearances from any other man. The enforcibility of these duties is necessary, not only to the individual who enforces them to protect his life, or his physical, mental or moral integrity; it is necessary to the essential functioning of the general human society as the milieu in which the creating God places men and destines them to achieve perfection. There are instances in which a man is bound to use force or the threat of force in behalf of other persons, and instances in which he has not only a right but a duty to exercise forcible self-help or self-defense, in order to preserve the "inalienable" rights. Some of these rights are "inalienable" because they serve the broad family of human kind and cannot, therefore, be surrendered by their individual tenant with moral impunity.

The juridical world order exists, not only in virtue of natural law as has been said above, but in virtue also of positive law.

The *imperium* of natural law proceeds from the intellect and will of God, creating men and the human society. The command which makes positive law is the product of a human lawmaker's mind and will, exercising a free and rational choice to determine that certain duties, not imposed by the juridical order effected by natural law in the society of human kind, shall bind men coercibly in that general society or in one of the particular societies of men. These last are the societies established by groups of men whose geographical and other propinquities warrant their establishing peculiar and particular societies within the general society of the human race.

These are the national societies or states which, because their functions of making and enforcing positive law are quite obvious, have dominated the history of human social life. So thorough has this domination been in fact, that some philosophers and jurists — not all of them Austinians or Hegelians — have identified the state or nation with human society itself, or at least have ascribed to no other society than the states or nations the character of a positive juridical social order. The effect of Austin's image of "the sovereign," to blind many of our ancestors and contemporaries to the existence of the positive juridical world order created by common human consent, usually expressed in treaties, and enforceable under the laws of war, is a commonplace.

The legacy of Pius XII is two-fold.

He recalled clearly the teaching of the perennial philosophy on the natural juridical character of the human society, and on the bases which found the positive juridical order expressed in the *jus inter gentes*.

He urged and implored the men of our time to cast that positive juridical order which serves the natural society of all men and all nations into new forms which might shine with at least some of the just splendor of the universal kingdom of which Dante dreamed. But the Pope was no dreamer, and his legacy is not given to some future millenium of perfect men and perfect human institutions. His testament contemplates that the institutions, such as the United Nations Organization, which presently and actually serve the positive juridical world order, albeit imperfectly, shall be taken as the existential basis of a realistically constructed and philosophically inspired fabric that may adequately serve humanity's need for a common public justice in our time.

THE CATHOLIC LAWYER is honored to bring to its readers the distinguished essays in which Bishop Griffiths, Father Drinan, Mr. Mahony and Mr. O'Brien trace and develop the precious threads of the Pope's legacy of thought. These papers were first presented in the October 1959 meeting of the Catholic Association for International Peace, at Washington, D. C.

William F. Cahill
EDITOR