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# WHAT VALUE: LAW

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Much of contemporary man's thinking is culturally conditioned by a battery of psychological, social, and environmental factors—all of which go into making a particular mind-set relative to law. There are those who worship daily at the throne of law as if it were a god. Others hold law in contempt. Both are extremes, to be sure, and both confuse the basic issues involved in any balanced theory of law.

Many extremists grossly misconstrue the precise meaning and value of law and theorize without recourse to man's legal and salvation history. It is a misunderstanding of the terms and realities of freedom and mercy which confirms so unenlightened an approach to such an authentic need and value.

No one who is anywise apprised of the present state of affairs of our nation in particular, and the world in general, need be told that something decidedly unwelcome relative to the principles of law is lurking in the wings of the human theater. One need turn no further than the Watergate crisis to find this problem with law exemplified in its quintessence. With Watergate we discover not only a blithesome disregard for, and a violation of, the basic principles of law and justice, but a growing attitude by which individuals set themselves even above the law itself. One wonders uneasily where this all will lead us. It is not given to us, however, to utter prophetically regarding the future. Suffice it to say, there are alarming indications today of a certain evolving attitude toward the value of good order and justice which would hold law to a marginal role within society, be it secular or sacred.

If one looks to the dictionary he soon discovers that law has had many and varied meanings as it twines its way through human history. One might even be tempted to recall with periodic nostalgia the "good ole days" when everything was "cut and dry," both in the Church and in society. Then, everyone seemed to know where they stood before the law and just what it was that the law required of them. Clearly, it is a somber satisfaction at best to live in the past. Despite undercurrents of growing contempt, however, things are beginning to look up. Especially since the Watergate and the all-important civil rights issues, a proper awareness of justice appears to be finding an important position on man's legal and social horizons.

Law can be defined in a number of ways. It can be viewed as a binding custom or practice of a community, a rule of conduct or action prescribed

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or formally recognized as binding and enforced by a controlling authority. On the other hand, law can be regarded as a means of redressing wrongs, of establishing justice, of vindicating rights. We can even look at law as a department of knowledge regarding the human condition. Measure it how you will, law contains all of these elements plus many others.

The purpose of law is for the good ordering of society, the assurance of justice, and the embodiment of values acknowledged to be of lasting merit for man. However, law never merely appears on the scene, as it were, out of nowhere. Before we have concrete law, there is experienced an entire series of events and attitudes toward some object, theory, or person which asks men to preserve a principle or value by embodying it within a legal framework. Law therefore protects that which is viewed and understood as valuable and worthy of preservation. To be sure, law differs in its context, origin, and orientation, yet all law flows from and points to certain values.

Church law differs from civil law, natural law from supernatural law. Yet both categories possess the same purpose and direction and touch upon identical principles. The Church legislates for the good of its members with a view toward salvation in Christ Jesus. Society legislates for its own good order and its citizens. Both exist to serve mankind in its quest for truth and both seek to embody the value of life as they understand that value. The Church endeavors to legislate with a view toward the fostering of holiness, the realization and actualization of which leads one to Jesus. Salvation is seen not as coming from the observance of the law, but from the grace of God affected in a unique manner by the Person of Jesus. The Church, however, reserves the right, by virtue of her position established by Christ, to order herself so as to best enable her members to be available to the Signs of Salvation which her Lord left as an everlasting remembrance of His undying love. These sacraments are likewise a means whereby that love is most perfectly expressed in history.

Just as with society, the Church is pervaded with the feeling that law and life are locked in deadly combat, that they are at odds, if not diametrically opposed to one another. Some view law, and within the Church, canon law, as an external imposition by authority, the upshot of which is to place a restriction on how and to what extent life can grow into Christ. Many churchmen understand canon law today as a force which keeps people in the Church but does not keep them growing.

Perhaps this negative viewpoint relative to church law is somewhat understandable given the past and present abuses within the scope of law, oftentimes occasioned by the impassioned guardians of our canonical heritage. This rather unfortunate fact, however, nowise cancels the ultimate need and value of the law itself. Law is not for death but for life; not to stifle but to stimulate; not for keeping people in, but for keeping them honest and growing. Law does not kill; it calls forth life, preserves values, issues forth a challenge.

Canon law is founded upon certain principles and truths, many of which are of divine revelation. As the Church grew in its own self-understanding, it began to structure itself in response to increasing complexity. It based many of its regulations upon the revealed word of God as it was then understood. Logically then, since the Church was subject to evolution, as society changed in response to history, and new understandings of life and love began to break on the horizons, the Church was called upon to adjust itself to the world around it. The principle of continual self-adjustment so necessary for a breathing, active community had been lost for many years. It is not until Vatican II that the Church begins to recapture this absolutely crucial spirit of self-renewal and self-adjustment.

Good law is always characterized by flexibility, that is the ability of the law to address specific situations and allow for proper and honest derogation. Yet flexibility does not imply the absence of perennial principles and the circumscription thereof, but rather asserts that within given contexts the law must be applied differently. In the future, the Church must endeavor to set up for her members certain precepts which should commonly suggest something advisory and not necessarily obligatory.

If the aim of all ecclesiastical legislation is the sanctification of persons, then in order to achieve this end the Church must insure that her legislation be clearly understood and that it be followed for the right reasons. When it comes to law, the question is not what one wants to do, nor what one could do, but what one ought to do. Law, then, must allow persons to properly respond to the values embodied therein.

The proper observance of law depends largely upon one's sense of values. As mentioned previously, law comes into being largely as a result of society's desire to preserve the best in its tradition and the values it holds near and dear. Recognized values have a way of impressing themselves upon the consciousness of the people. The people then begin to acknowledge the need to preserve and promote a particular value. They then proceed to perpetuate the value by embodying it within a law which hopefully will transcend the historical situations in which they presently find themselves. People desire their children's children to be guided by the same law and to uphold the same values that they once respected. To assure this, they legislate. These lasting values, however, must be framed in a way which allows for openness and founded upon principles that are essentially evolutionary by design. One's children must be able to apply law and value within their own particular context and invest law with new meaning and viability.

Within the Church, the source of all law is Christ. It is the dynamic presence of the Risen Lord (Kyrios) which inspires the authority of his community (*Matthew* 28:18). Church law must follow a certain pattern based on the revelation of the Gospel (*Mark* 10:45). It is the service Christ

came to render to his brothers that forms the foundation upon which the Church builds its notion and understanding of authority. Law in the Church must root itself in the person of Jesus as servant. The scriptures invest law with new meaning and purpose by referring all authority and legislation to God.

Jesus recognizes the need for law, even within the Church which claims Him as Lord, because the Church as a people lives in the presence of sin. It is the "unredeemed human situation" which requires law, and without law atomized by grace the journey through the desert of life would prove too long for us. It is for this very reason, namely, that we are a people on the move, that law should be provisional by nature. This should obtain despite the fact that law embodies and protects permanent and perpetual values.

Law, then, gives a society its peculiar identity. A people identifies itself with others through law which promotes its particular values. In this case, law enables a community to establish and sustain a unique personality. It is because the Church is an unfulfilled and incomplete personality that law is both desirable and absolutely crucial. Given the Church's unique historical context, it follows that its law is others centered and functions to direct human sinfulness with a view toward salvation in Christ. Law must witness to Gospel values as they find expression within a particular community. Since law, it seems to me, is by its very nature practical (at least at the level of function), it must seek to express the compassion of Jesus in today's terms without just trying to mouth Gospel principles. Sound application of Gospel theory is what is at issue here.

Law is not for the curtailing of human freedom: it is for its direction. Law, therefore, must be viewed in the context of freedom and accountability. We answer not to the law but to the values and realities (and in the case of the Church to a person) which the law represents. For instance, we are accountable to the needs of our brothers whatever they may be; we are accountable to the Gospel message of life and love; we are accountable for the bounty the Lord has given us; we are accountable for our talents and the use thereof. Given the freedom and right to be wrong, we are nonetheless accountable for the employment of our freedom. Law offers us a guide and a measure of value, yet does not force us to choose its value or follow its guidance. Law insures accountability and assures one that his actions and those of others will be measured by the value it struggles to preserve.

There have been, surely are, and undoubtedly forever will be abuses within the framework of law, many of which are perpetrated by zealous people in the name of love. The failure of law and its custodians, however, does not cancel its overriding merit. Rather, it only points out how truly long our journey yet is, for as long as man inhabits the earth he will experience the tension between that which he is and that which he hopes to become.

Let us briefly recapitulate the history of law in the Judeo-Christian tradition. Law as a theological question has a specific role to exercise in salvation history. Law in the history of Israel is understood as a form of instruction given by Yahweh to the Israelites for their edification. It particularly applied to their conduct and its regulation.

Man is confronted from the time of his pristine origin with the law of God (*Genesis 2:16-17*). God never leaves man without some principle to guide his conduct (*Genesis 4:7*). In no uncertain terms, the Old Testament tells us that men are judged good or evil, depending to a large extent on their attitude toward the law Yahweh lays down for them. The law became synonymous with the will of God.

It is the law of Yahweh, His wisdom and precepts, that sets Israel apart among all other nations. They were the people God had chosen to bind himself through His establishment of a covenant. The law from Sinai and its understanding as expounded throughout the Old Testament, especially in the Deuteronomist tradition, wisdom literature, the prophets, and Israel's sacred tradition, governed Israel's response to God's divine initiative. To be holy, Israel was to obey Yahweh's laws and precepts. To be sinful, one had only to disregard the divine law. The law existed to lead Israel to salvation by preparing her for the coming Messiah. Hard as those laws were, they were promulgated as a divine favor to His chosen people. These legal guidelines were an overriding imperative of law issued by God to make Israel a wise and faithful people. The people of Israel knew from their law exactly what God expected of them. Wisdom was nothing less than the law itself (*Sirach 24:23*) which Israel interpreted as being the supreme gift of God.

While Israel placed a high premium on the law and its observance and considered its greatness as hinging upon the law, in so doing Israel placed itself in a very perilous position with regard to the authentic freedom and love God envisioned to be His people's response. Israel, rather than becoming liberated by law, actually became incarcerated by its scrupulous observance. The resulting legalistic and formalistic attitude toward law actually put them frequently at odds with God's will. Moreover, the greatest danger of all was, as a result of their legal attitude, to view man's justice before God as depending upon observance of law rather than God's boundless grace.

It seems altogether fitting that with Jesus we have revealed the proper attitude that should characterize each Christian's response to law. The law was to be fulfilled (*Matthew 5:17-20*), not abolished. While Jesus obeys the law, he reveals himself as supreme interpreter of the ancient Hebrew laws. Jesus speaks authoritatively with respect to the law and does so since His Father is its author. He expounds upon the prescription of the law and transforms those regulations he knows to be unproductive and unfulfilling (*Luke 16:16; Mark 2:21-22*). Jesus reverses the hierarchy of values estab-

lished by the Jewish cultic leaders. He cancels those practices which were at cross-purposes with the Gospel. No longer would the insistence upon mere observance of every detail in the law be the measure of fidelity. Instead, the barometer for Christian commitment was to be the law of love, mercy, and forgiveness. Jesus proceeds to establish new norms of conduct for his people and commands that their values be preached even to the ends of the earth. Prior to the Incarnation, man's eternal salvation hinged upon his attitude toward the letter of the law. From this point on it will be determined on the basis of his attitude toward Jesus.

When St. Paul confronts the law he quickly states his case: "Man is justified only by faith in Jesus Christ, not by the works of the law" (*Galatians* 2:16; *Romans* 2:28). What Paul is doing here is attacking the false notion that man can merit his own salvation or justification by his observance of the law and the works of the law. With a conviction born of experience, Paul states unequivocally that salvation is given by God, not merited by man; that grace is freely given and can be neither bought nor bargained for; that man is justified by the sacrifice of Christ or he never receives justification.

Even in the light of the Gospel imperative to love God and neighbor as self, and the smashing of the rigorous details of the Jewish law, we find that the new law is no less demanding than the old law had been. To love authentically is a virtuous act, but it is difficult to be sure. For love is the ultimate value in life which orders and sustains genuine human existence. In order to preserve so precious a value, Jesus himself embodies that value within the context of a law: love God with your whole heart and your neighbor as yourself.

From the post-Easter experience right down to the twentieth century, the Church has sought to preserve the Gospel of Jesus through a growing series of prescriptions. Since the sacraments are our sacred signs, we have sought to preserve them through ritual regulation. Because certain values are held as indispensable for the Christian faith, we have sought to define the truth revealed by God and to order the society whose life is based upon these truths.

As the Church unfolded in history and evolved toward more complexity more structures were needed and regulations required. To preserve the unity of faith everyone must assent to the same doctrines. This required a code of law which would fulfill the purpose of ordering the faith community. Thus develops canon law. This law attempts to embody the values of Christian life and orders them to serve the people, even as it seeks to preserve. For example, since marriage is held to be a value in secular society and revealed as a sacrament by Jesus, the Church sought to preserve this value by defining it and subsequently legislating to insure its preservation.

Law has come a long way since 1,000 B.C., and still has a far journey ahead before it reaches its destiny. The values it has embodied over the centuries are still with us in some form or other, and the true test of future law will be just how it manages to allow us to love. So, within the Church we encounter regulations established simply for the insurance that the values celebrated will remain as the Master had intended: a law not static but nonetheless true to the Founder's mind on such matters. The only true absolutes are love and life, and law, if it is to serve mankind well, must always embody these values.