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Recommended Citation

(2016) "A Moot Ecclesiastical Trial - Smith v. Jones," *The Catholic Lawyer*: Vol. 5 : No. 3 , Article 7.

Available at: <https://scholarship.law.stjohns.edu/tcl/vol5/iss3/7>

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See introductory comment on preceding pages.

A MOOT ECCLESIASTICAL TRIAL — SMITH v. JONES

TESTIMONY OF MARY SMITH

1. Please give your name, the date and place of your birth, and your religion.

Mary Smith . . . born in Boston, Mass., on August 3, 1912, and my religion is Catholic.

2. Do you believe in the sanctity of an oath?

I do.

3. Do you swear to tell the truth, the whole truth and nothing but the truth?

I do.

4. Please give the circumstances of your marriage to John Jones.

I married him in St. David's Church, Boston, Mass. on February 15, 1929. I was sixteen years of age at the time. I married him because I was pregnant by him. The marriage took place at 7:30 A.M. at a side altar. There was no Nuptial Mass. Apart from the bride and groom, no one was present in the church except the priest and two witnesses. There was no honeymoon. We went immediately to live with his parents. Married life was a nightmare. I lived with him off and on for about seven years and then divorced him because he was cruel to me and refused to support me.

5. What leads you to believe that your marriage is null?

I married John Jones only because my mother forced me to marry him. She said that she would put me in the reformatory if I refused to do so. When she discovered that I was pregnant, she beat me and kept me in the house all the time until the marriage. She went to his home and made arrangements for the marriage. He told me afterwards that my mother beat him up too. My mother was a very severe woman. She had put two of my older sisters out of the house and sent my brother to reform school. He returned from there with wild stories about the cruel treatment given there. These stories terrified me and all the younger children at home. Whenever I refused to marry John Jones, my mother would pull my hair and slap my face. She was a very strict woman and I was afraid of her.

She would beat me very often. Whenever I said I did not want to marry him she would fly into a fit of temper and beat me. She was a woman who demanded obedience and would often strike the children with brooms. One of my sisters ran away from home because my mother was so strict. Prior to the marriage, I cried all the time but there was nothing I could do to escape marriage. I was only sixteen and my mother forced me to marry.

6. Who took care of the preparations of the marriage?

My mother went to the priest herself and made all the arrangements. She told me that she would give me a beating I would never forget if I dared to tell the priest about the pressure she was putting on me. My mother also brought both of us to City Hall, obtained the license and signed her permission since I was under age.

7. Who can give testimony to the truth of these statements you have made?

My mother and father are dead, but the following members of my immediate family would be in a position to testify:

Elizabeth Smith, my sister.

Sarah Smith, my sister.

Peter Smith, my brother.

8. Have you anything further to add?

I think that I have told all I know. I did not want to enter this marriage, but there was nothing else I could do. My mother forced me and I had no alternative, but to marry John Jones. I knew that if I did not marry him, she would put me in that reform school which I feared so much.

9. Do you swear that you have told the truth, the whole truth and nothing but the truth?

I do so swear.

TESTIMONY OF JOHN JONES

1. Please give your name, the date and place of your birth and your religion.

John Jones . . . born in Boston, Mass., on May 19, 1907. My religion is Catholic.

2. Do you believe in the sanctity of an oath?

I do.

3. Do you swear to tell the truth, the whole truth and nothing but the truth?

I do.

4. Please give the circumstances of your marriage to Mary Smith.

I was twenty years of age at the time and the cause of Mary's pregnancy.

Even though the mother never spoke directly to me about marrying the girl, I do know that she threatened to throw Mary out of the house and to disown her. I personally never witnessed any of these scenes between Mary and her mother, but Mary told me about them, and stated that she had been severely beaten several times. Mary was very much afraid of her mother. I once heard Mrs. Smith say that she would throw her daughter out of the house if she did not marry me. The mother was a bad character and a violent personality. She was very demanding. She was separated from her husband and was unscrupulous in her associations with other men. She told Mary that she would have one of these men beat her up if she refused to go through with the marriage.

5. Did Mary's mother ever use threats, etc. to you?

The mother never spoke directly to me about these things. I was not the object of her threats at any time. Personally, I was not unwilling to marry Mary Smith and I had the impression that she was not unwilling to marry me. When we first became aware of the pregnancy, we both ran away to New Hampshire in order to be married by a Justice of the Peace. Before the ceremony took place, however, Mary decided to return home because she was afraid of what her mother would do if she discovered that such an attempted marriage had taken place.

6. What was Mary's attitude toward her mother?

She was terribly afraid of her mother and rightly so because the mother was mean and always obtained what she wanted by fair means or foul. If Mary had disobeyed she would have received more beatings and would have been

sent to reform school. I know this from what Mary told me and from what the mother had done to other members of the family.

7. Do you swear to the truth of all that you have said?

I do.

[Editor's Note

Presupposing an interval for investigation and issuance of summons, witnesses appeared for each party. Each came separately; each was questioned by the presiding Judge, along lines suggested by the Plaintiff's Attorney and the Defender of the Bond. The script which they followed is now set forth.]

TESTIMONY OF ELIZABETH SMITH

1. Please give your name, date and place of birth, and your religion.

Elizabeth Smith, born in Boston, Mass., on July 8, 1910. My religion is Catholic.

2. Do you believe in the sanctity of an oath?

I do.

3. Do you swear to tell the truth, the whole truth and nothing but the truth?

I do.

4. Please tell the circumstances of the marriage of your sister, Mary, to John Jones.

My sister and I were always very close. She is only a few years younger than I. When she was sixteen she became pregnant by John Jones. My mother told her that she had to marry him. When Mary said that she did not want to, my

mother would yell at her, hit her, call her vile names and threaten to put her away in reform school.

Mary was afraid of the latter threat because my mother had actually put my brother away in such an institution. My mother was the boss of our house. We had to do what she said or else we would be most severely punished. She usually punished us with whatever she had in her hand, either a strap or stick or some other thing. I saw my mother beat Mary almost every day until the marriage. She would use a strap, a broom, or anything she happened to have in her hand.

- 5. Did Mary ever tell you that she did not want to marry John Jones?

We shared the same room and whenever she cried, which was often, I would ask her why she was crying. She would tell me that my mother insisted that she marry John and that she did not want to. She used to sob, "I do not want to marry John." Mary was afraid to disobey her mother because she feared the continual beatings and was certain that if she refused, my mother would send her away to the dreaded reform school.

- 6. Have you told the truth and do you swear that you have done so?

I have and I do so swear.

TESTIMONY OF SARAH SMITH

- 1. Please give your name, the date and place of your birth, and your religion.

Sarah Smith . . . born in Boston, Mass., on April 8, 1916. My religion is Catholic.

- 2. Do you believe in the sanctity of an oath?

I do.

- 3. Do you swear to tell the truth, the whole truth and nothing but the truth?

I do.

- 4. Please tell the circumstances of the marriage of your sister, Mary, to John Jones.

When I was about twelve or thirteen I overheard my mother telling someone that Mary had to get married because she was expecting a baby. I heard Mary tell my mother that she did not want to marry John Jones. I often saw her crying and my mother would scold her. I don't know too much about threats made by my mother. I do know that she would scold Mary often, but that was nothing new in our house. Once during this period, I heard her slap Mary. Whenever mother would speak about these matters to Mary she would send me into another room.

Mother was a very strict woman and we had to obey her every word. She would hit and punish us if we disobeyed her. I must say that I never actually saw my mother abuse Mary. As I said above, I did hear my mother slap her.

- 5. Did you ever hear your mother tell Mary that she had to marry John?

I never heard that in so many words. I did have the impression that Mary liked John. I felt that she objected to the manner in which my mother was pushing the marriage. As I said, mother was a demanding woman and certainly seemed to be forcing the marriage by her actions.

- 6. Was any pressure used to force Mary to marry John?

I only know that my mother told her to marry John. My mother would scold her often and once I heard her slap her face. It would seem, from what Mary told me, that she was forcing her into this marriage.

7. Do you swear that you have told the truth, the whole truth and nothing but the truth?

I do so swear.

TESTIMONY OF PETER SMITH

1. Please give your name, the date and place of your birth, and your religion.

Peter Smith . . . born in Boston, Mass., on August 10, 1908. My religion is Catholic.

2. Do you believe in the sanctity of an oath?

I do.

3. Do you swear to tell the truth, the whole truth and nothing but the truth?

I do.

4. Please tell the circumstances of the marriage of your sister, Mary, to John Jones.

I am a few years older than my sister, Mary. I was living with her and the rest of my family at the time of the marriage. She became pregnant and the father of her child was John Jones. She confided in me and stated that even though she was fond of the latter, she did not feel willing to marry him at this early age.

When she told my mother, as I instructed her to do, my mother flew into a rage, struck Mary very severely and demanded that she marry John. She told Mary that if she refused she would put her away to reform school. The latter remark had considerable influence on Mary since she heard from me what a terrible place that was. Mary begged her mother not to push the marriage, but the latter continued to beat her and told her that she would be locked up in the reform school if

she refused to co-operate. My mother then made all the arrangements for the marriage.

During the intervening weeks, my sister was locked in the house and any time she would protest her unwillingness to marry John, my mother would beat her and renew the threats about the reform school. I witnessed all these incidents myself and can truly testify that Mary was forced into the marriage by my mother.

5. What type of woman was your mother?

She was very demanding and domineering. Her children feared her and knew that any disobedience meant severe beatings. She was so harsh with one of my sisters that she ran away from home at the age of seventeen. She put two other children out of the house and she had me committed to reform school for a few acts of disobedience when I was fourteen. She was the boss in the house. She ruled with an iron hand and no one dared to oppose her.

6. Do you swear that you have told the truth, the whole truth and nothing but the truth?

I do so swear.

[Editor's Note

At this point the Plaintiff's Attorney and the Defender of the Bond were asked by the Tribunal if either had any further available and useful testimony. Receiving a negative reply, the Tribunal decreed the delivery of the complete record to both parties. As was noted above, the Plaintiff and Respondent testified separately, and not in each other's presence; and similarly the witnesses on each side appeared separately and did not hear the testimony of the opposing witnesses. It was only when each party had presented its complete case

that the record was made mutually available. In its decree of publication, the Tribunal allotted a period of ten days for study of the record and for filing, by either side, of motions to include new testimony by way of rebuttal or strengthening given points.

This time having theoretically elapsed and no new evidence having been presented, the Tribunal decreed the closing of the investigation and ordered the Plaintiff's Attorney to file a written brief supporting the alleged nullity and the Defender of the Bond a similar written brief in answer. These briefs now follow.]

ADVOCATE'S BRIEF IN FAVOR OF PETITIONER

SPECIES FACTI:

Mary Smith, a baptized Catholic, contracted marriage *coram ecclesia* with John Jones, also a baptized Catholic, in Boston, Massachusetts, on February 15, 1929.

The marriage did not work out and a decree of civil divorce was issued to Mary Smith on January 27, 1937, in the state of Massachusetts. On August 18, 1956, Mary Smith petitioned the Metropolitan Tribunal of Boston to declare this marriage null because, on her part, it was contracted under stress of grave reverential fear, contrary to the prescriptions of Canon 1087. The case was accepted by said Tribunal on December 10, 1956 and solemn process in first instance was initiated.

IN IURE:

1. According to the norm of Canon 1087, marriage is invalid if it is contracted

under the influence of force or grave fear which an outside agency unjustly exercises over a person so that the latter is forced to choose marriage as a means to free himself from the force or fear. The Canon also states that no other type of fear brings about the nullity of marriage even though the fear caused the contract to be made.

2. It is evident from common experience that force and fear are often confused. They may be properly distinguished, however, as cause and effect inasmuch as force causes fear.

3. The word "force" as used in Canon 1087 may be understood as physical violence which is exercised on the body. Because he who is subjected to force cannot repel it, his body expresses some consent (bowing one's head which is forced by another person who employs physical violence); however he gives no internal consent to this action which he performs physically. The presence of such defective consent would nullify marriage.

4. The word "force" as used in Canon 1087 also can denote moral violence or the perturbation of the mind caused by the apprehension of an imminent or future danger. This perturbation of mind is known as fear.

5. Under the influence of fear, the sensitive appetite becomes so disturbed that all deliberation or voluntary action is removed. In such cases, there can be no deliberate will and consequently any marriage entered into in such a way is null by the very nature of things.

6. Many times fear does not remove completely the power to deliberate one's actions, and one who is afraid often

chooses marriage with full deliberation in order to flee some imminent evil. One thus afraid, with full knowledge wills to enter a marriage which he would not have willed if he did not fear the imminent evil. Ecclesiastical law (Canon 1087) makes such a marriage null.

7. Fear is reverential when someone fears the indignation of a parent or superior even though blows and threats are absent. It must be noted that reverential fear is only slight and hence would not of itself render a marriage null. However, if it has the qualities demanded by Canon 1087, it can render marriage invalid. Thus, this fear which is slight in itself may become grave in view of the circumstances attending it, such as threats, pleas, entreaties, and the like. When these become so ceaseless and insistent that they actually overcome the resistance of the person subjected to them, the reverential fear which is present becomes grave. Blows and threats need not necessarily accompany such pleas for their equivalent is really present in the troublesome requests, vexatious scoldings and pertinacious solicitations.

8. All forms of fear, including reverential fear, must have four qualities if they are to render marriage invalid:

a) The fear must be objectively grave at least for this person. In other words, the fear must be relatively grave; i.e., it must be serious for this particular person, having regard to age, sex and social condition. Thus, the danger of being expelled from home might be a serious evil for a young girl, who has no means of earning her living and no friends to whom she could turn.

b) The fear must be caused by an extrinsic force; i.e., it must be inflicted by any free agent extrinsic to the person subject to the fear.

c) The fear must be unjustly inflicted; i.e., the person who is the extrinsic cause of the fear must have no right in strict justice to issue the threat or at least not in this manner. Thus if a mother with whom a girl is living threatens to expel her from the home unless she married the man the mother has chosen, the fear would be unjust. The mother may not be bound in strict justice to keep the girl in her home, but it would be an injustice *quoad modum* to make her leave as a weapon with which to force her into marriage.

d) It must present marriage as the only alternative allowed; i.e., the impending danger must be so imminent and coercive that it can be escaped in no other way than by marriage.

IN FACTO:

1. Mary Smith entered marriage with John Jones out of reverential fear of her mother. The mother was a domineering woman who demanded blind obedience.

a) Testimony of the petitioner: "My mother was a very severe woman. . . . She was a very strict woman and I was afraid of her. . . . She was a woman who demanded obedience."

b) Testimony of the defendant: "The mother was a bad character and a violent personality. . . . She was very demanding. . . . The mother was mean and always obtained what she wanted by fair means or foul."

c) Testimony of Elizabeth Smith: "My mother was the boss in our house. We had to do what she said or else we would be most severely punished."

d) Testimony of Sarah Smith: "Mother was a very strict woman and we had to obey her every word."

e) Testimony of Peter Smith: "She was very demanding and domineering . . . her children feared her and knew that any disobedience meant severe beatings."

2. The reverential fear which Mary Smith experienced had all the qualities which give this type of fear its nullifying effects.

a) It was objectively grave for Mary Smith when we take into consideration the following facts:

1) She was only sixteen.

2) She was pregnant.

3) She would be put into reform school as was her brother.

b) This fear was caused by an extrinsic force, her mother. This is shown by the testimony of all.

c) It was unjustly inflicted because by the very nature of things her mother had no strict right to force her daughter in this matter.

d) Marriage was the only alternative. She was too young to run away. She was pregnant. Her mother had put Peter in a reform school a few years previously and was in a position to do the same thing to Mary.

CONCLUSION:

In view of the fact that it is evident that Mary Smith entered marriage with John Jones only under the stress of grave reverential fear in violation of Canon 1087,

we respectfully ask the Reverend Judges to declare the Smith-Jones marriage null and void.

Boston, Mass.

January 18, 1959

James A. O'Donohoe
Advocate

ANIMADVERSIONS OF THE DEFENDER OF THE BOND

The Reverend Advocate has set forth in very complete and accurate fashion the substantive law concerning Force and Fear and the traditional and classical interpretation of the same as given by outstanding canonists, and as appears in the constant and consistent jurisprudence of the Sacred Roman Rota. Thus the presentation of the law and its interpretation will be accepted without addition or comment.

IN FACTO:

The first important and essential fact to prove is whether or not the Petitioner actually entered the contested marriage with a serious diminution of her freedom which resulted from the fact that she acted against her own wishes, under pressure and coercion, under restraint and in grave fear of impending evil. If this fact is not proved, there would be no possibility of a decision, favoring the nullity of the marriage, since Canon 1087 §2 clearly decrees "that no other fear, even if it gives cause to the contract, would nullify a marriage."

In order to have grave fear, there must be a serious evil which is threatened, and which instills this fear. But before a serious

evil would be threatened, there would have to exist a repugnance on the part of an individual to do the will of another, which repugnance would manifest itself in that individual's refusal to do the bidding of the other. Then, in order to overcome this repugnance and refusal, force would have to be resorted to and threats of a serious nature would have to be resorted to.

Therefore, basic to proving grave fear is the necessity of proving repugnance and subsequent refusal.

In regard to contracting a marriage under the influence of grave fear, it is essential to prove that the individual had an aversion to marriage in general or an aversion to marriage with a definite person in particular. Having proved the presence of aversion, it would be required to evaluate the degree and intensity of the aversion. The greater the aversion to a given marriage the greater would be the repugnance of the individual towards that marriage. The greater the repugnance, the greater would be the force required and the more serious would be the evil threatened.

Thus, if it is proved that an individual had no aversion to marriage in general or no aversion to marriage with a particular person, then there could be no question of force or threat or fear, because there would be no motivation for the employment of these techniques since people do not use force or resort to threats without a need and without a reason.

None of the evidence indicates that Mary Smith had any aversion to marriage in general. Thus, it must be presumed that, like most other girls of her age, she entertained the thought and the hope of some day being married and having her own home and family.

None of the evidence indicates that Mary Smith had any aversion towards John Jones as a person, as a suitor, as a husband or that she had any aversion towards living in the intimacy of marriage with him. As a matter of fact, the evidence proves the opposite.

Mary Smith, of her own free will, began dating John Jones and voluntarily continued her friendship and association with him. In the course of time, she even permitted him to take liberties with her and to have sexual relations with her. Since no evidence was brought forth to prove that these relations were distasteful to her and were forced upon her, it must be presumed that she did not object to these attentions and in fact allowed them and co-operated in them.

Mary Smith does not even say a word about not liking John Jones, nor of not loving him, nor of having a positive aversion towards him, when it would have been to her advantage to mention this if it were so. John Jones on the other hand, relates: "Personally, I was not unwilling to marry Mary Smith and I had the impression that she was not unwilling to marry me." Sarah Smith, the young sister of the Petitioner, deposes: "I did have the impression that Mary liked John."

Since there is no evidence of an aversion on the part of Mary Smith towards marriage in general or towards marriage with John Jones in particular and since there is a reasonable presumption that she looked forward to and entertained the same hope for marriage that any other young girl would; and since there is important testimony to prove that she liked John Jones, had encouraged his friendship, had considered him as a worthy candidate for her affections and had permitted him definite

liberties in which she willingly co-operated, it is humbly presented that there could not have been any force used or threats issued in order to persuade Mary Smith to contract marriage with John Jones, because such would have been unnecessary; and in the absence of these, it is impossible that Mary Smith could have acted under constraint and under the influence of grave fear when she did contract marriage with John Jones.

The Reverend Advocate, in his defense, speaks of the cruel and inhuman conduct of the Petitioner's mother prior to the marriage and relates the beatings she inflicted and the threats she issued in an effort to convince this court that these had a relation to the contested marriage and actually caused the contested marriage to take place and that his client acted under coercion and in grave fear when she entered the contested marriage. The evidence submitted does indicate that Mrs. Smith was a very strict and domineering type of woman, who enforced her will and who insisted on rigid discipline. But there is no evidence to show a causal nexus between the behavior of Mrs. Smith and the contracting of the contested marriage by her daughter.

In the absence of such evidence, I would like to suggest to the Court that whatever beatings were suffered by Mary Smith were actually punishments inflicted by the mother for her shameful and disgraceful conduct and not efforts to coerce her into contracting an unwanted marriage.

Since it has been demonstrated that no grave fear was present when the contested marriage was contracted, there is no need to investigate the justice or injustice of the influence used or whether or not marriage

was the only means by which the threats could be avoided.

In summary, since it has been proved that Mary Smith, the Petitioner, had no aversion to marriage in general or to marriage with John Jones in particular, and since it has been proved from a positive point of view that she looked forward to marriage and that she liked John Jones, encouraged him and permitted him certain liberties, and since it has been proved that because of the above, there could have been no force or coercion or threats to contract the marriage, because there would be no need of them and since it is clear that without these elements there could be no grave fear, and since it is evident that the cruel and abusive treatment was inflicted only as punishment for shameful behavior and not to cause a marriage, as Defender of the Bond I request the Most Reverend and Right Reverend Judges to issue a NEGATIVE decision and to answer the proposed dubium in the NEGATIVE – NON CONSTAT DE NULLITATE MATRIMONII IN CAUSA.

Boston, Mass.
January 18, 1959

Paul V. Harrington
Defender of the Bond

[Editor's Note

The complete records of the case, with the two opposing briefs, were then prepared and given to the Tribunal. The Judges, by mutual agreement, set a date for the formulation of a decision. On the stage, (but presumably in a closed meeting in chambers) each of the three judges presented a written memorandum of his views as to both the law and the facts. One of these opinions is now set forth.]

OPINIO JUDICIS

In the judgment of the undersigned the existence of force and fear as invalidating marriage according to Canon 1087, has been established in the case under consideration.

To some extent the evidence manifests a certain weakness in regard to the point as to whether the Plaintiff took positive steps to liberate herself from the fear of her mother, in some way other than by marriage. However, given the circumstances of the case (the age and condition of the girl, the domineering character of the mother, etc.) one can appreciate that, in point of fact, the existing conditions indicate that there was no avenue of escape other than marriage.

Reference may here be made to two points raised by the Reverend Defender of the Bond.

First, was there a causal nexus between the behavior of the Plaintiff's mother and the marriage? The Reverend Defender of the Bond implies that the conduct of the mother may have been aimed at punishing the girl, and not at forcing her into the marriage. As to the fact: it is the opinion of the undersigned that on the basis of the evidence presented (cf., e.g., the testimony of Elizabeth #4 and Peter #4 — not to mention the statements of Mary), it has been demonstrated that such a casual nexus existed; that is, the mother's behavior was directed toward marriage, not toward punishment. But even more important — careful consideration must be given to the fact that “iure codicis nullum est matrimonium tum si metus gravis sit directe incussus ad extorquendum consensum matrimoniale, tum si ad hoc non sit directe incussus, sed pars persuasum habeat se ab eo liberare non

posse nisi matrimonium contrahat.” (P. Gasparri, *De Matrimonio*, ed. nova ad mentem Codicis, II, n.856.)

Second, it is the view of the Reverend Defender of the Bond that aversion on the part of the Plaintiff toward the Defendant has not been established. In the opinion of the undersigned a distinction of great moment must be made here. For a marriage to be proved null according to Canon 1087, there need be no aversion at all against the *person* of the proposed spouse. It is sufficient that it bear against *marriage* with this person. Even in a case where there were indications that the girl was not averse to marrying the man, the Sacred Roman Rota did not hesitate to issue an affirmative decision of nullity, pointing out that in the particular case under scrutiny, the indications must needs be interpreted in relation to the threats under which the girl was living. (cf. *S. R. Rotae Decisiones*, XVI (1924), Dec. 1, pp. 1-9.) In a later decision the Rota noted specifically the lack of an argument based on aversion, and then proceeded to observe that in spite of that fact, a marriage could in other ways be proved invalid on the basis of grave and unjust fear. (cf. *S. R. Rotae Decisiones*, XXXVI (1944), Dec. XXXIII, pp. 359-371.)

As to the fact, in the case under consideration here, of the aversion of the Plaintiff to *marriage* with the Defendant — whatever may be said of the aversion or lack of it on the part of the Plaintiff toward the *person* of the Defendant — the evidence is conclusive, in the opinion of the undersigned. (Cf. the sworn testimony of Elizabeth #4 and #5, of Sarah #4 and of Peter #4, in addition to the statements of the Defendant #5.)

The opinion of the undersigned: Constat de nullitate.

Boston, Mass.

January 18, 1959

/s/ Lawrence J. Riley

Vice Officialis et Judex Synodalis

[Editor's Note

The opinion of the second synodal judge coincided very closely with the opinion just reported. At this point the Presiding Judge departed from the prepared program. He announced that his own opinion had been negative, but that he had been outvoted. Under Canon Law rules, all decisions are signed by all three judges, without publication of any dissenting opinion; but basically only a majority vote is required.

The Presiding Judge indicated the form which would be followed in the decision: a statement of the personnel of the Tribunal and its assistants, the parties to the case and their legal representatives, the basis of jurisdiction, the official notation that all procedural requirements had been fulfilled and a careful discussion of the governing law and the facts of the case.

As a final matter of procedure, supposing that the decision favored the Plaintiff, the Defender of the Bond interposed an appeal for a new trial in a Church Tribunal of Second Instance and served notice that a similar petition would be immediately filed before the higher Tribunal. The Moot Court, at this point, ended the trial; but very gladly answered any and all questions from the spectators.]

MEANING AND METHOD

(Continued)

conclusions from facts collected and collated from several peoples, primitive or civilized according as the approach is ethnological or historical. These methods of inquiry have been fruitful, but they involve a danger that facts may be forced to fit patterns elaborated artificially. Those who employ these methods often arrange legal forms collected from diverse sources into ascending stages of a single line, according as they reflect or as the philosopher feels they reflect an order of progressive perfection. From this order, the inference is made that all peoples have and necessarily will have the same fixed scheme or the same evolutionary trend. Where a people is found to manifest, or to manifest unclearly, certain forms or stages, such elements of the progression are postulated for that peo-

ple because they have been found clearly in the history or pre-history of other peoples. The postulate is premised upon the asserted uniform evolution of all peoples. The assertion is gratuitous, more, it is quite improbable, when one considers the variety of the nations' characteristics and of their concrete circumstances. Such variety, it seems clear, must urge each people to pursue ways of development different from those of other nations and peculiar to itself.

None of the methods, deductive or inductive, are to be rejected from prejudice. Law is so complex a thing that its study can use and may need to use many different approaches. But this diversity should not be left to result confusedly from chance, but should be organized according to the exigencies of the several problems proposed for solution. Care should be taken also to avoid the dangers inherent in the several methods.