tage général dont jouit le pays, par suite de la publication de ces débats judiciaires, contre-balance largement l'inconvénient causé aux particuliers dont la conduite peut être l'objet du procès.'[9]

[9] Par Lawrence J. dans l'affaire *R. v. Wright* (1799) 8 T.R. à la p.298, cité avec appobation dans *Wason v. Walter* (1868) L.R. 4 Q.B. à la p.88.

SOME THOUGHTS ON NATURAL LAW AND CONTEMPORARY SOCIETY

VINCENT A. DE GAETANO

WAY back in 1950, William J. Kenealy S.J., then Dean of the Boston College Law School, delivered an address at a testimonial banquet in honour of twenty-six members of the Federal, State and Municipal Judiciary, alumni of the School of Law of Loyola University, New Orleans. The opening paragraph of the address ran as follows:

'The majesty of the law? In what does it consist? In marble columns or high-backed leather chairs or black silk robes? No. These are but external symbols of an inward majesty. Does it consist, then, in that invisible force which always lurks behind the bench: the battalions of police, the regiments of soldiers, the battleships and bombing planes, which can be summoned to put teeth into a nation's laws? No. It is not force. At least not physical force. For the true majesty of the law is more than its coercive sanction. It is a moral power, springing from a rational people's conviction that they see, enshrined in their courts, one of the few enduring elements of civilised life. It is a moral power, arising from a free people's realisation that the law is the means, under Divine Providence, of enjoying in security the inalienable rights founded in their human nature by the natural law. It is a moral power, flowing from a moral people's persuasion that the administration of just human law demands their conscientious obedience, because it is their human participation in the Eternal Law of God.'[1]

To many the whole tone and content of the above paragraph will sound archaic and overcharged with religious sentiment. It is not,

[1] *Loyola Law Review*, June, 1950.

of course, surprising that it does *sound* so. In an age where any notion of the 'Eternal Law of God' is bigotry and adherence to an objective moral code is narrow-mindedness, it might even be surprising to find anything along these lines in a modern law journal. It is, in other words, a question of fashion (using the word with all its post-Victorian connotations).

But fashion and taste, on their own, will not explain many things; they do not help us explain, for instance, the growing irreverence in certain sectors of Maltese society toward law and an increasing popular antipathy toward the judiciary, lawyers, and the legal profession generally.

A prejudice against lawyers is, of course, not an exclusively modern phenomenon. Lawyers have been excluded from every Utopia from the time of Plato to H.G. Wells. In the Middle Ages it was popularly said of St. Ives, the patron saint of lawyers,

> Sanctus Ivo erat Breto
> advocatus sed non latro
> res miranda populo.

Perhaps the traditional popular antipathy to the legal profession is a product of the natural tendency to blame human ills indiscriminately upon human leadership;[2] possible it arises from an instinctive distrust of many men toward minds more subtle than their own; maybe it springs from an unthinking resentment against the curbing of selfish desires in the interest of the common good and ordered liberty; certainly, some of it is born in an ignorance of the genuine public necessity of many legal rules which work undeniable hardship in particular cases; and undoubtedly, it is nurtured by the fact that law is still essentially the monopoly of lawyers. One will recall, for instance, the power enjoyed by, and the corresponding antipathy shown toward, the *pontifices* in the early period of Roman Law until its 'popularisation' with the *ius Flavium* and the *lex Ogulnia*.[3] Most of the adverse criticism of the legal profession is grossly unjust; some of it is richly deserved. And where such criticism is just, neither the lawyer nor the law student should emulate the ostrich and bury an unseeing head in the sand, but should face up to it and make an intelligent effort to evaluate it.

The substantial criticism can be viewed under two main head-

[2] There are twenty members of the legal profession in the present House of Representatives.

[3] Jolowicz (and Nicholas), *Hist. Introduction to the Study of Roman Law*, 3rd. ed., pp. 88-91.

ings: one of personalities and the other of philosophical principles.

One of history's most obvious lessons is this: that to the unthinking mind – which is more common than we like to admit – nothing so obscures high ideals as the unworthy personalities who falsely profess to defend them. Ex-President Nixon and some of his advisers are perhaps the most recent example of this in the field of public administration. Similarly, nothing so ruins the concept of family life and conjugal love than the selfish, cruel and unfaithful parent. Nothing so debases the beauty of the liberal arts as the skilled technician who distorts his artistry for ignoble ends. No one can harm the Church as effectively and as disastrously as unpriestly members of her own clergy. So also with the legal profession. Every lawyer, notary and legal procurator who looks upon his calling as a business instead of as a profession, and utilises his professional skill to prey upon the tragedies and conflicts of individual members of society, weakens the civic faith and loyalty of the ordinary man in the street by blocking from his sight the true nature and purpose of the law. Fortunately, since the commencement of British rule in Malta, we have had few, if any, cases of judges and magistrates removed from office for misconduct or for having forsworn their oath of office.[4] And although the legal profession does not lack members who use their profession as a screen and tool for huge financial dealings, personal revenge and political ambition, yet one may confidently assert that such persons are in a minority. Nonetheless 'legal' scandals have a shocking impact on the public mind precisely because they contradict the high ideals sincerely embraced and practiced by the overwhelming majority of the legal profession.

As harmful as such unworthy personal conduct may be, yet the second reason for the slow decline in respect for the law, the bench and the bar is probably far more dangerous, being more subtle and therefore less perceptible. I refer to the gradual infiltration of a philosophy alien not only to our legal system but to the Maltese way of life generally and the corresponding lack of enthusiasm shown in academic circles for Maltese Legal Philosophy.

I doubt, of course, whether I am justified in writing about *Maltese* Legal Philosophy as being distinct from, say, Italian, French or American Legal Philosophy. Scholasticism, utilitarianism, dialectical materialism, existentialism: these and a host of other 'isms' are philosophical currents not particular to any given ter-

[4] To-day sections 10 and 18, C.O.C.P.

ritory.[5] What distinguishes, say, American from Italian Legal Philosophy is not so much the content of that philosophy as the nationality – to use the word in its broadest and least technical sense – of the writers on the subject. Italian Legal Philosophy is distinct from American Legal Philosophy principally because there is a body of Italian writers on legal philosophy distinct from a body of American writers on the same subject.

The legal profession is both a learned and a practical one. Lawyers and judges have a responsibility both in thought as well as in conduct. The legal system of every nation is profoundly affected by the philosophy which dominates the leaders of its legal profession. Justice cannot be administered in vacuum, without regard to a fundamental philosophy of life, of law and of government. I confess to little patience with those who cannot see the place of philosophy in the law. Philosophy shapes the law, whether customary law, or case-law (*gurisprudenza*), or codified law, or Acts of Parliament. It may be difficult to see, at first glance, any philosophy in the decisions of our courts. But implicit in every decision, no less than in every sentence, where the question is, so to speak, at large, is a philosophy of the origin and aim of law and of its sanction; a philosophy which, however veiled, is in truth the final arbiter. Very often the philosophy is ill co-ordinated and fragmentary. Neither lawyer nor judge, pressing forward along one line or retreating along another, is conscious at all times that it is philosophy which is impelling him to the front or driving him to the rear. Nonetheless it is there. The same may be said of our codified law and the institutes therein contained: minority, tutorship, lease, sale, prescription, bankruptcy – philosophy moulds them all. It is not, therefore, a question of keeping philosophy out of the law, but of what philosophy shall go into the law.

It is pertinent, at this stage, to ask: what philosophy has, so far, gone into our legal system? I do not propose to draw a detailed picture of the philosophy which has shaped the legislation of these islands, and this, for three reasons. In the first place it is difficult to pinpoint with any degree of accuracy the moment in time when

[5] However, certain currents of thought can be identified with a particular territory by reference to philosophers who initially propounded or subsequently supported a particular philosophy. We still speak of, say, Continental Rationalists (e.g. Descartes, Spinoza) and German Idealists (e.g. Fichte, Schiller).

Maltese legislation properly begins.[6] In the second place neither time nor the research facilities available make possible a detailed and scientific analysis of the topic in issue. Finally, any detailed exposition would be beyond the scope of this short essay. Indeed, a general knowledge of the history of Western society from c. 700 A.D. to the time of the French Revolution would suffice for the present purpose.

The period comprised between c. 700 to 1550 A.D. (commonly known as the Middle Ages) is the period of the re-building of the Roman Empire. Western man sought to re-build this empire not on the strength of the Roman Legions but on the spiritual – and in due course of time, temporal – strength of the papacy, buttressed as it was by the Benedictine Rule and the monasteries which sprung up all over Europe. Eventually there emerged a community which was neither Church nor State, but Christendom, and which reached the apex of its internal stability in the twelfth century. It was within this political set up that the intellectual activity of Western Europe progressed, to culminate in the Renaissance. Along with the revival of literature and the arts in general we find the revival of law and of philosophy. The revival of the study of law must not, however, be attributed solely to the glossators of the eleventh and twelfth centuries. Professor Southern writes: 'Every notable pope from 1159 to 1303 was a lawyer. This fact reflects the papacy's pre-eminent concern with the formulation and enforcement of law. It was here that the papal position was strongest. At a time when the tradition of ancient law and government had been almost completely obliterated in Europe, the popes retained the elements of a legal system on which they could build. Besides this they could aim a legislative authority to which no other ruler of the West could aspire. Every circumstance of twelfth-century society favoured the rapid growth of papal law, and this growth was given a steady impulse by the great succession of lawyer-popes – Alexander III, Innocent III, Gregory IX, Innocent IV, Boniface VIII. The fundamental order of medieval, and to a large extent of modern, society owes a great debt to these popes. They brought to their

[6] Harding H.W., *History of Roman Law in Malta*, R.U.M., p. 24. But it must not be forgotten that even with the coming of the Knights the bulk of local law continued for quite some time to consist of Sicilian enactments, with the inevitable sub-stratum of Roman and Canon Law, and supplemented by the *jus commune* (itself Roman Law as interpreted through the centuries) and local customs.

task clarity of mind, firmness of principle, and a capacious practical wisdom.'[7] These factors, together with the immense authority wielded by the Roman Pontiffs and the extensive jurisdiction of the ecclesiastical courts, led to Canon Law interpreting the Civil Law itself where it was controversial, mitigating its rigour where necessary, and adapting it to the Christian outlook of life. Writing on the period immediately following the Norman conquest of these islands, Harding has this to say: 'It is (to this period) that we must look, rather than to the Roman occupation of Malta, if we wish to see the real influence of Roman Law. At that time the Roman Law had returned to its splendid heritage on the continent through the halls of the Bologna school. The religious reorganisation of Malta by the Normans contributed to its re-introduction in the Island since it placed our people, who had never completely forgotten the Roman Law and who still enjoyed a substratum of Latin culture and traditions, in continuous touch with ecclesiastics who were well versed in that law and followed its rules in many parts of the Canon Law, then, as now, applicable to Malta. In fact it was principally through the agency of Canon Law, which was partly a Romanisation of the Church's customs and partly an attempt to adapt Roman Law to Christian and Medieval customs, that Roman Law acquired predominance in Malta, for it must be remembered, in the words of Ferriere, that 'lo spirito del diritto romano, che, abbandonato a se stesso, sarebbe lungamente rimasto fuori dalle cose di questo mondo, diveniva una forza attiva ed operosa passando nei precetti del diritto canonico".'[8]

In short, as Judge Debono points out in his *Storia della Legislazione di Malta*, we owe to Canon Law 'il maggior rispetto al diritto dell'umana personalità'.

And it is precisely this philosophy, the philosophy of the individual human personality, of man as a rational being endowed with certain inalienable rights which is the target of a subtle but sustained and determined attack. Subtle because it is sweetened with words and administered in small doses; sustained and determined because of the immense energies involved in its administration. Up to a century ago man knew pretty well when a thing was proved and when it was not. And if it was proved he really believed it. He still connected *thinking* with *doing* and was prepared to alter

[7] Southern R.W., *Western Society and the Church in the Middle Ages*, 1970, p.131.
[8] Harding H.W., *op. cit.*, p.14.

life as a result of a chain of reasoning. But what with the weekly press and other such media, society has largely altered that. To-day's man has accustomed himself, ever since he was a boy, to have a dozen incompatible philosophies dancing about together in his head. He doesn't think of doctrines as primarily 'true' or 'false', but as 'academic' of 'conservative' or 'revolutionary'. Jargon, not argument, is to-day the best ally of any propaganda machine which wants to introduce a new philosophy. Make man think this new philosophy is strong or stark or courageous or that it is the philosophy of the future. The unthinking mind will accept it.[9]

In reality the conflict we are beginning to witness, on home ground, is the age-old conflict between the idea of the Absolute State (in its watered down version for the moment) and the idea of the Natural Law – a term which has been much distorted and the meaning of which has been greatly altered by both the positivist and the historical school of jurisprudence, and in our case, as in the case of most Catholic countries, by the interpretation of theocratic philosophers who saw it as a means of furthering the Church's temporal power.

We are all familiar with the philosophy of the Absolute State. Its modern name is totalitarianism, but its name is its only novelty. It is a retrogression to ancient Caesarism: the deification of the state upon the specious grounds of pragmatic public policy, to the annihilation of human personality. The public policy of the State is the alpha and the omega of all things, the ultimate criterion of truth and the last norm of right. The logical conclusion of such a philosophy is that human life, its origin and purpose, its dignity and value have significance only by the yardstick of State utility. Will is substituted for reason; law becomes organised force; might becomes right. There are no inalienable rights[10] and therefore *quod principi placuit legis habet vigorem*;[11] there are no inalienable rights because there is no natural law; there is no natural law because there is no eternal law; there is no eternal law because God is merely an appendage to political life, tolerated but not approved.

[9] See C.S. Lewis, *Screwtape Letters*.

[10] See E. Busuttil, *The Frontiers of Human Rights*, R.U.M., 1966.

[11] Ulpian, in Digest 1.4.1 pr. and 1. And the reason is: *utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat.*

The origins of modern totalitariansim may be traced back to the middle of the seventeenth century and in particular to Thomas Hobbes' theory of the Leviathan State.[12] Subsequent philosophers contributed their share. David Hume's skepticism cast doubt upon the ability of the human mind to attain any objective truth. Jean Jacques Rousseau's anti-intellectualism cast aspersions upon any rational explanation of human life. Jeremy Bentham's utilitarianism repudiated the age-old norm of morality. Immanuel Kant drove a wedge between the legal and the moral orders. Herbert Spencer's sociological evolution cast aside fixed principles of morality and of the natural law. Austin's jurisprudence completed the legal bridge to the modern totalitarian State. These philosophies, and the positivistic concepts of Hegel, Marx and Spengler, melted down into an amorphous philosophy of so-called realism and pragmatism, are the ideas fighting for a secure bridgehead in Malta to-day.

That such a philosophy is essentially alien to our way of life should be patent to anyone in touch with the spirit of the Maltese people and their laws; it should be clear to anyone with an elemental knowledge of the language and substance of the declarations demanded (and often obtained, but equally often transgressed) from the rulers of these islands by the Maltese in defence of their laws and customs. In particular, the Declaration of The Rights of the Inhabitants of the Islands of Malta and Gozo (of 1802), which ushered in British Rule of Malta, contains, in a nutshell, what I submit are the essential principles of the legal and political philosophy of these islands.[13]

Modern legal pragmatists pooh-pooh the very notion of the Natural Law as a medieval fiction, which served a useful purpose in its day, but is now obsolete, and never had any objective existence. To them, therefore, inalienable rights are so much metaphysical nonsense. There are no duties in conscience because morality, in its last analysis, is merely current good taste. There are no principles; there are merely prevailing formulae of expediency. Above all there are no absolutes, that is, except pragmatic public policy, which means the Absolute State. If it works it's true; if it works it's right. A rudderless philosophy, which leads, logically and psychologically, to the philosophy of force.

[12]Hobbes propounded the theory that the ruler (Leviathan) is above the law and need not obey it. Kant was greatly influenced by the philosophy of Hobbes.

[13]See J.J. Cremona, *Human Rights Documentation in Malta*, R.U.M., 1966.

And, make no mistake about it, no philosopher in history has ever pointed out another alternative between the natural law and physical force. It has always been one or the other. If then we do not want human law, our law, to be measured by the yardstick of physical force the only alternative is the yardstick of the Natural Law. What does this latter yardstick entail?

There is involved in every practical judgement of the reason the claim that something is meet, good or right to be done.[14] That is a truth of psychology; but (to confine the discussion to a legal context) even in connection with Austin's Command Theory, which taken at its face value is brutally non-moral, Buckland says that 'he (Austin) would have agreed that the law is an outcome of many causes and that in the long run it expresses a morality ... That does not mean a moral code of conduct but a set of rules as to what the legislator thinks it desireable that people should be made to do – a very different matter.'[15] But not such a different matter that it is not similar in an important way. It is an admission that law is a judgement in terms of the good, whether that good is real or apparent. Just as every judgement, whether speculative or practical, contains an implicit claim to truth, so in particular the practical judgement claims *that it is true that it is good that something should be done.* This propositional truth, reflecting the being or nature of the situation, is what gives the ultimate form, definition or limit to the judgement. When the truth is absent the defining limit is breached; when an impossibility is asserted, openly or covertly, the judgement has passed into what the Pythagoreans called the *apeiron* – the boundless chaos where anything can be predicted of anything because everything is nothing.

Human law, therefore, presupposes and includes assertions that pretend to truth. We can account for the fact that it is not wholly reducible to them by saying that scientific laws describe being and do not depend on will, whereas human laws prescribe the good and are imposed by will in order that the good may be effected in and by the wills of the subjects. Both declare what might be called universal patterns of behaviour, but while the scientific pattern cannot but be realised, the human pattern may not be. It is this *potential* characteristic of human law which gives rise to questions about its obligation and scope, questions which ultimately boil

[14] See *The Limits of Law and Legislation* by Ivo Thomas, in *The King's Good Servant*, ed. R. O'Sullivan, 1948.
[15] Buckland, *Some Reflections on Jurisprudence*, p. 48.

down to the single question 'When is a law not a law?'

Logicians are accustomed to treat as a single 'null class' all classes which have no members, or, in some systems, those which involve contradictory notions. Similarly we may term 'null statements' in the speculative order those which state either mere falsehoods or impossibilities, and in the practical order those which prescribe as meet to be done what it is not or cannot ever be good for man to do. The law which prescribes something morally permissible but factually unsuitable has breached its defining, limiting boundary of goodness and truth; the law which is necessarily bad is altogether in the *apeiron*, the undefined, unlimited chaos of nothingness where no laws oblige, for there are no laws to oblige. It does not mean, however, that enactments which are not laws in this moral sense may not be laws in a purely legal sense, or that they may not have very practical consequences. In the logic of classes the 'null class', which by definition has no members, is a working convention which can be operated upon like other classes. The number '0' for instance may be defined as the class which has the null class as its sole member, a definition which enables the logician to generate the series of cardinal numbers. To the logic of classes the null class is as important as the cipher is to numerical calculation. The enactments of a legislator have a prima facie claim to be law in the moral sense and, even if they are outside the moral order, may make good their claim to be obligatory law in a purely civil sense.

This distinction between *necessary* and *factual* falsehood and badness is equivalent to that which Thomas Aquinas makes between laws that are contrary to divine good and those that are contrary to human good.[16] Even the latter he calls *magis violentiae quam leges*, and in their regard quotes St. Augustine: *lex esse non videtur quae justa non fuerit.*[17] Such a conception goes back to Cicero and ultimately to Plato. In fact it was Cicero who said that a commonwealth in which the common good, the *res populi*, is not being sought is no commonwealth.[18] These laws that are contrary to human good are not binding in conscience; but unlike the laws which are contrary to divine good it is sometimes permissible or even obligatory to obey them, for law is made to secure the order and peace of society. Bad law militates against that end, but dis-

[16] *Summa Theologiae*, I-II, 96, 4.
[17] *De Libero Arbitrio*, I, 5.
[18] Quoted in *De Civitate Dei*, II, 21.

obedience to it may militate against it even more. If it be not immediately contrary to divine good, bad law has broken its defining limits, but has not passed altogether beyond them. Many who will not allow jurisprudence to take account of morality fail to recognise this point, as do those who believe that insistence on a higher standard of human action than human law makes for anarchy. So far from holding that human lawas such is morally suspect, Thomas Aquinas maintains that it is in general an extemal source of moral principle. Even man-made law is binding in conscience. But human legislators are fallible and when their enactments are unjust they bind, if at all, in virtue of the law of nature which prescribes that a man should live at peace with his fellows in human society. To live at peace with God is a higher duty still which may involve a refusal of obedience to man-made law.

How can we assess this frontier of goodness which a law must have if it is to be genuine? No one with experience of human affairs would ask for a yardstick that would give public and uniformly acceptable assurance of the exact status of any law to which it might be applied. There are, however, some constants intrinsic to man which provide a matrix for the formation of law and a canon of its goodness. There are (a) the desire for the preservation of the self; (b) the desire for the continuance of the self; (c) the desire for the perfecting of the self. Since these desires are constants in man, it should not be thought that they represent a merely human good; they are features of human nature as it comes from the Creator. Hence, in so far as a law goes contrary to the general satisfaction of them, it will be contrary to what is good for man as such, contrary to the good of its subjects in whatever situation they may be, contrary therefore to its own nature as law, and hence lacking its due definition or limitation. It will further be contrary to what Thomas Aquinas calls a divine good.

One need hardly state that such ideas have been widely abandoned by legal theorists on a variety of grounds; partly perhaps because much of modern legislation might not show up well when compared with this standard, partly because the growth of law as a closed system has been accompanied by an independent abandonment of universally recognised moral standards by many people. If however legal theory is treated as a closed system with respect to moral theory, if legal rights are held to be ultimate and not finally to depend on moral rights, there seems no avoidance possible of making force the supreme arbiter of right and wrong.

Human law, then should be concerned with the common good of

the community. But again, the term 'common good' requires some explanation.[19]

In a multitude of ways we are all busy considering the relationship of the individual to the community and the adjustment of claims between them. The individual makes claims to rights and liberties which the community at times calls on him to sacrifice for the sake of the common welfare. Must he do so? May he resist the claims of the community? How far may he be coerced? Are the interests of the one and the many irreconcilable? How exactly are they related? These are questions of some immediate importance as we see the steady encroachment of the claims of the State on our own lives at the present time. In more concrete form the questions could be framed as follows: Is there a limit beyond which the State should not tax one or other class of its citizens? Has the Government the right to impose the closed shop by law? May the State confiscate private property? The final question which sums them all up is, of course, Is the State for the citizen or the citizen for the State?

It will help, first, to examine the nature of the group that is the State, and of its unity. Every group is constituted in view of some end. It is the end or purpose which determines the nature of a society, gives it its extrinsic form and provides its extrinsic unity, determining the direction of the society. The intrinsic unity follows, a product of that authority which arises in the society from the impulsion of the members toward a common end. This unity which exists in any society and particularly in the State is not an accidental unity such as exists in a heap of stones, or an artificial unity such as exists in a house or a machine; nor is it a unity of composition such as exists in a chemical compound. It is a unity of order, which comes into existence because of the end or the good which is being pursued. This unity does not absorb the activity of the individual members of the society, as other forms of unity do with their constituent parts, but supposes their activity, co-ordinated in view of the common end. This activity of the individuals in the society may be compared to that of soldiers in an army or to men towing a boat. There is an activity of the parts which is also the activity of the whole, such as the actual fighting or the towing. But this is not the whole of the activity of the parts.

[19] See *La Notion Thomiste du bien Commun*, by Suzanne Michel (1932), and *The Person and the Common Good*, by Jacques Maritain in *Review of Politics* (Notre Dame, Indiana), October 1946.

There is, so to speak, a residue of activity which may be concerned with other things, such as eating and sleeping, and need not be directed to the fighting or the towing.[20]

Hence a society, a group, or a State is not an organism or an organic unity in the sense that the activity of the organs is totally consumed in the activity of the organism. *It is not a substantial reality. It has no personality in the metaphysical sense.* It is not even something distinct from its members. It is simply the members themselves considered from a particular point of view, acting in a certain way. It is not an organism but an organisation. When a society comes into existence it is not a new thing that is born, but a new state of things. This point needs emphasis at the present time, particularly with regard to the power and claims of the State. The one natural God-given unit in human life is the family. Many families together make a State and the State enjoys what we call a moral personality. But the State is not and never can be a real person, nor can it enjoy a reality independent of its constituents, citizens and families. It is at most a 'fictitious personality'. As a moral entity the State exists to subserve the ends of the only realities – its citizens. And the common good of the community is the good of its constituent members and ultimately that good is the right of each to the free pursuit of the good life.

Now, as individuals, men possess certain goods, chiefly in the material order, such as wealth, health and bodily integrity. As persons they possess certain rights such as the right to life, the right to truth, the right to found and rear a family, the right to possess property. And since a society is a unity of order among not merely individuals but among persons, the good of the society must be related in some way to personal goods and rights. The common good of the group cannot be compared to the good of the one quite in the same way as the whole is compared to the part, or as a society is compared to its members. The society has no personality while the members are persons. Yet the society is in some way the support and defence of personal goods and the maintainer of personal values. Hence we cannot too easily say that the personal good of a single member must override the common good of society. There is a scale of values in which the protection of the personal rights of the totality takes precedence over the protection of those of the single person: while the personal good of the one transcends the individual good not only of the one but also of the many. We

[20] *Summa T.*, I, 3, 1.

should, therefore, say that the relationship between private good and common good is both quantitative and qualitative. The test of value is quantitative only in defect of a qualitative criterion, or rather, within each qualitative sphere or range. Hence, the good of the one, considered as an individual, is subject to the good of the many. There is a quantitative relationship, and in a conflict of interests the good of the one may be obliged to yield to the good of the many. But the good of the one, considered as a person, can never be sacrificed for the good of the many.

How does one relate these ideas to modern legislation? Once more I will evade any detailed examination of recent drafting, proposing the application of the test of the common good in a general way.[21]

Let me take a couple of examples. The right to property, for instance. This is a personal right which the community may not deny to one of its members. Immediately one thinks of schemes of nationalisation. Clearly any form of nationalisation which would destroy the personal right to property, for example the total nationalisation of land, would be contrary to the common good. There are, on the other hand, forms of nationalisation which can be justified when *really necessary* for the common good: public utilities, communications, vital industries.

Take also the right to truth. Just as a single human being is bound to avoid the lie in treating with another because the other has a personal right to the truth, so is the government of a State in dealing with its citizens and more especially in dealing with other governments. This must be specially underlined at a time when the public lie has become a deliberate instrument of policy in the domestic and international practice of numerous governments.

The above are, briefly, what I believe to be the basis of the philosophy of the Natural Law, a philosophy as old as the thought of civilised man. Sophocles, Plato, Aristotle; Cicero, Tertullian, Justinian; Jerome, Ambrose, Augustine, Albertus Magnus, Thomas Aquinas, Vittoria, Suarez, Bellarmine; Bracton, Langton, Coke, Blackstone, Burke; Marshall, Storey, Kent, Maritain and a host of others have contributed to its development.

The philosophy of the Natural Law is not specifically Catholic, or Protestant, or Jewish. It is the philosophy which is logically *antecedent to the theology of every religion.* It is the philosophy of

[21] See *The Common Good in Law and Legislation* by Andrew Beck, in *The King's Good Servant*, ed. R. O'Sullivan, 1948.

the pagan, in the classical sense of the word pagan, namely, he who worships God although without the benefit of supernatural revelation.

This philosophy maintains that there is in fact an *objective moral order*, to which human societies are bound to conform, and upon which the peace and happiness of personal, national and international life depend. The mandatory aspect of the objective moral order we call the Natural Law. In virtue of the natural law, fundamentally equal human beings are endowed by their Creator with certain natural rights and obligations which are inalienable precisely because they are God-given. They are antecedent, therefore, both in nature and in logic, to the formation of civil society. They are *not* granted by the beneficence of the State.

The construction and maintenance of a *corpus juris*, implementing the Natural Law, is a perpetual and monumental task demanding the constant devotion of the best brains and the most mature scholarship of our legal profession. For the fundamental principles of the Natural Law, which are as universal and immutable as the human nature from which they derive, nevertheless require rational application to the constantly changing political, economic and social conditions of society. The application of the Natural Law *postulates* change as the circumstances of human existence change. It repudiates a naive and smug complacency in the *status quo*. It demands a reasoned acceptance of the good, and a reasoned rejection of the bad, in all that is new. It insists upon a critical search for the better. It demands an exhaustive enquiry into all the available data of history, politics, economics, sociology and every other pertinent front of human knowledge.

And, for primary importance, it insists that the construction of a better *corpus juris* be made in the light of the origin, nature, purpose and limitations of the State; and in the knowledge of the origin, nature, dignity and destiny of man.