The Catholic Lawyer

Volume 7
Number 1 *Volume 7, Winter 1961, Number 1*

Article 7

Religion and the State

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RELIGION AND THE STATE†

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ON OCTOBER 11, 1819 THERE gathered together at the court house in Portland 269 delegates – one from each incorporated town in Maine. These delegates met to form a constitution and to apply to Congress for the admission of Maine into the Union. A committee of thirty-three was appointed to draft a constitution to be ratified by the convention and later by the people of Maine.

At one of its first sessions the committee adopted a preamble to the constitution which read in part: "We the people of Maine . . . acknowledging with grateful hearts the goodness of the Sovereign Ruler of the Universe . . . and imploring His aid and direction . . . agree to . . . establish the following Constitution. . . ."

It is fitting, therefore, that at least once every year the bench and the bar as well as the people of Maine should publicly imitate their forefathers and pray together to the "Sovereign Ruler of the Universe" in order to implore "His aid and direction." It is well to recall on such solemn public occasions that Maine, by its constitution, by its statutes and by its decisional law, is committed to the protection of a moral law which has its roots in religious belief.

For seven generations – 140 years – the law of Maine has assumed the existence of a moral law and that this law should be promoted and advanced by the state. The legal institutions of Maine, furthermore, have provided special consideration for the clergy and for religious groups on the assumption that the morality of our people derives primarily from their religious beliefs.

† A sermon delivered at the annual Red Mass held at St. John's Church, Bangor, Maine on October 2, 1960.

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Justice Holmes once reminded us that "the law is the witness and external deposit of our moral life. Its history is the history of the moral development of the race." The history of the law of Maine reveals its dependence and reliance on religion as the principal source of the morality of its people. In the Constitution itself, the founding fathers, following the firm traditions of the Mother State of Massachusetts, gave exemption from military duty to ministers of religion. In the same Constitution it is provided that every person appointed or elected to a constitutional, judicial or executive office shall take an oath calling upon God as his witness and his aid in the solemn words, "So help me God."

In the formation of the statutory law of Maine, a large body of material was adopted from those laws of Massachusetts which had governed the people of Maine for 167 years. The criminal code of Massachusetts had been admittedly borrowed from the Mosaic law rather than the common law of England. It is this adaptation of the Mosaic code which, with certain modifications, forms the substance of the modern criminal law of Maine.

In countless ways the statutes of Maine promote religion and morality. Ministers of religion may not be subject to call for jury service.[1] A prayer recited by a clergyman has opened the deliberations of the Senate and of the House of Representatives on every day since these two bodies were established in 1820. By law, chaplains must be appointed for prisons; they must "conduct religious services in the chapel every Sunday . . . and labor diligently and faithfully for the mental, moral and religious improvement of the convicts. . . ."[2] The law of Maine, moreover, requires that the religious faith of an adoptable child be secured by placing the child "in a family of the same religious faith as that of the parents or surviving parent of such child. . . ."[3]

Maine's regulations regarding education manifest particular concern with the law's desire to inculcate public morality and foster the faith of young citizens. Chapter 41, section 145 of the Revised Statutes indicates the reasons behind the public policy of requiring Bible reading in the schools of Maine. These reasons are:

> To insure greater security in the faith of our fathers, to inculcate into the lives of the rising generation the spiritual values necessary to the well-being of our and future civilizations, to develop those high moral and religious principles essential to human happiness. . . .[4]

The strength of Maine's law in promoting spiritual values is also clear in another statute which provides that the school committee of every town or city may "provide for the moral instruction of pupils. . . ."[5] Students, furthermore, receive academic credit for what the law calls "moral instruction" acquired during attendance at "places of worship."[6]

The law of Maine assumes quite correctly that there exists a code of morality deriving from religion, but nonsectarian in character. All state teacher-training schools must instruct the students in those "great principles of morality *recognized by law.*" Graduates of these schools and all "instructors of youth in public and private institu-

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[1] ME. REV. STAT. ANN. ch. 116 § 7 (1954).

[2] ME. REV. STAT. ANN. ch. 27 § 51 (1954).

[3] ME. REV. STAT. ANN. ch. 25 § 252 (1954).

[4] ME. REV. STAT. ANN. ch. 41 § 145 (1954).

[5] ME. REV. STAT. ANN. ch. 41 § 146 (Supp. 1959).

[6] ME. REV. STAT. ANN. ch. 41 § 149 (1954).

tions, shall use their best endeavours to impress on the minds of . . . youth . . . the principles of morality and justice. . . ."[7] It is refreshing to note that by the same statute teachers are required to impress on the minds of their students the value of "chastity . . . and all other virtues. . . ."

In countless other ways the jurisprudence of Maine affirms the existence and value of moral norms. It guarantees the sacred right to be born to every child by placing the severest sanctions on the taking of the life of an unborn child.[8] It assumes the accountability of every normal person for his actions and his words. And the legal traditions of Maine and of our nation assert that religion as the source of our public morality is to be encouraged and fostered, without, of course, any discrimination against any sect.

The Supreme Judicial Court of Maine has affirmed this tradition as, for example, in the case of *State v. Mockus,*[9] decided on March 25, 1921. In sustaining a statute which punishes anyone who "blasphemes the holy name of God" or who subjects religion to "contempt and ridicule,"[10] the court wrote that no one can be required to believe, but that blasphemy, a crime at common law, can be punished because " 'public . . . ridicule of a prevalent religion . . . threatens the public peace and order by diminishing the power of moral precepts.' "[11] The court also stated that the "stability of government in no small measure depends upon the reverence and respect which a nation maintains towards its prevalent religion."[12]

The tender care which the laws and the judiciary of Maine have always shown to religion is not substantially different – although probably more intense – from that concern for religion demonstrated by the laws of every state and of the United States. In all our legal institutions we find that our law is committed to fostering religion as the source and wellspring of our private and public morality. In countless preambles to constitutions and statutes we read that public morality, without which the state cannot long survive, derives and depends on the religious faith of the citizenry.

Is this tradition of fostering religion dying in our contemporary society? There is today in America a widespread belief at the bench and the bar, as well as in the nation at large, that the government should be neutral concerning religion or nonreligion. The very articulate and aggressive spokesmen for this novel and strange doctrine in our law will make provision for the practices – even the idiosyncrasies – of individual religious zealots, but, on the other hand, teach that our law and our schools may not encourage religion even if such encouragement is done only because religious faith is the principal source of our public morality.

Should the American state be neutral and indifferent to the presence or absence of faith in the hearts of its people? How do the advocates of neutralism reply to the question of Thomas Jefferson: "Can the liberties of a nation be thought secure when we have removed their only firm basis, a

[7] ME. REV. STAT. ANN. ch. 41 § 144 (1954).
[8] ME. REV. STAT. ANN. ch. 134 § 9 (1954).
[9] 120 Me. 84, 113 Atl. 39 (1921)
[10] *Id.* at ___, 113 Atl. at 40.
[11] State v. Mockus, 120 Me. 84, ___, 113 Atl. 39, 43 (1921).
[12] *Id.* at ___, 113 Atl. at 42.

conviction in the minds of the people that these liberties are the gifts of God?"

American law has unconsciously assumed that the compliance with civil law which it demands of its people will not be given because of any draconian penal sanctions but because our people have always believed in those divine moral values planted in our hearts by that Eternal Judge Whom the Constitution of Maine recognizes as the "Sovereign Ruler of the Universe."

There is involved in this matter no question of the relation of Church and State. Our federal constitution and our universal conviction tell us that the separation of Church and State is wise and just. But the separation of Church and State which we all cherish does not mean the divorce of government from religion or the estrangement of law from morality.

American jurists today stand in confrontation with a fragmentation, an erosion of those firmly held moral principles derived from religious faith, confirmed by the light of natural reason and placed in those imperishable legal documents by the light of whose wisdom we live together in peace. Typical of such principles is the firm affirmation in the Maine Constitution that "All men are born equally free and independent, and have certain natural, inherent and unalienable rights. . . ."[13]

To what extent should the law insist on these great principles of public morality which have been placed in our law books by our God-fearing forefathers? Should the law lead or follow public morality? Should the law teach a strict standard of morality or should it seek rather to harmonize itself with those moral norms to which the majority of its people can readily comply?

American law seems to have no clear answer to this question and, because of its silence, we hear on all sides that the morality of our forefathers, even though it was made a part of our civil law, should cede to the mores of contemporary society.

Can we be very logical about this firm commitment in the past of our civil law to the protection and promotion of religion and morality? Either it was a feeling of yesterday which today we consider a mistake or it was the wisdom of yesterday which today we have regrettably overlooked. It is submitted that the bench and bar in America should and must confront the central moral question of our day – what is the source of our public morality? Is it that consensus common to all religious faiths which therefore should be cherished as the fountainhead of our morality? Or is it some new morality devised by the state based on the will of the majority or the mores of our people or, even worse, the least common denominator of those principles which can conveniently be insisted upon in our society?

It is submitted that the bench and bar in America should do three things: (1) recognize the fact that our civil law presupposes and relies on the existence of a moral law known to all men; (2) affirm the truth that this moral law has its origin both in reason and in the teachings of religion and also, (3) support our government in encouraging religion since it is the ultimate and strongest source of all our moral convictions.

The jurisprudence of Maine gives eloquent testimony to these three truths; so also does the mainstream of American statutory and decisional law. Our laws require all citizens to obey those parts of the Ten Commandments which relate to our

[13] ME. CONST. art. 1 § 1.

duties to our fellow man. Our laws invite, encourage and even sometimes require that we assume the role of the Good Samaritan. Clearly, every citizen has moral duties not required of him by civil law, but for those duties legally expected of him, the state relies on the sanction of the imperious voice of individual conscience enlightened by religion and reason.

The state therefore cannot be indifferent or neutral to religion in the sense of not caring whether it exists or does not exist. Our legal institutions, as Mr. Justice Douglas reminded us in *Zorach v. Clauson,*[14] "presuppose a Supreme Being." Consequently, as Mr. Justice Douglas pointed out in the same opinion, the state follows the best of our traditions when it "encourages . . . religious instruction." "Reason and experience," George Washington reminded in his farewell address, "forbid us to expect that national morality can prevail in exclusion of religious principles."

The bench and the bar therefore should not hesitate to exercise that leadership by which the legal profession in our nation brought about in America a system of law which knows no sectarian heresy, but which knows, recognizes and advances those unchanging moral values taught by all religions as the common duties of children of the same Eternal Father.

[14] 343 U.S. 306 (1952).

BIRTH CONTROL BAN
(Continued)

increase hostility among citizens of different religious beliefs and moral codes.

Lawyers say that "hard cases make bad law" and surely Dr. Buxton's patients present a "hard case." Whether or not we get "bad law" depends on the Supreme Court which must resolve the issues raised by the plaintiffs. It may also depend on the State of Connecticut which, if upheld by the Court, must still ponder the political wisdom of its present birth control legislation.