

in the case of what is essential and permanent, recognising that it is the fate of forms and structures to perish, and that their continuity must never be bought at the expense of our spiritual inheritance. Only thus can the fecundity of tradition be safeguarded. Collections in museums and libraries are of themselves sterile and lifeless. But tradition, which first produced them as fruits of life and can still produce new ones, is itself both alive and life-giving. It alone made Europe; it alone can keep Europe in being.

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COMMON LIFE AND COMMON LAW¹

On the last page of their classical history of the English Law, Pollock and Maitland wrote these words: 'The men who were gathered at Westminster round Pateshull and Raleigh and Bracton (in the thirteenth century) were penning writs that would run in the name of kingless commonwealths on the other shore of the Atlantic Ocean. *They were making right and wrong for us and for our children.*'

The rules of right and wrong that were framed by these prelates and judges of the Middle Age constitute the Common Law of England, a system of law that rules not only England (and Ireland), but also the Dominions of Canada and Australia and New Zealand and (in great measure) India and most of the colonies and possessions of the Crown. The Common Law rules also 'those kingless commonwealths on the other shore of the Atlantic Ocean,' the states of the American Union, with the single exception of Louisiana.

The Common Law is thus one of the two great systems of Law and of legal tradition by which the world was governed before the war. The other system is the system and tradition of the Roman Law, which governed the great continental countries of Europe and their non-European dependencies. The Roman Law has a history

¹ The substance of a talk given on the 13th May, 1943, at the Rugby Christian Life Week.

of twenty-five centuries.. It was accordingly pagan in origin. It reflected what Lord Acton has called the vice of the classical state : it was Church and State in one. Divine honours were paid to the Emperor. And the law recognised or drew a sharp distinction between free man and slave ; and between citizen and stranger. The Common Law of England, on the other hand, has a history of seven centuries. It is accordingly Christian in origin. It recognises (or recognised) the Church and State as co-ordinate powers each of them independent of the other in its proper sphere ; so that, in the pure system of the Common Law, the moral and spiritual life of man is independent of the political organs of the community. From the days of Bracton, the Common Law has repudiated slavery as a thing contrary to natural right and justice : ' Est quidem *servitus* constitutio juris gentium qua quis dominio alieno *contra naturam* subicitur Quid sit libertas? Libertas est naturalis facultas ejus In hac parte ius civile vel gentium *detrahit iuri naturali.*' The great creative work of the English law was the construction of the free citizen, the *liber et legalis homo*, the free and lawful man. The dignity of the free citizen was the dignity of the Christian man which is to be found in the Gospels and in the Epistles of St. Paul and in the liturgy of the Mass : ' Deus qui humanae substantiae dignitatem mirabiliter condidisti et mirabilius reformasti'²

The independence of the Church, that is to say, of the moral and spiritual life of man, over against the State is affirmed in the first article of Magna Carta : ' quod ecclesia anglicana libera sit et habeat jura sua integra.' It is not un instructive to reflect that the author of Magna Carta was the author also of one of the greatest of the Christian hymns, the *Veni Sancte Spiritus*. One may also observe that the Common Law of England, which is the only great system of temporal law that came out of the Christian centuries, comes to us out of the same centuries that gave us the great English cathedrals and parish churches and those ancient schools of Christian philosophy and theology, the Universities of Oxford and Cambridge.

The conception of man which gives life and character to the common law is the conception of a reasonable and responsible being who by virtue of his nature is entitled to be free, a free citizen living

² In his recent work entitled *The Fear of Freedom*, Eric Fromm has analysed the social and political consequences that have followed from Lutheranism and Calvinism and the Protestant conception of man ; and has traced the growing sense of individualism and isolation and anxiety which has induced men to exchange freedom and independence for a condition of dependence and so-called security.

in a free community. It is not only that the political officers of the community are to have no control over the moral and spiritual lives of the citizens, but also that within the proper field of politics the rulers of the State are to be subject to the limitations imposed upon them by the natural law and the laws and customs of the realm. 'The King,' says Bracton, 'is under God and the Law, for the Law makes the King. Let the King therefore attribute to the Law what the Law attributes to him, namely power and rule. For he is no king when Will and not Law is the principle of his rule. And that the king should be under the law (since he is the vicar of God) manifestly appears from the example of Jesus Christ . . . who willed to be under the law in order that he might redeem those who were under the law. So also the Blessed Mother of God, the Virgin Mary, Mother of our Lord, who by a singular privilege was above the law, was content, as an example of humility, to conform to the institutions of the law.'³ In the same manner an anonymous scribe of the fifteenth century writing in one of the Year Books says: 'The law is the highest inheritance of the king by which he and all his subjects shall be ruled. And if there were no law, there would be no king and no inheritance.' In the political controversies of the seventeenth century, the book of Bracton was in much demand and the principles that he laid down were affirmed by the common lawyers in Parliament against the ambition of the Stuart kings who sought to rule the Church and State by virtue of the Royal Prerogative.

The issue of the constitutional controversies of the Stuart time was to subordinate the power of the King to the power of Parliament; and (with the decline of belief in the natural law) to exalt the power of Parliament to the point of Omnipotence. Amid all the modern talk of the Omnipotence of Parliament it is proper and salutary to affirm the superior rule of the natural law, and to repeat that Parliament has no power to repeal or alter the principles of biology or psychology or logic or ethics or even of political economy.

To re-affirm the natural law is to affirm the principles of the common law in so far as the common law is identical with the law of reason. 'The common law,' Sir Edward Coke was wont to say, 'is the perfection of reason.' And he naturally proceeded to argue, and to rule, in a case which has had an immense influence on the history of American jurisprudence, that the common law is superior to statute.

³ It is not without significance that English political freedom is (or was) expressly founded on the example of our Lady and our Lord.

In any event it is true to say that the traditional principles of the common law which are shared by England and the Dominions and by all the States (save one) of the American Union are in line with the principles of the natural law and in line, accordingly, with the teaching of the great Encyclicals. One may summarise these principles of Christian teaching and tradition under four main heads which we may call the four Integrities: that is to say, the integrity of man, the integrity of the family, the integrity of the political community, and the integrity of the international order.

The integrity of man must be understood to relate to the integrity of his body, mind and spirit. The words and acts of the German bishops during the war in defence of the life and physical integrity of invalid and aged (and non-Aryan) persons is an illustration of the power of Christian principles even under a totalitarian regime.

The integrity of the family covers the relation of husband and wife and also of parent and child. It is infringed by the modern freedom and habit of divorce and separation of the spouses and by the increasing denial of the right (and even of the duty) of the parents to maintain and educate the children of the marriage. The assumption of the law now is that the normal wage is insufficient to enable the normal wage-earner to pay for the education and the maintenance of his children: and so the education of children is paid for by the local or the State authority (to the prejudice or even the denial of parental right) and the working man is yet to be made dependent upon a system of family allowances. Those who are charged with the duty of administering the law in relation to delinquent children have now begun to realise that the chief pre-disposing condition to delinquency is what is called the 'broken home'; and that the denial of parental right is apt in many ways to lead to evil consequences for the community.

The course of the war now raging is a sufficient example of the evils that ensue from a denial of the integrity (and independence) of political communities; and of the integrity of the international order.

It accordingly behoves all men of good will, and especially those who value the Christian tradition of England and of Europe, to respond to the call which Pope Pius XII has made for the 'co-operation of all generous and noble minds'; and to endeavour to recapture the spirit of the great creative time that gave us the English Cathedrals, the English Universities, and the Common Law. In this way only shall we be able to establish peace on a sure basis. In this way only shall we fulfil the aspiration of Lord Halifax and unite 'a Christian past with a more Christian future.'

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