

Christ's law has been established for man's benefit.⁹ By virtue of his law, man, who has been a slave, rediscovers his liberty. Hence the existent body of laws concerns man as the slave of sin, and, reflecting as it does all the defects and limitations of human culpability tends to limit his faculties, to restrict him within more or less narrow boundaries; but the law of Christ, which is the new law, is superior because it breaks all boundaries and unifies all races into one people in one land.¹⁰

The servile character of pagan law was due principally to idolatry. Did not the ancients make the law derive from the gods? Well, by subjecting the idea of divinity to reprehensible images and rites, they had been the very ones to degrade the law, so intimately bound up with their religion.¹¹ The Christian religion, being free from the demons — the active "energies" of polytheism — is thus free from falsehood and from the deficiencies of a legislation conceived in an atmosphere saturated with untruth. That is, even from the juridical point of view, Christianity raises the dignity of man, formerly prostrate before mythology.

6. *Ib.*, V, 33.

7. Cyprian, *Ep.*, X, 1.

8. Pseudo-Cyprian, *De laude martyrii*, XVIII.

9. Origen speaks of legislation salutary and out of love for man (*C. Cels.*, III, 8).

10. *Maior est igitur legislatio quae in libertatem, quam quae data est in servitutem; et ideo non in unam gentem, sed in totum mundum diffusa est* (Irenaeus, *Adv. Haer.*, IV, 9, 2).

11. "Law was born of the concept not of justice but of religion. . . . It was one of the aspects of religion." (Fustel de Coulanges, *La cité antique*, ed. 13, Paris, 1890, p. 226).

The instruments of idolatry had been the pagan priest, the very philosophers and still more those poets who, like Orpheus, had corrupted men's souls with song, destroying "that beautiful freedom of mankind under the heavens" in order to make them slaves of myths and diabolical enchantments.¹²

The Church is the depositary of the law of Christ and she enforces it for him in its absolute entirety, using to this end, the *episcopi*¹³ as her principal organ, and next the *presbyteri*. The *Didache* is a kind of prelude to the codification of Christ's law.

Consequently, the Church was giving its members not only a new social conscience, but also a new concept of the state; it limited political authority simply by placing its own law, as the law of God, above and even against the law of the state when the latter was irreligious or immoral. When, for example, Tertullian asked that the anti-Christian *institutum* be abrogated, it was an enormously bold request in the light of the civic morality of the ancients for whom the laws, once promulgated, were sacred, fixed, proceeding from divinity. A law might easily fall into disuse; it was not easily abrogated. The *Digest* of Justinian was a collection of laws that were centuries old. Tertullian dared to propose a revolutionary moral standard, namely, that the justice of a law was determined by the conscience of the citizens for whom it had been made. In that atmosphere of ever-growing imperial absolutism, the ruler, who was a god, considered himself the source of the laws; he determined their justice, for he was the source of the moral standard. On the other hand, Christianity made the ruler also, as a man, subject to an extrinsic moral law, the natural and supernatural law, that is, the law preached by the Church. As a result — and this was a revolutionary result — a Christian must not obey a law which offends his conscience. In fact, he

12. Clement of Alexandria, *Protr.*, I., 3, 1.

13. *Der Bischof war jedoch nicht nur dux, dominus, iudex und rex, sondern in erster Linie pastor, magister und sacerdos* (Harnack, *Verfassung und Recht der alten Kirche*, p. 95).

does not obey the law when it commands him to swear by the emperor, to call him Lord, to abjure Christ. The heretic goes even further and refuses to obey at all when it calls him to military service or even when it confers on him a wreath for valor. Without this conflict there would have been no martyrs. St. Paul bade the Christians to be subject to the authorities "but not in order to avoid martyrdom, but to inspire you to live virtuously even with respect to them [the authorities], who are cooperating with justice, and are ministers of divine judgment."¹⁴

This means that divine judgment stands above the temporal authorities. Therefore, there is no such thing as the divinity of the law since there is no such thing as the divinity of the state. To test the equity of its legislation, the state must accept the criticism and collaboration of the citizens for whom the law stands. In other words, the law has two authors, he who commands and he who obeys, and it is not infallible.

Since the state did not accord its citizens this right of controlling the law, its Christian citizens automatically accorded it themselves whenever the law against the Christians was involved. And with every resource at their disposal except, naturally, violence or the repudiation of their faith, they took pains to elude the law by fleeing, bribing their jailors — a matter which Socrates would have condemned as being prejudicial to the public authority¹⁵ — and carrying off the bodies of the mar-

14. Tertullian, *Scorpiace*, XIV. "Then after quoting St. Paul (Rom. 13:4-7), he adds: *Condixerat scilicet Petrus, regem quidem honorandum; ut tamen tunc rex honoretur, cum suis rebus insistit, cum a divinis honoribus longe est; quia et pater et mater diligentur, cum Deo non comparabuntur. Caeterum super Deum diligere nec animam licebit.* In the *Apol.*, IV, 13, he says: *Nulla lex sibi soli conscientiam iustitiae suae debet, sed eis, a quibus obsequium expectat. Ceterum suspecta lex est, quae probari se non vult, improba autem, si non probata dominetur.* He is repeating a thought already expressed in the *Ad. Nat.*, I, 6: *Nulla sibi lex debet conscientiam iustitiae suae, sed eis a quibus captat obsequium. Ceterum suspecta lex est si probari se non vult.*

15. Plato, *Criton*, XI. Socrates imagines that the Laws and the City appear before him to admonish him as he attempts to escape from prison: "Tell me, Socrates, . . . with this act which you are about to do, do you not plan, perhaps, to ruin, as far as you are able, us the Laws, and the whole City? Do you think a City can endure . . . in which the pronouncements of the courts are thwarted by private citizens?" Socrates goes on to show that all the laws must be respected, the whole body of law. The Christians, on the other hand, dis-

tyrs. This was because the law was contrary to justice; when the laws were just, on the other hand, Christian obedience went so far as to demand the inner consent of the conscience.

On this point, there was no possible surrender on the part of the Christians. The example of the Apostles, steadfastly rebellious to the decisions of the Sanhedrin, was testimony of this.

Thus, with regard to the evangelical invitation to abandon father, mother and brothers for the Gospel and Christ in order to be eternally blessed, Clement of Alexandria, speaking of martyrdom, writes that "mother" was allegorically, the fatherland, the land that has nourished us; "father," on the other hand, means the laws of the state. "But these the just man, of great soul, must disregard readily when it is a question of becoming the friend of God and winning a place at the right side of the sanctuary: thus have the Apostles done."¹⁶

The exemplary citizen in ancient times sought by scrupulous obedience to be called the "friend of Caesar." The exemplary citizen of the new era insists that the laws should not create a conflict between his actions and his conscience, for his conscience is the important thing, and therefore he must judge the laws according to religious and moral principles. Through these he criticizes laws and when necessary rejects them, as, for example, the laws permitting prostitution,¹⁷ which, after all, are contrary to the austerity of the old Greek legislators, like Solon, and the Roman lawmakers as well (with allusions of this sort, the Christians satisfied their patriotic conscience).

This does not mean that the Christian minimizes the value of the laws, which are expressions of authority and must be obeyed even when they are punitive. For the lawmaker is like the surgeon, who, even when he cuts and burns and admin-

criminate between one law and another and reject those which are unjust. For them it was permissible, as it was not for Socrates, to flee into other cities.

16. *Strom.*, IV, 15 (P. G., VIII, 1229).

17. *Clem. Alex., Paed.*, III, 3 (P. G., VIII, 585).

isters bitter potions, does so for the health of the sick man and not because he hates him. But precisely because his function is repressive and formative, the lawmaker, like Moses, must look to the Logos (Reason) for his standard and inspiration; he must be what the philosophers call the wise man.¹⁸

In opposition to the Platonic (*Gorgias, Crito*) and Stoic theories that the individual is absolutely subject to the laws of the state, and contrary to the tendency supported in ancient times by Protagoras to consider the positive law the source of right, Origen went back to a summary discussion of the origin and end of the state and established the preëminence of natural law over positive law. He thus made a real contribution to the movement, then gathering momentum, to make the legal code conform always more and more to the natural law.

Celsus had objected on the basis of the political ethics of ancient times, repeating that justice consisted in obedience to the nation's institutions, whatever they were. Therefore—replies Origen—the Scythians and Indians who eat their friends and relatives in obedience to the local customs do not commit injustice! He answers with the Christian and Stoic criterion which distinguishes between natural law and positive law. "In the beginning, there are two laws: one, that of nature, fixed by God, the other, that written for the states; when the written law does not conflict with that of God, it is well for the citizens not to desert from it to follow after foreign laws; but when the law of nature, that is, of God, ordains things contrary to the written law, see if reason does not demand that we bid a glad farewell to the written laws and the intentions of the lawmakers, and obey the only lawmaker, God, and regulate our conduct by his ordinances, even at the price of danger and infinite tribulations and death and dishonor. Some ordinances pleasing to God are not in accord with other ordinances acceptable to the cities, and it is impossible to please God and the authors of these laws at the same time; in such cases, it

18. *Strom.*, I, 25 and 26 (P. G., VIII, 916).

would be absurd to scorn the works which make us pleasing to the Author of the universe, to embrace those, with which, though we become displeasing to God, we remain loyal to unjust laws and their authors. Now if it is logical in every case to prefer the natural law, insofar as it is the law of God, to the law written and conceived by men in the spirit of opposition to the divine law, then how much more reasonable is it to do this in the case of laws which regard God himself?"¹⁹

With the help of Stoic thought, Origen is giving philosophical form to this distinction, the nature of which was already firm and clear in the Christian conscience in the second century along with all the dangers it involved by setting the faithful in deliberate opposition to the state, dangers which they necessarily accepted. Justin himself, for all his natural serenity and attempt at conciliation, is nevertheless a rebel, for this attempt is inevitably based on the effort to persuade others, the authorities and the enemies of Christianity, to withdraw from their positions, in short, to yield, because Christianity cannot withdraw in the slightest degree from the stand it has taken. The others must make concessions; Christianity has nothing to concede nor can it sacrifice any of its morality or dogma to the state. Now whoever does not submit to the laws is a rebel; whoever wants to change the established order for a new one is a dangerous innovator, a revolutionary. After all, Justin himself is often aware of this and shows it in those outbursts which flash now and then like lightning across the uniform tranquillity of his words. Whenever his line of reasoning, notwithstanding his logic, and his feelings, notwithstanding his purity of intention, clash with the pagan concept and the judiciary

19. C. *Celsum*, V, 37. Since human laws derive their power from God, they complete the divine laws. The commandment in the Acts of the Apostles, (15:28-29) prohibits only the eating of things sacrificed to idols and things strangled. . . . But it does not thereby give sanction to murder, adultery, theft, sins against nature and *caetera crimine quae divinis et humanis legibus puniuntur*. No, because these crimes are punished by human laws, the Holy Spirit has considered it "superfluous" to forbid them with divine law (Origen, *Ep. ad Rom.*, IX, 28; P. G., XIV, 1228).

system, he explodes: "Oh, finally, you may kill us; but who cares aught for death? It is worse for you if you do not listen to us and kill us." This is an unusual challenge, and an insolent one from his adversary's point of view. When he mentions the prohibition, under pain of death, to read the books of the prophets and to aid in the diffusion of the new faith, he speaks clearly: "You may indeed suppress us: but we read and teach just the same. And if this declaration sounds hostile to your ears, you can do no more than kill us!"

"You can do no more than kill us! . . . Bleak consolation for a Roman autocrat, who was, besides, a philosopher."²⁰

In truth, Justin's attitude is not exaggerated when we compare it with that of others who confessed the faith. Melito, who tries not to reproach the just Marcus Aurelius for his anti-Christian laws, does, however, say at one point that they would not be used even against a barbarous enemy.

In conclusion, whenever Roman law conflicted with Christian law, the Christians rejected it and denied altogether that it was law. Otherwise, there was no difficulty; in fact, those who knew Roman law rather professed admiration for it. This is implicit in Tertullian's words and is indeed explicit in the youthful and therefore academic and redundant prose of one of Origen's disciples, Gregory of Pontus, who is to become bishop and be surnamed Thaumaturgus. In his panegyric for his teacher, Gregory, who was studying the Latin language and Roman law, calls the laws which govern the empire "admirable" for they are "wise, well-considered, various, admirable, and, in short, most Hellenic; composed and written in a language — that of the Romans — which is a stupendous and magnificent language befitting the glory of the Empire."²¹ And this was at the frontier, the edge of the territory to which Roman sentiment might penetrate.

20. I. Giordani, *S. Giustino Martire, Le Apologie*, Florence, 1929, introd. p. 73.

21. *Paneg.*, I.