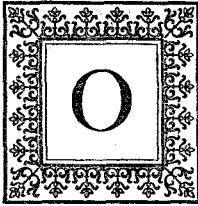


The Sense of Law

BY STRUTHERS BURT

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ON the far-off and perfect day when human values are reassessed properly, some one will write a book showing the reverse side of aphorisms, and one of the first aphorisms to be turned inside out in this fashion will be the one which states that "fools rush in where angels fear to tread." They do, and the air is nervous with the winds of their rushing, but one forgets that more than half the time the angels are responsible and that, much as the fools hamper and confuse certain issues, where other issues are concerned their rushing is inevitable and necessary. Fools, after all, are frequently no more than laymen, amateurs, that is to say—the audience, the victims, the public—while angels are experts, and nothing is more certain than that experts are constantly in need of lay opinion, sometimes even of lay revolution.

In his essay on the jury system Chesterton has shown how that apparently cumbersome and often stupid method of determining guilt is not only the symbol of a racial sense of fairness, but essential as well to the continuance of that fairness. The consensus of opinion of twelve good men and true may often be wrong-headed, but it is always human, and although one would prefer opinion to be both clear-headed and human, if it cannot be both it had better, at least in matters of life and death, be the latter. The present partly sophisticated age is cherishing, to the contrary, a belief, growing rapidly into a superstition, that what the world needs is more expert advice and less unthinking compassion. That is only a half-truth, no better than the half-truths it seeks to eliminate. The world does need more expert advice, but the expert, on the other hand, needs more lay opinion. In short, what really is needed is intelligent compassion and compassionate in-

telligence. Nothing is more terrible than a meeting of experts, save, possibly, a meeting of fools.

Angels know more about heaven than fools—they ought to, they live there—but the trouble is that, seeing mostly only other angels, they talk an angelic patter of their own and, what between this and that, come eventually to have a great contempt for their constituents, or clients, or patients, or public, or what you will. Not only a contempt but also a conviction that celestial details are the only things that matter. They completely forget that heaven's sole and original purpose was to afford a final abiding-place for fools, and that the stuff of which their jobs are made is the stuff of human folly. If there weren't fools there wouldn't be angels, although, if there weren't angels there would most certainly still be fools. If the fool waited at heaven's gate while the expert angel—expert, or minor official—put on swank and hemmed and hawed over tickets and raised supercilious angelic eyebrows, he would never get in at all.

For example, one does not like, even in a humble way, to encourage ignorance and prejudice and violent wrong thinking, and the common sense of the theory of evolution, also its spiritual beauty, need not be discussed; but the biologists should be reminded that if they hadn't insisted upon playing angel there would have been considerably less opportunity for the rushing in of fools—real fools this time.

Once the biologists descended from the lofty and hidden heights of experiment and step-by-step reasoning and, entering the dark valley of theology, leaped a stream in the shadows and attempted to formulate a religion, they ceased to be scientists and became poets and preachers; and, since poetry and preaching are very human affairs, the fools rushed in—two kinds of fools: the fools who find evolution profane and the fools who vaguely and mistily really do think

we are descended from monkeys. Meanwhile, the biologists have not yet admitted that no science can build a religion and that no religion is unassailable, whether it be materialism or transcendentalism. Mystery remains, and God, if there be one, must regard with equal sardonicism the fundamentalist and the adherent of salt and water.

But what the scientist does, or the artist, immensely important as it is in the long run, is by no means as pressing important as what is done by those three curious professions, or arts—there is always a discussion there—that touch continuously and immediately human nature: the professions or arts of medicine, theology, and the law, and under the last, its subsidiary branches, the lawmakers and, in the widest sense, the police. You have time to consider the biologist and reject or assimilate his teaching, but when you are sick you want a good doctor, when you are troubled about your soul, a good clergyman, and, when the body politic is ill, good lawyers, good judges, good policemen, and, above all, sensible framers of law; and you want all these without delay. The cure cannot be put off; it is a question, one way or another, of life and death. No wonder fools have to rush in, and no wonder that at present, especially in America, lay opinion, where one of these fundamental professions, or arts, is concerned, is steadily rising to a crisis in its bitter contempt.

The doctors are wise men; they have to be; their wares are too much in the open. Even the clergy have set about to some extent the cleaning of their house, but, blindly and blithely and insolently, the bar and the legislators and the police continue increasingly to place themselves amongst the greatest criminals of a somewhat distracted era.

I say criminals and I use the word advisedly.

Now law is a curious thing, for, although it is exceedingly susceptible to chicanery and complexity, in its essence it is exceedingly simple and homespun. You can fool the average man for a while on most questions, but on this question you cannot fool him for long, for the average man, especially the man born under the Anglo-Saxon tradition, has, ingrained in

him deeper than any other feeling, save the feelings of sex and self-preservation, the sense of law. Therefore, upon no other question has the fool, or layman, more right to utter an opinion; and to outrage and thwart the sense of law is one of the most dangerous pursuits possible, even in such a sprawled and slow-moving democracy as America, even if this sense of law is usually undefined and, for a while, timidly subservient.

You not only cannot fool the average man about the law, you cannot even tell him much about it intrinsically, once he sits down to think it over. You can confuse him with legal language, you can get the better of him by trickery, you can hand him hundreds of volumes of precedent; but what the law actually is he knows because, unless he is born an idiot, he realizes that he was born into a world of law, dies according to law, and watches every night and every day things that move by law, among them the sun, the clouds, the stars. And this was true even in the days when man thought nature was the whim of gods. The basic idea of cause and effect is the same, whether you believe rain comes from certain natural laws or because you have pleased a deity.

Law is man's admission that if you hurt another man you have to do something about it, even if the reaction is no more than running away; it is man's perception of three dimensions; that is, that objects possess length, breadth, and thickness, and that you cannot walk through them. It is his discovery that there are other people in the world besides himself. That is all it is, save the further discovery that some people are weak and others strong; the discovery, in other words, of the rights of the majority and the rights of the minority. You can hide theology under a veil of special and divine knowledge, you can hide medicine beneath admitted special training, but you cannot hide the basic principle of law.

Strange that, all through history, lawyers and judges and policemen and statesmen have had to be reminded by "fools" of such an obvious truth.

Law, therefore, is man's sense of fair play and his agreement to live with other men peaceably, conditioned, of course, by the innate perversity of circumstances

and human nature. It is the most intimate thing man possesses, save, as said before, his instinct for sex and for self-preservation, and, as a matter of fact, it is a corollary of the latter, for it is an acknowledgment that the best way to preserve yourself is to preserve good sense and justice in your manners and habits and decrees where others are concerned. Law was invented, or rather it evolved itself, in the minds of ordinary people; it is a common thing, an ordinary thing, a daily thing; it is not even preserved for Sundays or illnesses, and it was only because we—the ordinary people, the fools—did not have the time, going about our usual occupations, to keep track of this discovery that it was ever turned over to trustees. When these trustees forget that they are trustees and regard themselves as inventors, then it is time to remind them of their honorable but by no means lofty position.

Furthermore, since the law is such an elemental business, you can no more fabricate it than you can make a baby. There are plenty of synthetic laws, but they bear no relation to the real thing. A real law is at hand when needed, never before and seldom long afterward, and all the pronunciamientos possible to the folly of the human mind cannot make a so-called law the law unless it is the law to begin with. There is nothing that so exposes the blocked intelligence as the statement that such and such a thing "is the law and so must be obeyed." To the lay mind, which conceived law and which must live by law, a law is not a law if it offends the sense of law, and millions of misguided experts cannot prove otherwise. The sense of law stands above all law and all laws are subject to it and refer back to it.

The English common law represents the slow evolvement of the ordinary man's desire to be at peace, as said before; not only that, but pleasantly at peace as well. Sir Edward Coke says: "Reason is the life of the law; nay, the common law itself is nothing but reason." But so is all law, even statutory law, and when, as is so often the case, statutory law is passed without any sense of law—without reason as its life—it is bound for death, as is all law that is not law.

So far so good, but to such an argument supporters of all laws as such answer of course: "Quite so, but suppose every man felt himself at liberty to pick what laws he should obey and what laws he shouldn't? Where would we be then? There are a number of people who feel that they have the right to commit murder and a still larger number of men and women who feel that the marriage laws can be twisted according to their own fancies. Even there, however, your sense of law, although perverted, is present; self-justification is the commonest of human traits."

It is—self-justification, that is—but, save in the case of abnormal people, it is born after an event, or immediately before, and is not there in the beginning, as is the sense of law. It is doubtful if the majority even of those who commit murder or abuse their wives, or husbands, once they get through with their self-justifications, mostly personal, will uphold murder or cruelty as a theory. The free-loverists, for all their noise, have always been in a small minority, perhaps not in actual practice but in their philosophy at least. Man's sense of law is involved when he involves himself with a woman, and, no matter how much he may flout this sense of law, he does not delude himself into the belief that he is practising perfect justice. The whole question, of course, comes down to one of the majority and the minority, of the normal and abnormal, and although this would seem a topic too ancient and too well known to discuss, unfortunately it has become in America the most pressing of questions. We seem to be losing our sense of the rights of the minority; that is, a large element among us seems to be losing this sense, and in this element are most legislators, most administrators of the law, and not a few judges and lawyers.

Perfect balance, of course, would be where each man could do exactly what he wanted, provided he did not interfere with the rights or comfort of any one else, but since this is impossible, the rights of the minority increase in direct proportion to their numbers and their approach to what is considered normal; their approach, in other words, to the average

man's sense of law. The witty French statement that insanity is merely a question of being in the minority is quite true, but we need not think about that for a while, not anyway until modern conditions—as they very well may do—accelerate even more than at present the production of a moron population. What we should think about is that the rights of the majority have never been, and never will be, the imposing of the majority's implicit will upon the minority; it has always been a sixty-forty proceeding. There is no other way of doing it, otherwise you so offend the sense of law of numerous people that sooner or later you have trouble on your hands. There is no other way, that is, save by persecution or war, and even then you are only temporarily successful.

Force majeure has been tried again and again in the world and has always failed. You can massacre or exile your opponents, but you cannot massacre or exile the idea that made them oppose you.

Louis the Fourteenth was a rationalistic monarch, so when he considered the Huguenots sufficiently dangerous he drove them out. He realized that statutory laws aimed at a man's conscience would not do, for the simple reason that such laws are not laws and cannot be made such. The Spanish kings followed the same logical method, but in the end both they and Louis the Magnificent failed. Protestantism is not dead in France, and France was greatly hurt by the expulsion of the Huguenots; Spain killed herself for all time by the Inquisition and her treatment of the Moors and the dissenters.

The sense of law, therefore, is elemental, the sense of law is perpetual, and the sense of law, more than anything else, is based upon the rights of the weaker, or the minority. But more than this, it is so much an entity that, although it cannot be utterly killed, it can be wounded and grievously sinned against.

It can be sinned against by affronting its perception of common sense as well as affronting its perception of fair play. It knows that in all things there are degrees of right and wrong.

Statutory laws may at times be necessary, although always dangerous, but to

say because the sense of law has called forth one statutory law the door is open to every form of statutory law is to perform a feat of reasoning called, if I am not mistaken, chop logic. It is to say that because one egg is good for you at breakfast, twelve eggs must be twelve times better; it is also to say because in Occidental countries actual polygamy is forbidden that spiritual and celestial marriages of the Mormon church should be forbidden also. Narcotics, for instance, are clearly and dramatically unsocial and every one knows it, but to say that because there is a law against narcotics there should be one against chocolate sundaes, although perfectly logical, is, none the less, perfectly insane. We forget too much the *reductio ad absurdum*; we forget that most over-earnest logicians, at least those who insist upon practising their logic, are locked up in institutions.

Chocolate sundaes do undoubtedly in many instances cause slow death, and there is no question that indigestion is an antisocial disease producing immense loss and misery, but since the victims of chocolate sundaes are not immediately vicious and the process of their decay spreads itself delicately over a long period, the question enters that vague field of compromise, where, until recently, humanity has agreed to mind its own business. You are at liberty to eat all the chocolate sundaes you want until you begin to throw glasses at the soda clerk's head and then, quite properly, you are arrested. The sense of law has always recognized this distinction. There were, for instance, laws against drunkenness; there were not, before war with its false legal values blurred the sense of all civilian law, laws against drinking, for drinking is not in itself antisocial; to the contrary, it may frequently be social. As a matter of fact, the act itself is neither social nor antisocial, but is in a realm outside the law, like brushing your teeth, going to bed, or taking your daily dozen.

Since the sense of law is an entity and can be sinned against, those who sin against it must be criminals in the same way as all men who sin against law, although unfortunately this has not yet been recognized formally. To pass or to promote the passage of a bad law is as

criminal an act as to break a good law, to permit without protest a bad law is as foolish and as conducive to crime as to permit without protest murder, highway robbery, or arson. Worse, for whereas the latter three are obviously antisocial, the former, although equally antisocial, go so deeply to the foundations of living, and are so hidden that they may undermine the state if allowed to proceed. From a purely moral standpoint, where bad laws are concerned, unless they can be repealed, nullification is the only attitude consistent with integrity, also with common sense.

We are witnessing to-day, more obviously in America than elsewhere, but none the less throughout the world, the curious spectacle of the law being punished by the sense of law, and this punishment will continue, with all its disastrous consequences, until the law reforms itself—the law and its administration. Authority stands responsible before the bar of real justice; and it is more guilty than recognized criminality, for it is supposed to be less hampered and better informed. Through slow centuries of warfare and revolution monarchy has at last learned what the sense of law implanted in the minds of even its humblest citizens is, and to-day the few remaining constitutional monarchies—England, Holland, the Scandinavian countries—are the only partially law-respecting countries in the world; the only countries, that is to say, where authority considers itself responsible to the people and the people consider themselves responsible to authority. Indeed, some of the Scandinavian governments have evolved even to the point where they realize that one of the functions of government is to promote such little considered necessities as the desire for gayety, the love of beauty, and the rational happiness of their citizens. A bizarre idea when one considers the present sullen dislike of most governments for their peoples and of most peoples for their governments. It is rumored that in certain Scandinavian countries officialdom even goes to the length of insisting that minor servants and the police be courteous to the ordinary man, let alone being just.

Democracies, drunk with the lawless-

ness of majorities, have yet to learn their lesson.

And, indeed, this insistence upon the necessity for courtesy is not fine drawn, it lies at the very root of the sense of law, besides being infinitely wise on the part of officials. As law represents not only man's desire to live at peace but to live at peace pleasantly, the insolent customs official, the brutal policeman, the hectoring judge, the insulting cross-examiner, the "bawling-out" traffic officer, the impertinent fanatic, the democrat who so little understands democracy that he thinks it an opportunity for universal hoggishness, the hypocritical lawmakers, all these in their minor ways are as serious offenders against the law as the thief, the murderer, the forger, and the framers and supporters of vicious legislation. What is authority—the rich, the governments—doing to prove to those born below a certain economic level that they should be kind toward those born above? The percentage of goodness that exists under modern conditions, small as it may be, is a tribute to the inherent decency of the human race. Some day governments will learn to present themselves to their citizens as something else than a lowering menace, legal or financial; a constant insolent rebuke. If the commissions now investigating crime will indict criminal authority as well as the admitted criminal, they will do lasting service.

But even if they don't, the world—the fools—will not forever continue to watch the liar frame laws for the comparatively honest man, the authorized thug beat the unauthorized thug, the mental prostitute sentence the far less guilty and unfortunate bodily prostitute.

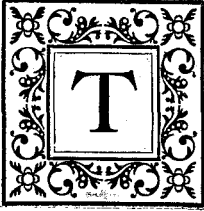
The sense of law, which is man's notion that there can be pretty nearly an honest, approximately gay, and largely constructive world, has survived many vicissitudes; it will survive even the early, perhaps necessary, experiments of democracy. It not only will survive; it must, for it is the essential idea that separates man from the rest of creation; the clear break between him and the beast. It is, furthermore, the keystone of the democratic ideal. If it cracks, the arch falls. It is a holy idea and a beautiful one.

The Director's Brother

BY VALMA CLARK

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ILLUSTRATIONS BY DOUGLAS RYAN



HE professor had pedalled up with urgency, but he now halted at the edge of the crowd in a sudden compassionate reluctance to get through to his brother with the alarming news. The setting was the entrance to the dignified old Griswold mansion; the scene which was being shot showed the home-coming of the erring son to the sorrowing judgment of his father. Backed by his little flock of camera men and assistants and by the whole fascinated town of Sweetwater for audience, Adolph Burrows stood, with one leg slung over the back of a canvas chair and with the rolled script pointing, and issued instructions to his puppets: "You're not a sad old b— of a hound—you're the boy's father, and you're torn between your love of him and your sense of duty. Get that struggle, Clifford!" The director was perhaps not unaware of the impression which he made upon Sweetwater—perhaps, indeed, some lurking thought of making such an impression had prompted him to choose Sweetwater as the location of this story. The scenario had called for a rural town, and no more rural town than Sweetwater could be found; but also Sweetwater was Adolph's home town, and he had not been back to it since he had become such a success.

Abruptly the business was over, the director was dismissing them with instructions for the following morning. And, regaining his own gentle authority, which he had lost in the contemplation of his brother's spectacular sovereignty, the professor pressed through the crowd. "Adolph, I must talk with you privately, at once. Will you come over to my house?"

"But I've correspondence back at the

Inn, John—those scenes to go over with McKinnon— Oh well. . . ."

The two brothers stood for a moment together. They were alike in contour, in general outline of face, but the meanings which they expressed with this similar physical equipment were utterly dissimilar. Though they were both full figures of men, John's was the fulness of benevolence, while Adolph's was the fulness of affluence. "My bicycle—I'll follow you," murmured the professor.

Adolph turned impatiently from his gorgeous custom-built touring car—gray with red cushions, the wonder of Sweetwater—to discover his brother's wheel. His desire was anticipated. The liveried chauffeur, with a bow for Mr. Burrows and a certain gingerly condescension for the plebeian vehicle, gathered the professor's bicycle on to the running-board, and gathered in a dumbly delighted small boy to hold it there. The door was swept open for the two brothers. The audience was dusted down by their departure.

"Ought to oil these roads, John. Well, shoot!"

"When we reach my study. The guilty son in your screen story—what is the particular crime for which he begs forgiveness?"

"Forgery."

"And does the father forgive him?"

"He forgives him, but his sense of justice won't allow him to save his son, and the kid would have to pay the penalty but for the lucky accident of . . . Clifford's flat, huh?—I'll punch it into him yet!"

"But would a father?"

"Umph, how do you know how a father might act?"

"Would you?"

"Turn over Luke to the law if he'd committed a crime? I've got a healthy sense of justice, and I probably would. Didn't mean to dig you on your lack of a son."