

# The Catholic Lawyer

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## Letters

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## LETTERS

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CHICAGO, ILL.  
To the Editor:

I found your article [*One Phase of the New Debate on the Iniquitous Law*] in the *CATHOLIC LAWYER* (Spring 1959) very interesting. However, there were a number of questions aroused in my mind by some things you stated, in the light of some things I had read in St. Thomas bearing on these points.

On p. 123 you state that the implication of a double obligation is "nonsense," and not imposed by any ethical system. However, it seems that St. Thomas does pose just such a problem in his *DE VERITATE*. In the English translation *TRUTH*, q. 17, art. 4, 5, 3, there are passages which bear on these matters, and seem to be to some extent, at least, applicable. He poses the problem of obligation to obey a superior (and why not also a law promulgated by authority?) by reason of the obligation of obedience to a legitimate authority, and the obligation to obey conscience because of the obligation to a higher authority and higher law, even when the one contradicts the other.

He postulates that in case of false conscience there is the dilemma of sinning either way, but that to act contrary to conscience would be the greater sin than to act contrary to the authority of the Superior, which does bind however and still would be sinful. Probably this is simply a case of the lesser of two evils.

No doubt Professor Hart in claiming a dilemma between two moral duties — to resist and obey the law — has some basis for his contentions, inasmuch as a law must be upheld (authority being necessary for common good) while a law contrary to a higher law would have to be resisted because it postulates or commands something contrary to the higher authority and therefore also contrary to the true common good, which needs not only authority but authority used in accord with the will of the Divine Authority.

Fr. Davitt, S.J., in his *NATURE OF LAW* (pp. 98-99, note 39 and pp. 219 and 226) also brings to light that two basic principles or concepts of law and obligation are apparently being followed, and that until this question is settled there is necessarily going to be trouble in the applications which follow from these basic concepts. I wonder whether this is not also involved here.

Hubert J. Mark

*You take exception to the statement that it is nonsense to postulate a moral duty to do what is, in the case supposed, immoral, and equally nonsensical to postulate a morally free choice between immoralities (5 CATHOLIC LAWYER 123 [1959]). I think it is clear that Professor Hart is postulating an objective moral dilemma, not a subjective one, because Hart nowhere in his article intimates that the dilemma takes its rise from an erroneous conscience. I think it is also clear that Hart's dilemma*

arises out of his concept that the idea of fidelity to law imposes a moral duty to obey the [positive human] law which exists, whatever be the content of that law [i.e., whether the conduct the law commands is moral or not]. St. Thomas clearly rejects this concept: “. . . law enacted by men has the quality of law insofar as it is derived from the law of nations; but if it is in any matter discordant with the natural law, then it is not law, but a corruption of law. . . .” (SUMMA THEOLOGICA, I-II, q. 95, art. 2, in the body). Therefore, I believe, St. Thomas would agree that a moral duty to do what is immoral, and a morally free choice between immoralities, are nonsense.

You cite St. Thomas' DE VERITATE, q. 17, art. 4 as “at least to some extent” supporting the idea that Hart's moral dilemma is not nonsense. As you note, St. Thomas is discussing the situation where a person erroneously believes that he is bound to do a thing (therefore St. Thomas supposes the person is not objectively bound to do this thing), and the person is commanded by a superior not to do this thing. This, clearly, is not Hart's case.

Further, St. Thomas does not hold that there is in the case he supposes such perplexity that the person is compelled to choose between two immoralities. In the last paragraph of the DE VERITATE article and in the first answer to difficulties, St. Thomas indicates that the erroneous conscience he supposes is due to error or ignorance which is vincibile —“For one can and should change such a conscience.”

This problem is more clearly resolved in the SUMMA (I-II, q. 19, art. 6, ad 3): “. . . supposing that an error of reason or of conscience proceeds from ignorance which

does not excuse, it follows necessarily that the will (acting upon the error) is evil — nor is such a man ‘perplexed,’ for he can overcome this error, since his ignorance is vincibile and voluntary.”

The passages you cite from Father Davitt's NATURE OF LAW (pp. 98-99 and 219-226) are quite beside the point of Hart's dilemma and my judgment that his dilemma is nonsense. Whether one gives primacy in the lawmaking act to the intellect or to the will of the lawmaker has nothing to do with one's view of the proposition that law, once made, imposes a moral obligation upon its subjects, even when it commands immoral acts.

Whether it is true that some “laws” are laws only in the sense that one is obliged in conscience to accept and not to refuse or resist the penalties they impose, does not reach Hart's assertion, that every law, regardless of what conduct it commands or what penalty it imposes, creates a moral obligation to perform the conduct or a moral obligation to accept the penalty.

OTTAWA, ONTARIO, CANADA

To the Editor:

I should like to order a subscription to your publication, THE CATHOLIC LAWYER. I understand that the yearly rate is \$5.00 and you will find the said amount enclosed.

I might add that I am a Catholic practising law in the City of Ottawa and shall look forward to receiving your quarterly with great interest. There is, unfortunately, no equivalent publication in Canada dealing with the problems of a moral or ethical nature which face the Catholic lawyer in his day to day practice.

Gordon P. Killeen

WASHINGTON, D. C.

To the Editor:

I congratulate you for the excellent presentation of the second in a series of problems dealing with some of the moral issues involved in the defense of persons accused of crime. The solutions offered in the Autumn, 1959 issue were highly instructive and represented concrete illustrations of the application of the four basic principles which control morality in this area of legal practice.

This series is in accord with a growing trend in Catholic legal education. With appropriate recognition of limited jurisprudential scholarship, it would seem that, on the whole, Catholic law schools have hardly been more than places to accommodate

Roman Catholics who might not have been accepted in non-Catholic sponsored institutions. Importantly, however, apart from the providing of facilities for law study by Roman Catholics, each Catholic law school should have a required course in "Morality in Legal Practice." Your series of articles may well be the forerunner of the insertion of the course in the curriculum. In the last analysis our only true distinction lies in the teaching of morality in the practice of the law. Moral substance and tone make a profession of law practice. Lectures on the canons of legal ethics will never reach the standards involved in translating Christian precepts and values into the professional life of a lawyer.

Nicholas J. Chase

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## ST. MARY'S LAW SCHOOL

*(Continued)*

must capture this type of student for St. Mary's. The law student can never be an inanimate statistic. He is an important person. There is no room for even near mediocrity in the person who practices law. The judicial system and the adversary system of law in the United States has been the greatest single force in the preservation of our democratic process. Your Law School is seeking not only the good man, but the good and intellectual man with a meticulous sixth sense of leadership and professional responsibility, which encompasses all that is good, noble and true in the lawyer. This

is part of our quest commanded by duty.

I believe that today at the St. Mary's University School of Law, we have the best faculty that the institution has known. They are, all of them, great teachers. Additional great teachers must join our family of devoted men and women. Additional chairs for the distinguished teacher, such as the Alumni Chair for Visiting Professors, must be endowed. Research in new and challenging areas of jurisprudence in an ever changing world must be stimulated. It is our duty to make this a better world and preserve the best of what we have. Our great law teachers must always maintain greatness by improving in all things the next graduating class over the last.



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