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# Why Law?

## Why Canon Law?

The application of Law requires study, competence, passion for the truth and for the good of the person. It demands the cultivation of the virtue of prudence, much common sense, and, above all, intellectual and moral honesty!



Fr. Bruno Esposito, OP

**I**n the ecclesiastical academic centres of Rome, it is humorously said that the difference between students of Philosophy, Theology, and Canon Law lies in the fact that the first end up losing some of their reason; the second, their faith, and the third...well they just lose their time!

One time, however, after this witicism had just been proffered in the presence of a poor Canon Law student, provoking laughter and jibing, he spoke up with composure, paraphrasing the words of the psalmist: “Thus speak the wicked and the foolish!” (cf. Ps 10:4; 14:1)

### *A summons to question oneself and to think*

Profoundly convinced of the truth in this student’s retort, we think it in no way inappropriate to invite the reader of this article – who may have decided to peruse it for any number of reasons, but doubtless attracted by the possibility of finding a *reasonable response* to the question – to reflect on the importance, in our day-to-day life,

of Law in general and of Canon Law in particular.

Obviously – and firstly – we note that, in questioning ourselves about what Law *means* to us, we place ourselves within the perspective proper to Philosophy, and in this way, as Paul Ricoeur (1913-2005) liked to repeat, in the willingness to accept Philosophy’s summons to question oneself, to think.

You are invited, then, to think, to ask yourself some questions. Paradoxically, what matters most for someone who does not want to waste his life is to trust, not that he has all the answers, but that he knows how to formulate the right questions.

According to another jurist and philosopher of Law, Giuseppe Capograssi (1889-1956), the philosopher is one occupied in the sole task of gathering the secret lessons of life and expressing them. From this standpoint, it becomes apparent that our student had a good dose of reason and common sense, in labelling those who consider the study of Canon Law a waste of time as wicked and foolish.

### *A mere instrument of arbitrary power?*

Let us attempt, first of all, to ascertain to what extent the quip we shared is true. As is often the case, it harbours a set of stereotypes, but also a grain of truth. The reality of Law attracts different approaches and behaviours, at times in open conflict among themselves.

Certainly one such stereotype is to view Law as a set of rules, regulations and norms that limit the legitimate aspirations of full liberty and individual fulfilment. Additionally, there is the generalized conception of Law as an arbitrary instrument of the holders of power, who use it when and how they wish – a mere instrument of arbitrary power.

In this respect, sadly applicable is the answer that Giovanni Giolitti (1842-1928) gave to the question that he himself posed: “What is the law?” The law is something to be interpreted for one’s friends and applied to one’s enemies! Or the clerical version, which explains as follows the respective poses of the statues in St. Peter’s Square of the two

Princes of the Apostles: that of St. Paul portrays him reading “here laws are made”; and that of St. Peter, pointing to the Tiber, affirms “there they are observed!”

### ***The physiology and pathology of Law***

We are deeply convinced that this way of feeling and seeing the Law is born of an insufficient knowledge of the legal sphere and of what it involves, a knowledge which is unable to distinguish between the *physiology* and *pathology* of Law, between the Law as a conveyer of justice and law as mere arbitration.

But beyond all theories about law and justice, whoever is sadly the victim of injustice knows how things really stand. At that moment, one has no need for theorization or explanation!

When, in social life, one is forced to appeal and to plead for a definite right as if it were a favour; or when one is the victim of a summary “justice,” presented as supreme and necessary justice at that moment (but Terentius [185-159 BC] and Cicero [106-43 BC] recall that *summum ius, summa iniuria* – maximum justice, maximum harm), and which denies the natural right to know the accusation and the accuser; or when one experiences the coldness of an administrative or judicial apparatus that either does not respond or responds at a biblical pace, these are signs that we are dealing with an ailing government.

### ***The juridical dimension of society***

For these reasons, it is important to return to the meaning and significance of Law as an indispensable dimension of human nature, which directs intersubjective relations according to justice, understood as the *measure* of what is due, while being able, in accordance with the Gospel message, to open itself to charity, which, in turn, is understood as going *beyond the measure* and which,



St. Thomas Aquinas  
Angelicum, Rome

*Aquinas unhesitatingly affirms that a possible human law contrary to the natural law is not law, but a corruption of law*

as such, always presupposes the existence and fulfilment of the measure, and therefore of justice (*nulla est charitas sine iustitia*).

This juridical dimension of social life also pertains to that society which is the Church, desired and founded by Christ, and its Law participates, albeit in a particular and original way, in its visible and social capacity, in being an instrument for the salvation of souls.<sup>1</sup>

Let us never forget, in the light of sound anthropology, that the first justice due to the other is to recog-

nize the truth of what he is: a person created in the image and likeness of God, redeemed by the Blood of Christ and therefore called to be and to feel himself to be the brother of his fellow men, not a mere “colleague.” In this way we will avoid passing off as law that which ultimately shows itself to be an egoistic desire that does not take into account the nature/reality and the dignity of the person and of others.

Thus, in any civil society and in the Catholic Church, the sole and true problem is not whether or not to have laws or legal norms, but to have good laws and good legal norms. Rediscovering that laws and norms should be observed in conscience, not because they are written in a code, but because they are just (*iustum*) and promote the realization of the common good, the decision was made to draw them up in a code and they are therefore established by legitimate authority (*iussum*). Precisely for this reason, A. Kaufmann (1872-1938) wrote that the State does not create the Law; the state creates laws, and the state and its laws are beneath the Law!

### ***Good government requires few laws***

From this perspective – except that which *epikeia* and *equitas* demand so that justice be carried out *hic et nunc* (and those legal and characteristically canonical institutions, such as dispensations and privileges, are only acting instruments of such justice) – it is senseless for those in a governing position, in any age, to yield to the temptation summed up by Ulpian (170-228) in the famous maxim “*Princeps legibus solutus* – the prince is exempt from all laws.” The fact is that, in the end, such conduct and such a manner of governing are not effective, nor have they ever been!

The implementation of good government in any field requires that there be few laws (*Corruptissima re*

*publica plurimæ leges*, warned the great Tacitus [55-120]) and that these be observed by all, not because they are commanded by the power-holding authorities, but because justice (understood as giving to each one his due – for St. Thomas a true and proper *res*; “*ius est obiectum iustitiæ*”<sup>2</sup>) demands it, so that society can truly live in peace (“*et erit opus iustitiæ pax, et cultus iustitiæ silentium, et securitas usque in sempiternum*” [Is 32:17]).

This is so true that Aquinas states, without hesitation, that a human law discordant with natural law “is no longer a law, but a perversion of law.”<sup>3</sup> Let us not forget that the unjustified overproduction of juridical documents always distorts and depreciates them, to the point of negating the authority of these documents and the very authority that produces them.<sup>4</sup>

It becomes clear that the use and application of Law requires study and competence; it requires time and passion for the truth and the true good of the person (Mt 7:12). It demands the cultivation of the virtue of prudence, much common sense, and, above all, intellectual and moral honesty! To provide but one example: in the perennial and sensitive problem of distinguishing between “truth” and “formality” in the administration of Justice in the administrative and judicial spheres, the canonist has but one choice: the

objective (and obviously not procedural) truth!

### ***Two groups in opposition***

If we have succeeded in summoning our readers to a more in-depth reflection on the necessity of the Law and of but few good laws, we can expect that many of our readers are in agreement with the response of that quick-witted student with whom we began our reflection.

In fact, as the Bible confirms, the people of Israel regarded as “wicked” those who did not recognize themselves as creatures and therefore did not recognize God as Creator or worship Him, and who accordingly acted as sinners, especially in their injustice towards the orphan and the widow. The condem-

natory stances that Jesus repeatedly took against the Pharisees amount to a denunciation of wickedness: under the appearance of observing the laws, they betrayed justice, disrespecting man in his basic needs.

Even the term “foolish”, more than denoting an unintelligent person, is used in the Bible to generically define those who do not act reasonably, but proceed in moral disharmony with the just norms established by God in creation.

In Wisdom Literature particularly, humanity is divided into two classes: the wise and the foolish. “The wise will inherit honour, but fools get disgrace” (Pr 3:35). These two groups are and will always be in opposition.

Scholars and honest professionals in the field of Law do not, therefore, lose their time. Rather, the real time losers are those who are ignorant or scornful of law, for in so acting they reject the opportunity to build up human society and that of the faithful. ✧

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<sup>1</sup> Cf. SECOND VATICAN COUNCIL. *Lumen gentium*, n.8; CCC/83, can.1752.

<sup>2</sup> ST. THOMAS AQUINAS. *Summa Theologiae*. II-II, q.57, a.1.

<sup>3</sup> Idem, I-II, q.95, a.2.

<sup>4</sup> Cf. Idem, q.97, a.2; ad 1.



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- Associate member of the Supreme Tribunal of the Apostolic Signatura.
- Member of the Juridical Commission of the Italian Conference of Major Superiors.
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