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The State and the Social Problems of Today

GIORGIO DEL VECCHIO*

(Translated by Bernard F. Deutsch, J.U.D.)**

SOCIETY AND THE STATE

AS IS WELL KNOWN, the concept of society is more extensive than that of State; the first represents the genus, the second a species. Society consists in a bond which can correspond to various demands, and thus society assumes different structures (religious society, familial, economic, professional, etc.). The State is founded on a juridical bond, and arises when this bond predominates. It is not, however, the first nor the most comprehensive form of society, since other forms are anterior to it, and some (e.g., religions, nationality) are able to comprehend a greater number of individuals belonging to different States.

In order to define the concept of the State it is fitting to begin with that of law. In its most general meaning the law is a criterion which determines a coordination of action among several subjects, so that for the faculty or exigency of one party there is a corresponding obligation of the other party. Since human life can be nothing but social (there would be an absolute chaos if this were not true, and it is impossible), even in the primitive forms of living together there is, at least in embryo, a juridical order. *Ubi homo, ibi societas; ubi societas, ibi ius*. But this formal notion does not prevent us from distinguishing, within the ambit of the law, various degrees of perfection up to the supreme perfection itself, which is identified with the ideal of justice.

CONCEPT AND IDEAL OF THE STATE

While the law is co-extensive with the human race, the State is formed through a slow and laborious process, so that gradually the juridical order (originally

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founded on the bond of blood) is extended and consolidated, organizing itself with a proper unitary center, capable of imposing the observance of its norms. These norms thus appear as dependent on and determined by that center, even where they have in fact arisen, at least in part, independently of it.

One may accordingly define the State as the unity of a juridical system having a certain degree of positive vigor; or also, as the subject (invisible, but real) of a juridical order in which is verified the community of life of a people.

But one should remember (analogically to that which has already been noted in the case of law) that indeed only the formal concept of the State has been defined, which logically enough applies to all existing States. But this definition does not mean that these States are all equally sound and adequate for their functions. Through the element of *positivity*, or of the preponderant force, which is innate in its idea, the State appertains to reality of fact; but the human mind, by its rational nature, is able and should elevate itself from the consideration of facts to one of ideals postulated by reason. It is necessary, then, to admit an ideal of the State as the superior (hyperphenomenal) criterion by comparing it with the empirical data provided by history and experience, and to evaluate it precisely according to that criterion.

Only one who disclaims the transcendental validity of ethics and confuses, more or less knowingly, force with justice is able to attribute to any State, or also to the so-called modern State, an absolute value, such as a "perfect society." Philosophical criticism destroys such state-worship, though it assigns to the State its proper mission, on the fulfillment of which depends the approbation of its authority. Such a mission is expressed by the word *justice*, which evidently cannot be understood as the arbitrary command of the one who possesses the greater power, but rather as conformity to the supreme law itself, which can be violated but not abolished, because it is indelibly impressed on human nature. And this law imposes on the State the obligation of working for the common good, for the protection of the dignity of the human being.

Aristotle, in treating various constitutions of States, once clearly distinguished the governments which worked for the general or common good from those which operated instead for the proper or particular good, that is to say, he distinguished between the sound forms and those which are corrupt and degenerate. This critical distinction was received and developed by successive philosophies, especially by Scholasticism, which showed once more the concept of the *bonum commune* as the end or object of the State, without ever losing sight of the possibility of errors and degenerations, such as the history of every age unfortunately demonstrates by numerous and manifest examples.

LIFE AND CRISIS OF THE STATE

It is necessary to observe that the life of the State is subjected to various vicissitudes. Although the word *State* would seem to indicate a certain stability, the

truth is that each State is constructed by a continuous, dynamic and complex work through the changing of circumstances, needs and opinions of its components, besides its relations with the world outside. The State should, above all, maintain the juridical order, which would perish if the State were not thus capable, and in place of which would of necessity arise another political formation. But the maintenance of the juridical order is not possible without its gradual renewal, which often makes way for inconsistency and crisis. Meanwhile, the struggle against injustice should be carried on unceasingly, that is to say, there must be defensive and reparatory action where the laws sanctioned by the existing norms are menaced or broken.

The great crises which have profoundly disturbed the life of States in ancient and recent times are well known, especially the so-called civil wars. But, in a broad sense, one may say that a certain crisis, even if hidden and free from violent manifestations, is innate in the very nature of the State; it is not difficult to perceive its causes.

The law in all of its expressions is without doubt a product of the human spirit; and each man is naturally a source of law, in so far as he can draw from himself, from his conscience, juridical affirmations, even though they be but rudimentary and imperfect—affirmations which normally correspond to those of the existing system, although they can also be different and divergent from them. The spontaneous juridical productivity of the individuals and of their groups is made evident by the fact just alluded to, that regulatory norms of relations of living together are formed even prior to the emanation of the State; and the mark of such origin is preserved even when those spontaneous formations (e.g., the family unity) are included within the order of statehood and in it now and then modified through new regulations.

This natural productivity is exercised, then, in the ambit of the State, since new social groups, for their many various purposes, continually push forth, and each society (it is well to remember) tends to give itself a proper law, whilst already in its emanation it is unable to dispense with at least a beginning of juridical order—whether it derives this immediately from the laws of the State, or tries to construct it in a more or less autonomous manner. The history of law offers innumerable examples, even of the latter type of case. To refer to only a few, beginning with the better known and more important, one remembers that the Catholic Church was given a proper juridical order outside the State and above the State, and that the Church remained bound to the States only by generic relations; and the same may also be said, in a relative and proportionate way, for other religious organizations. Moreover, there was formed *ab antiquo* an international juridical community (not to be confused with the United Nations Organization, nor with any other analogous institute) or, in other words, a set of the most elementary norms, independent of any deliberation or agreement of state character, but having none the less a certain positive existence inasmuch as those norms were generally observed as

customs, so as to make possible relations and trade among various peoples even in the absence of laws and treaties.

Worthy of particular attention is the phenomenon of the associations or corporations of arts and crafts, which in various ways, both in past centuries and in the present, have elaborated a proper law within the bosom of the State. The importance which the statutes of such organizations had in the juridical life of the Middle Ages is well known, having been often recognized by the public powers, and having thus effectively possessed an authority no less than that of the municipal statutes. Suffice it to recall, for example, that the maritime commerce was regulated by rules developed by the seamen in form of customs, and then reduced to writing, as in the famous Table of Amalfi. At the present time associations of workers often assume positions antagonistic to the organs of the State, thus creating political problems of no small importance.

The freedom of association cannot, as a rule, be denied by the State; and the prohibition (sanctioned by a law up to the time of the French Revolution) of any corporative organization, by acknowledging only the relation between State and citizen without the intermediate forms of sociality, was certainly an error, seeing that the associative spirit instilled in human nature manifests itself through a series of gradations, rising from the individual to the State, and that excessive restrictions placed on this natural tendency could not long survive, or else would have as their only effect a changing of the manifest and known society into a secret one.

On the other hand, the State tends by its nature to centralize in itself all the juridical formations which are produced in its bosom, by establishing them in a coherent system. For this reason even the norms which become elaborated through the spontaneous process of the corporative or municipal associations are able and should be collected and inserted, although often not without modifications and adaptations, into the framework of the State, provided they do not jeopardize those fundamental principles which are the essential reasons of the existence of the State itself, namely, the guarantee of public order and social peace.

The regulative activity and energy of the various entities should thus be reconciled and harmonized with the direct expressions of the state sovereignty. This demands a reciprocal effort of comprehension and adequacy, without which there would inevitably be serious disturbances in the life of the society and of the State.

The sense or awareness of belonging to a particular class should never extinguish nor overpower the "sense of the State," just as the latter cannot suppress the sense of belonging to humanity.

STATE AND PARTIES

Another phenomenon, which especially in modern times (though having ancient origins) has intervened to make more complex the life of the State

and often to aggravate its crisis, is the division of the citizens into diverse parties. As long as they confine themselves to sustaining ideals and programs, while loyally recognizing and respecting the authority of the constitutional organs of the State (as typically occurs in Great Britain), the formation and action of the parties correspond indubitably to a fundamental right of the citizens, and can actually aid in stimulating and controlling the activity of those organs. But when, as has happened in Italy and also in other countries, parties are organized which openly attack the sovereignty of the State, it cannot but defend itself by imposing through legal forms limits and restrictions on the activity of those organizations; and if it is a "State of Justice," then in reality it defends justice by defending itself. It is known that in the life of today, with international relations being multiplied, the parties existing in one State often unite with those which in other States sustain equal or closely associated ideas, and in such a case they are submitted directly to an analogous foreign party; it is unnecessary to point out what danger there is to the institutes of the State, where the party on one side happens to be subversive.

In practice, the power of some parties has become so strong in Italy as to exercise a predominant influence on the very organs of the State, prejudicing the function assigned to them by constitutional laws. More and more the pernicious effects of such a practice are being noticed, and precise measures invoked to prevent the abuses of the so-called *party-rule*.

The causes of this disquieting phenomenon are various; and the most general is without doubt a moral relaxation, which has weakened and misled, in a great part of the people, the conscience of duty toward country and respect for the most sacred ideals, making them embrace instead base, false, materialistic and egoistical doctrines. But there is also a more precise and direct cause of the present degeneration of political custom; namely, the mechanical and irrational application of the principle of universal suffrage. The adoption of this principle, quite just in the abstract but doomed to failure in totally failing to recognize differences of capacity among various persons, has profoundly changed, for some decades now, the bases of the political life of the State. The choice of representatives of a nation, and thus definitely of its fate, has been entrusted, rather than to a qualified electoral body, simply to an enormous, indiscriminate mass, in which the men most capable from the viewpoint of greater experience and greater learning have, so to speak, been submerged. A consequence of this has been the formation of parties with a very great number of adherents, who are dominated by a few political professionals and bound to a rigid discipline. That reform which intended to ratify and consecrate an individual right of liberty has produced instead a new kind of slavery—throughout the broadest strata of the population, the sense of the aggregate has become substituted for the sense of individuality. And it is not

strange that in such a state of things the preaching of hate has often found better soil than that of love.

It is, therefore, necessary that the forces for educating and illuminating the people be multiplied, by counseling the doubtful, teaching the ignorant, refuting errors, pointing out and propagating the essential truths of ethics; promoting, in short, through word and deed, a re-birth of society for the common good.

With reference to the electoral system, nothing would prevent while holding firm the principle of universal suffrage that its application be perfected, attributing greater weight to the vote of those who have reached a certain age or a certain intellectual preparation, even without excluding the others from the electorate. One might, for example, designate a certain quota (e.g., forty percent), of the total of the representation for electing, to the vote of the persons equipped with a certain academic claim (e.g., a high school diploma or another similar title) regardless of their age; then distribute the remaining quota among the other people, according to whether they have or have not reached a certain age (e.g., thirty or thirty-five years), so that a greater value could be acknowledged for the vote of those who, even though lacking the academic claim, have acquired that experience which comes precisely with advance in age. But there is no need to dwell any longer on this problem; it may perhaps allow for other solutions, which must, however, always conform to the common good, with respect for the rights of all.

CHURCH AND STATE

Among the social entities which thrive within the bosom of the State, there is one which, in view of its great importance and singular nature, demands a special treatment; namely, the Church. It has as its ultimate end the salvation of souls in an ultramundane order, but for this same end it proclaims norms relating to the totality of human life. On the other hand, the State, on the basis and in the form of law, should protect the human personality (which is not only corporeal, but also spiritual), guaranteeing a definite order in all the manifestations of its activity, from which results the inevitability of a clash and the possibility of conflicts between the two authorities, as well as some crises of conscience in the individuals who depend on both. Everyone knows that such conflicts are not manifested merely in doctrinal disputes, but that they often and in the end disturb the life of the people.

Thus, it is extremely desirable that a co-ordination be established between the spheres of competence of the two powers—a co-ordination which cannot consist in a simple delimitation, as though one were assigning territorial limits, but one which should comprehend also a real concordance of action. The Lateran Pact, or Treaty, of 1929, which put an end to the discord between the Catholic Church and the Italian State, was inspired by a sentiment of reci-

procal respect and by a common aim of collaboration which safeguarded the diverse characteristics of the two entities, spoken of, even in the following Constitution of the Italian State, as "each in its proper order, independent and sovereign." But the same treaty determined norms pertaining likewise to the one and to the other order, and even, in some matters, deferment of jurisdiction by way of a dismissal, sometimes from the juridical order of the State to that of the Church, and sometimes the reverse; so that one and the same institute becomes effectively valid for both entities, and the same individuals are able to fulfill at once their duties as Christians and as citizens. Thus, for example, the Italian legislation has recognized the full validity of a marriage celebrated before a minister of the Catholic religion according to the canons of the Church, except for the obligation of transmitting the information to the Commune for transcription in the registers of the civil state. Under certain conditions there is recognized also the validity of marriages celebrated before the ministers of other religions permitted in the State, in homage to the principle, sanctioned by the Constitution, of liberty in the matter of religious faith, just as, in conformity with the same principle, there remains in force the institute of civil marriage.

Conversely, in penal matters the law of the Church was often referred, even prior to the Lateran Pact, to the law of the State for delicts which did not have an exclusively religious character (cf. *Codex Iuris Canonici*, can. 2198). One may also recall that in the State of Vatican City the Italian penal laws have been declared applicable.

It is beyond doubt that the principles of Christian ethics inspire and inform all modern civilization, and they are particularly accepted by the Italian population, which almost in its totality professes the Catholic religion, while even the non-Catholic minority recognizes in substance the same principles. According to the Lateran Pact, Italy considers as the foundation and perfection of public instruction the teaching of Christian doctrine according to the form received from Catholic tradition; and this teaching is, therefore, imparted in the public schools, though the right is given to parents, or to those who take their place, to request a dispensation for their own children from frequenting the courses of instruction in such matter.

The State has among its purposes that of educating and instructing youth, with integration of the right and duty of the parents regarding their own children. It should, therefore, establish schools open to all, which would provide the instruction for at least eight years, which is by the norm of the Constitution obligatory. But there does not exist on account of that an exclusive capacity of the State; rather, it is expressly recognized by the same Constitution that entities and private persons have the right to establish schools and institutes of education. Special norms were established by the Lateran Pact for that which concerns the schools instituted by ecclesiastical entities.

Equality with the public schools can be granted to the private schools; but

for the validity of the final diplomas and for the qualification for professional practice there is prescribed a state examination, and this applies, outside of special norms of a concordat, even to the schools directed by ecclesiastical or religious entities.

The State is not juridically obliged to subsidize private schools; it is altogether indubitable (and it was even expressly clarified in the work of the Constituent Assembly) that the State can legitimately grant such subsidies, and it is rather desirable that it grant them in sufficient measure, maintaining always due vigilance so that those schools rightly fulfill their function.

On this point, and also on others of this complex matter, numerous practical problems frequently arise which have no easy solution—whether because the existing means are in general inadequate for the purposes indicated, or whether because more or less serious divergencies of ideas or interests are manifested concerning the use of those means. And even in the interpretation of the Lateran Pact difficulty may arise; but this possibility was foreseen by the pact itself, which wisely provides that in such cases “the Holy See and Italy proceed with common intelligence to an amicable solution.”

Analogically, a spirit of reconciliation, designed to overcome the difficulties, should prevail in all the disputes on the problems of social life; and here special reference is made to disagreement in the matter of education and instruction.

Everyone knows that in Italy, as in other countries, no small portion of the people suffers not only from the sad economic condition but also, and perhaps even more, from the lack of a sound moral education, so that these people readily yield to superstitions and give vent to wild passions. It is the duty of all enlightened men to exert themselves and intensify the forces to combat these evils—the shameful calamity of illiteracy, the false doctrines which defile consciences, the harsh discords which disturb the life of society and the State—which impede or slow up, with damage to all, the civil advancements.

THE STATE AND INTERNATIONAL RELATIONS

The State should not constitute anything closed, or strictly limited. However important be the bonds which bind to the State the individuals who compose it, international relations of various sorts (moral, religious, intellectual, economic) were initiated in ancient times and were progressively developed, even taking on more or less precise juridical forms. The unity of the human race, in some way or other divined even before the beginning of philosophical thought, received the highest consecration from Christianity, which affirmed the brotherhood of all men. But a true and perfect *societas humani generis* remained always an ideal postulate, and has not even yet been positively constituted; and the multiplicity of the various political organizations has given rise, throughout human history, to frequent conflicts, which became ever more murderous through the continuous perfecting of the instruments of war.

Today it has reached such a point that the existence of entire nations, not to say of all humanity, has been placed in danger by the eventuality of a war, even while there is a plea for peace from every quarter.

To uphold the renunciation of every defense, through a unilateral disarmament, would be an error, because even that would be equivalent to encouraging the aggressive designs of those who would not be disposed to equal disarmament. Yet, it is necessary to plead incessantly for peace, to condemn any kind of program of military conquests and, according to the formula of the Italian Constitution, "to repudiate war as a means of resolving international controversies." War is legitimate only in the case of an immediate need for defense. The idea of peace, however, cannot be separated from that of justice (*Iustitia et pax osculate sunt*, as it is said in the Psalms). This does not mean that recourse to war would be lawful in order to oppose any injustice and sustain any right whatsoever—in that case the causes of war would be multiplied, and truly fundamental rights exposed to danger—since each war causes a profound disturbance of the juridical order in general, and no war can offer a guarantee which will lead to a just peace.

In this matter it is also necessary that a sound educational program be developed, not in the direction leading toward base indolence, of course, but rather through exhorting youth to the voluntary fulfillment of their military obligations, and in general by promoting energetic and courageous action in the struggle against the vices and diseases which infect today's society. There is required for that an exertion no less strenuous than that which is displayed in combat; so that even this struggle is a kind of campaign, as Lactantius once observed: "*Iusti militia est in ipsa iustitia.*"

At the same time, every reasonable effort should be made, by favoring that process of moral unification which corresponds to the common nature of the human race, in order that peaceful and amicable relations between one's own nation and the other nations be extended and consolidated. Concord rather than discord should be kept in view just as much for whatever concerns international relations, as for that which regards internal relations. It is fitting that the accomplishments of one's own country be exalted, but it is necessary to avoid vainglorious infatuations and to do justice to the deeds of foreigners as well. One should not factiously feed on the memories of past wars and strifes, and thus perpetuate antagonisms, but rather build upon those memories the foundations of a new and fruitful peace.

These concepts should particularly inspire the programs of instruction, wherein it would be expedient to make more room for the rules of charity and justice in all their applications to the problems of modern life. Since those rules are not and cannot be refuted by any civilized people, or by aspiring to belong to a civilized order, the compilation of a single text to be adopted in the schools of all States should not be impossible. From the idea of justice

universally understood flows the due respect for the dignity and worth of the person; the natural rights of the man and the citizen should therefore be clearly affirmed as rules of reason; and beginning with the idea of charity, universally understood, every human virtue ought to be briefly illustrated, so as to demonstrate its function in respect to both the individual good and the social good.

Perhaps the times are not yet ripe for a juridical codification that effectively regulates all humanity, but a moral codification might well be attempted. Any efforts which might be made toward this end would never be wasted.

Even in the field of law there has undeniably been a tendency toward co-ordination and a universal unification. Even though the goal is still far off, the importance of the steps taken toward it should not for that reason be ignored; and in the meantime, there is the obligation of taking other steps, in the firm faith that the goal is attainable.

It is useless to recall here the numerous international organizations, met with especially in this century, prior to the United Nations Organization which includes most existing States. But the fact cannot be passed over in silence that even that Organization is definitely not a perfect society; its principal defect consists in not conforming to its very program. It has in truth affirmed solemnly in its Constitution, and later more fully in the universal declaration of human rights, its intention to reconfirm the belief in the fundamental rights of the human person; but it has not hesitated to gather to its bosom States which manifestly ignore such rights both in their own internal order and in their relations with other States. Besides, whilst it has affirmed in its Constitution the principle of equality of all members, it has given a privileged position to some States, and thus put the others in a condition of permanent inferiority—a contradiction much more serious and unjust, in so far as there is among the privileged States one which has no respect at all for human rights, while in the second category there are other States which do respect the rights.

It is true that, notwithstanding its imperfections, the United Nations has been able to render some service to the cause of peace; it is, therefore, to be hoped that it will survive and, by possibly correcting its structure, the better make its activity sufficient for its noble ends.

But it is fitting to insist once more on this, that peace is that much more secure as it rests that much more on justice, and to keep in mind that the international organizations are the more solid and efficacious as the principles on which they are founded are the more homogeneous. For that reason agreements have rightly been concluded between States which contain in their constitutions guarantees of liberty, and otherwise propose the defense against the dangers that threaten it. The organizations which have sprung from such agreements, even where they include a much smaller number of States, are in

reality no less important than that of the United Nations, and should be unanimously supported by the peoples represented in them.

It is the duty of the State to promote, through agreements with other States as well as through measures of internal order, the increase of international communications and the progress of culture. And to the work of the State must correspond that of the individuals, particularly of those who are better qualified for activity of the mind. The barriers which oppose intellectual relations and diffusion of works of thought should be removed. Toward the same end, the international conferences and the associations of scholars in one and the same science should be facilitated, as also travels and sojourns in foreign countries for the purpose of study, with suitable subsidies especially in favor of the young people best fit and prepared for this.

In such a way progress will be made toward the formation of that universal republic of thought, which is an ideal goal toward which thought itself strives of its very nature. And with that will also be fostered the progress toward a true and perfect *societas humani generis*, in which, according to the words of Dante, *genus humanum liberum in pacis tranquillitate quiescat*.

THE STATE AND "THE APPEAL TO HEAVEN"

The false doctrines which attributed to the State an absolutely arbitrary power have been justly disproved and rejected by the most sound philosophy of law; this does not prevent them, however, from appearing again now and then in certain pseudo-philosophical theses since, as Cicero once observed, "*Nihil tam absurde dici potest, quod non dicatur ab aliquo philosophorum.*"

The truth is that the authority of the State is determined by a natural law (reflection, according to theology, of the *lex aeterna*), which assigns to it a proper mission and consequently limits its sphere of competence. The State, rationally understood, is the ideal point of convergence of individual rights, which are logically anterior to it, even though they await the positive recognition and the positive confirmation of the State. In no moment of its activity is the State able to deny that presupposition without depriving itself of the title which justifies its existence, since the protection of the natural rights of the human being is precisely the primary and inherent reason for its activity, and the essential condition of its legitimate authority over the individual.

This does not mean that the State may only protect against invasions of individual rights (as though it were simply, as has been said, a "carabineer-State" or "nocturnal guardian"); on the contrary, it is necessary that the State develop a most abundant activity for promoting the common good, but always on the basis of law and in the form of law. In this sense the modern State among the most civilized peoples is qualified as a "State of Law" or, as perhaps might be better said, a "State of Justice."

The State cannot, in short, legitimately operate otherwise than as an organ

of the autonomy equal to its components; and this principle should be inviolable either by an act of imperium of the central power, or by a deliberation of assemblies or groups of individuals. It is a fatal error to believe that in the State everything can be the object of valid deliberations through the agency of any majority whatsoever. There has unfortunately been an unwholesome tendency of majorities to sacrifice minorities, just as there has been an egotistical tendency of the strongest to oppress those less strong. But precisely against such tendencies, in their main points, stands the law. And the right of one man is just as sacred as that of millions of men.

The subjection of the individual to public power, then, is not unconditioned. To the duty of obedience, which is incumbent on the citizens in general, there corresponds, in a State organized according to justice, the faculty of the same citizens to participate in the formation of the laws and to exact their observance, even proceeding through judicial means against the eventual abuses of the organs of the State. In this concept of bilateral obligation lies the nucleus of truth of the theory, often inexactly formulated, of the social contract.

If the State falls short of its mission and violates the law of justice, misusing that overwhelming power which is strictly sufficient to give its resolutions the character of a positive legality, or to render them effectively operative, if it neglects or oppresses the weaker individuals, and prefers particular interests to the common good, if it tramples upon or threatens the rights most fundamental in the human conscience, as for example religious liberty, if appeals for the necessary reforms be in vain, there arises the problem of the legitimacy of resistance, and finally even of revolution—a problem among the most arduous of political science and philosophy of law, which in the life of the people, as everyone knows, has developed into most grave and bloody crises.

First of all, it should be explained that not every aspiration toward improvement which encounters obstacles in the laws in force is a valid motive for refusing them obedience. The stability of the juridical order has in its very self a certain ethical value. For this reason the sacrifice of Socrates, who chose to submit to an unjust sentence rather than give his disciples and fellow citizens the dangerous example of despising the laws of one's country, has forever been considered noble. Analogically and later, scholastic philosophy, through the work of its finest representative, St. Thomas Aquinas, taught obedience even to laws not in conformity with the *bonum commune, propter vitandum scandulum vel turbationem*. Only in the case of violation of the natural and divine laws would disobedience or reaction be lawful, with the view not of destroying but rather of reaffirming the law—that absolute and eternal law already broken, in the hypothesis, by false and perverse laws.

It would be unjustifiable, however, to seek to obtain by way of revolution that which could be had by way of reform.

One must not forget that there can be quite different motives for opposing the stabilized juridical order—the aspiration toward a more noble justice, as well as the egoistical longing to escape one's own obligations. Many times in revolutionary movements there have been abuses in the sacred name of justice to protect particular interests and to give vent to base passions.

It would be erroneous, therefore, to consider *a priori* all revolutions as instruments of juridical progress; one should rather admit the possibility of *regressive* revolutions along with the progressive. It is also worthy of note that the more profound and fruitful revolutions were oftentimes those less violent.

It is of consequence to note, moreover, that where a revolutionary movement fails, that is to say, where it does not succeed in establishing a new and more just order, the attempt is qualified as a grave crime and has the effect of provoking an exacerbation (that is to say, in the majority of cases, an aggravation) of the existing regime.

For all these reasons, it is expedient to put particularly juvenile enthusiasms and phantasies on guard against the delusions and mirages of revolutionary ideologies.

To promote correction of defective and unjust laws without the use of violence there exist, at least in the States where free discussion is allowed, various means of indubitable efficacy; and an important function for this purpose, beyond that of the legislative and administrative bodies, lies within the competence of the judicial organs, which are not mechanical instruments that are bound to the letter of the law, but which should interpret its spirit by extracting from it as much justice as is possible. The history of law demonstrates that the enlightened work of the judges can produce a gradual renewal and perfection of the system in force, even in the absence of formal reforms. It is unnecessary to dwell on this subject here.

The preceding considerations lead to the conclusion that the so-called "right to revolution" cannot be admitted, even under the ethical and rational aspect, except with many restrictions and reservations. Still, it is not to be excluded absolutely, as an *ultima ratio*, when positive laws trample upon, without possibility of other remedy, the fundamental principles of natural juridical reason. In such an extreme hypothesis one cannot deny the lawfulness of a resistance against those *monstra legum* (to use a phrase of Giovanni Battista Vico), that is to say, of a struggle to uphold the dignity of the essential and unchangeable demands of the human conscience. That is then rationally and ethically legitimate, which Locke called the "appeal to Heaven" (*appello al Cielo*), that is, the affirmation of the validity of the divine laws over the human, which was once expressed in the famous words of Antigone in the tragedy by Sophocles, and later repeated a thousand times in the course of the centuries, by unforgettable examples of heroic martyrdom.

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