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# Law, State and Politics

By *GIORGIO DEL VECCHIO*\*

**T**HE modern world is in turmoil; an obscure threat puts peace in jeopardy, bringing to our mind the horrors of the two recent world wars. It would be an immense disaster for mankind if those horrors were to be repeated, in an even more catastrophic way, because of the greater power of the means of destruction. The only thing that can save us from such disaster is the law, which ought to inspire international politics and secure a just and peaceful world. Easy as it is to state this concept in general terms, it is by no means easy to determine its precise meaning, so many are the errors and prejudices which stand in the way of the solution of the problem.

The word "law" involves an ambiguity. In a merely formal sense, law means a coordination of relationships, by which certain rights correspond to certain obligations. In this sense, law necessarily exists in any condition of human life, because a complex of social relations is always involved. For this reason a state cannot exist without its own law, that is, a juridical order of which it is precisely the center and the subject. The problem changes if we mean by law an essential attribute of the human person, by virtue of which he can insist upon absolute respect for his spiritual nature. When the state is based on this, we call it a state ruled by law. Better than that and to avoid any misunderstanding, we should call it a state ruled by justice.<sup>1</sup> But questions of words are unimportant provided the concept is clearly defined. Besides, the expression "state of law" is so common today that any attempt to try to eliminate it would be in vain. What really counts is to recognize clearly that this expression does not refer to a state which has a positive formal legal order (an unfailing situation), but only to a state which conforms to the ideal of justice, in other words one which acknowledges the fundamental rights of the human person.

In this way we reaffirm a concept, already announced in classical antiquity, developed by the sublime maxims of the Christian message, and demonstrated anew in modern philosophy; the concept, in a word, of natural law. We know that this concept is still opposed by different

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<sup>1</sup> I proposed this several years ago (*DEL VECCHIO, LA GIUSTIZIA* 132 (3d ed. 1946) and also in succeeding editions), and again recently as a theme which has been discussed at the sixth conference of the Italian Society of the Philosophy of Law ("The State of Law and the State of Justice").

schools, which often repeat old errors, already peremptorily refuted. Some authors affirm *a priori* that they admit only positive law, and, from this arbitrary postulate, they deduce, with evident paralogism, that natural law does not exist. Others, referring to the inexactness of certain formulae used, perhaps merely as a linguistic device, about natural law by some authors of the seventeenth and eighteenth centuries, consider this verbal inexactness as a sufficient proof of the erroneousness of the fundamental thought of those authors and innumerable others who before and after them have elaborated the same doctrine without concurring in that inexactness. Others (for example, B. Croce) rely upon the mutability of human laws as a reason for rejecting the concept of a rational or natural law,<sup>2</sup> overlooking the often demonstrated fact that certain external rules of reason may be conciliated with their various applications through the course of history. Thomas Aquinas, for instance, has clearly explained that the principles of the law of nature, immutable in themselves, cannot always be applied in the same manner, but must be subject to particular circumstances "et secundum personas, et secundum negotia, et secundum tempora."<sup>3</sup> There is, in short, in human laws, an element of relativity which does not exclude their absolute basis.<sup>4</sup> This basis, the law of nature, is a criterion by which we can identify justice, as well as possible deviations from it, due to the fallibility of the human mind, since in the form of legality may be included a real injustice.

The meaning of that law, which corresponds to an imprescriptible requirement of our conscience, is intrinsically *deontological*, as an *ought*, that remains valid above the empirical sphere. The fact that this law can be violated does not destroy its value. Only a false philosophy ignores that the human being, although he belongs to a material world, is also partaking of universal and eternal ideas and norms. For this reason he feels himself free and responsible, because of a light of natural reason which imposes on him an obligation to respect ethics in both its basic forms, charity and justice. For this reason he is entitled, in the name of ethics, to insist upon respect for his personal dignity.

It must be remarked that the ethical principle is unique, and

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<sup>2</sup> CROCE, *FILOSOFIA DELLA PRATICA—ECONOMICA ED ETICA* 323 (6th ed., Bari, 1950).

<sup>3</sup> See ST. THOMAS, *SUMMA THEOL.* 1a, 2ae, q. 95-97. Cf. SUAREZ, *DE LEGIBUS AC DEO LEGISLATORE*, book II, ch. 13, at 3-5.

<sup>4</sup> On this can be seen my essay *Mutabilita ed eternita del diritto* (in the law review *Jus*, March 1954), and in *11 STUDI SUL DIRITTO* 5-26 (1958).

manifests itself in its two forms, previously mentioned, because it produces norms, respectively, for each individual and for the relations among several subjects. Justice is nothing other than the social profile of ethics.

From these elementary notions a correct conception of state and politics can be deduced. But how many erroneous theories have been developed to the contrary! To mention only a few of the well-known, we recall that, according to Machiavelli, the state should be understood as strength or power to command, without any moral limitations; from which follows the justification of the absolute power of the prince, and his privilege to use violence and cruelty, trickery and fraud.<sup>5</sup>

Machiavelli had in mind, in fact, a noble purpose: to establish a unitary state and "to free Italy from the hands of the barbarians", but his fatal mistake was to believe that to reach a desired end, any means, even the most immoral, are justified. In Machiavelli's words we still find something of value mingled with imperfections; but the extreme immoralism of Nietzsche's work is even less estimable. It is well known that with his extravagant "inversion of all values" he not only harshly opposed the fundamental principles of ethics, but also the idea of the state itself, which he defined simply as "a monster."<sup>6</sup> Croce, on the contrary, exalts the state, but defends "the amorality of politics, the priority of politics to morals";<sup>7</sup> a theory that resembles Machiavelli's, but without the relative justifications of Machiavelli by reason of the circumstances and customs of his time. This justification cannot be granted to those who today defend a similar theory, after the state has been built, with so much labor of thought and at the sacrifice of so much blood, on a basis of liberty and brotherhood, principles which Croce derides as "stupid formulae."<sup>8</sup>

Although these fallacious theories have been widely publicized, making their authors famous (because paradox and error solicit fame more than does truth), the main principles of ethics, including those which deal with the law and the state, have always been kept alive in the conscience of the civilized peoples, as can be seen not only in the works of many writers, but likewise in constitutional laws and international documents. It is enough to recall, for example, that the Constitution of the Republic of Italy "acknowledges and guarantees

<sup>5</sup> MACHIAVELLI, *IL PRINCIPE*, ch. 18 (1513).

<sup>6</sup> NIETZSCHE, *ALSO SPRACH ZARATHUSTRA* 69 (Lipsia ed. 1904).

<sup>7</sup> CROCE, *ELEMENTI DI POLITICA* 27 (3d ed., Bari, 1949). See also, by the same author, against natural law, CROCE, *FILOSOFIA DELLA PRACTICA* 324 (6th ed., Bari, 1950).

<sup>8</sup> CROCE, *ELEMENTI DI POLITICA* 23 (3d ed., Bari, 1949).

the inviolable rights of man" (Art. 2), and that a similar statement appears in the United Nations' "Universal Declaration of Human Rights" of December 10, 1948.

The old sophism according to which the art of politics is not bound to respect truth but consists rather in the art of dissembling, has been expressed in many proverbs, still often quoted. This accounts for the persistence of deplorable mistakes in the analysis of the relation of politics and morals. The silence dictated by prudence, a virtue needed by everyone and especially by statesmen, has been confused with the vice of falsehood, a vice the more blameable as the social position of those who practice it is more elevated. For this reason Romagnosi observes that statesmen should be an example of truth and loyalty.<sup>9</sup> All of Mazzini's noble work is inspired by the "worship of truth," and strongly opposes a "diplomacy based on lies" and also "the theory of useful crimes and convenient falsehood, and others of a like nature." "It is necessary and urgent," he stated, "to establish politics on a moral basis."<sup>10</sup> Addressing himself especially to the youth of Italy, he urged them to "throw away the Machiavellian notions of tactics and convenience. A nation is not created in such a manner; it is created by the truth, the boldness of faith, and by sacrifice." This brilliant description of the process of creating a nation is confirmed by history itself, because the unity of Italy was obtained by virtue and heroism, while the deceptive and false counsels of Machiavelli failed to liberate Italy from either internal discord or foreign domination.

Healthy politics cannot survive apart from the principles of morality and justice, which have been engraved in the human spirit because of its rational nature. Such are the principles to which the constitutions of states which wish to be considered "states of law," should be adapted. It is the responsibility of politics to apply and to develop these principles in the particular social environment and factual conditions of each nation. The application of these principles requires an unceasing labor, because the life of the state has no pause, circumstances change, and in the very center of the state frequently arise differences and contrasts, which politics should endeavor to solve, always aiming at the basis of the state and its essential goals.

No one, moreover, can deny the fact (demonstrated clearly not only by history, but also by present experience) that a state can be

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<sup>9</sup> 3 ROMAGNOSI, *ISTITUZIONI DI CIVILE FILOSOFIA OSSIA DI GIURISPRUDENZA TEORICA* § 2974 (De Giorgi ed. (1845)).

<sup>10</sup> 6 MAZZINI, *SCRITTI EDITI E INEDITI* 232 *et seq.* (Daelli ed. 1863); 11 *id.* at 74 (1882).

organized on a basis other than one indicated by natural law or reason, which theology conceives as a reflection of the Divine wisdom. A state can exist if there be power in fact over a certain population in a definite territory, even though this power be based only on force and not on law in the sense we have previously explained. In that case, there will be a politics supporting such power; but, in opposition to it, another politics, inspired by the most profound motives of the human soul, will try to establish a state of justice. This can be attained through reforms, or in the most extreme case by revolution. The celestial voice of conscience can never be kept indefinitely silent; numberless examples of this can be found throughout history. Famous are the words of Antigone in Sophocles' tragedy, who called upon "the unchangeable laws of the Gods" against a cruel decree of a tyrant; words which, according to Yves de la Brière, are "le témoignage de l'âme naturellement chrétienne."<sup>11</sup> Not less famous is that "appeal to heaven" which Locke indicated as the last resort when it is not possible to appeal to an earthly authority.<sup>12</sup> Similar are the expressions of William Tell in Schiller's play: the power of tyrants has a limit ("eine Grenze hat Tyrannenmacht"), and when its oppressive weight becomes intolerable, the oppressed draw from heaven their eternal rights, inviolable as the stars.<sup>13</sup>

The state, as an order of positive law, is formally considered a sovereign. Sovereignty can be understood, however, in two entirely different senses: as absolute, arbitrary power, or as power bound to law and therefore not unlimited. In the same way the liberty of the individual can be conceived either as simple will or as an authority subordinated to law. It is easy to discern that in the first sense sovereignty and liberty have no moral values whatsoever. A state which considers itself free of the obligation to respect the fundamental rights of its citizens, much less those of other states, or even international treaties signed by itself, is not a true state; it is an outrage to human reason and a permanent threat to world peace. In a similar way, it is an illusion to consider a man free when he is subject to the impulses of passion; only he is free who obeys the laws of his own spiritual nature.

There is no need to discourse further these elementary concepts in order to refute the grave errors we have mentioned. It is worthwhile, however, to note that equally unacceptable is a thesis which

<sup>11</sup> Yves de la Brière, *La race et le droit* in *RACISME ET CHRISTIANISME* 112 (1939).

<sup>12</sup> 2 LOCKE, *TWO TREATISES OF GOVERNMENT* § 242 (1690).

<sup>13</sup> SCHILLER, *WILHELM TELL* Act II.

came into prominence at the Peace of Westphalia (1648), according to which a state is bound only to the rules of international law to which it has given its own consent. To tell the truth, it does not seem that the Treaty of Westphalia meant to deny the existence of a law of reason, valid for all nations; the real intention was rather to emphasize that no state should be placed under the leadership of other states or of other similar powers. The interpretation of that treaty, given by some authors, is therefore probably not exact. At any rate, it is certain that the ideal of a natural society of the human race, conceived in classical antiquity, and validated by Christianity, was partially applied, as well before the Peace of Westphalia, as in the following centuries and especially in modern times. But this ideal has not yet been completely attained, and appears still as a distant goal.

The unitary organization toward which history proceeds, in order to be healthy and vital, must be based on the same principles, established, as we have said, by the constitution of each state. The adherence to that international organization must be considered as obligatory and not optional, as it is presently considered by the United Nations. No state has the right to refuse to enter into peaceful relations with the other states of the world. It is for this reason that the great Spanish jurist Francisco De Vitoria affirmed that "totus orbis aliquo modo est una respublica."<sup>14</sup> He accordingly insisted on the principle of free communication among the nations for peaceful purposes, and considered the violation of this principle one of the few *just* reasons for war.<sup>15</sup> The same concept was defended, not long afterward, by other great jurists and philosophers, such as Alberico Gentili and Francisco Suarez.

To become a member of the universal society does not mean that all states should possess equal functions and powers. A distinction must be drawn between the legitimate states and those which ignore the essential rights of the human person. Only to the former, in my opinion, should be given voting power, at least in the more important matters; while to the latter could be given secondary functions, with the statement that they would participate in the important matters only after a reform of their imperfect constitutions; a requirement which would undoubtedly serve as an incentive for such reform.

A false parity which does not take into account differences of

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<sup>14</sup> DE VITORIA, DE POTESTATE CIVILI 21 (1557).

<sup>15</sup> DE VITORIA, DE INDIS RECENTER INVENTIS § 3 *et seq.* (1557); DE TITULIS LEGITIMIS; RELECTIO, DE INDIS, SIVE DE JURE BELLI HISPANORUM IN BARBAROS.

capacity, merit and attitude, when these differences are really serious, is a grave error; it should be noted that the United Nations is not free from such an error, since in modern times it has admitted as members a large number of nations which have hardly emerged from barbarism and are absolutely without valid constitutional rules. Such states have been equated with some of the most civilized states. By another obvious anomaly the charter of the United Nations has given a privileged position to five states, considered "original members," certainly not all of which respect human rights, but each of which has a veto power over the deliberations of the others on all the most important matters. As a consequence of these defects we have already experienced no little difficulty, and in that hide more serious dangers, especially when, as cannot be denied, any of the privileged members collaborate with many states which ignore liberty and justice, for the purpose of opposing the states which defend those ideals.

We should not, however, repudiate this organization, but seek to have it correct its imperfections, in order to be able to attain more effectively its noble goal. If this is not done, no one can guarantee that, like the defunct League of Nations, the United Nations itself will not be superseded by another organization which would be a better defender of human rights.

Of great importance meanwhile is adhesion to those international organizations which, although formed of small numbers of states, are really more valid defenders of civilization and peace, because they are more homogeneous and are founded on a real community of principles and ideals. To call in question the fidelity to these organizations, constituted with the collaboration of Italy, would be on our part more than an error and would come nearer to a crime.

A sterile neutralism is a sign of a bad conscience, and has never succeeded in assuring peace, which, like justice, can be safeguarded only by vigilant and resolute action. We must remember that, according to Lactantius' maxim, "militia est in ipsa justitia," and that a timorous yearning for a quiet life not only has never prevented war, but sometimes has provoked it, as recent experience has clearly demonstrated.

False is the policy that tries to keep at equal distances the good and the bad, civilization and barbarism. By a false egalitarianism we have consented to abandon colonies, which had put semi-barbarous peoples on the road of progress, with the result of creating states where base passions such as race hatred have risen, and from which fires of anarchy

and tyranny have often spread. That has not prevented, as we have remarked, the admission of such states, with parity of rights, into the United Nations.

Past political errors are almost always irreparable (*quod factum est, infectum fieri nequit*), but we ought to recognize them and make every effort at least to prevent their repetition and aggravation. We must always defend the supreme values of the spirit, and also the truths of elementary logic which, although sufficiently obvious, have many times been neglected and forgotten: for example, that he cannot support international peace who puts in danger the peace of his own house by fostering the struggle of classes.

A coherence is necessary between internal policy and external policy. A legitimate state, which accomplishes its mission, must protect its own juridical order, maintaining righteously the integrity of its own territory, and assisting the intellectual development of the nation. It would be all the more blameable for us today to show any weakness on the subject, after an unjust treaty by which Italy has been so cruelly mutilated.

At the same time, a state should not be self-contained and shut itself off from other states. It must foster and facilitate the utmost communications with other peoples, particularly in intellectual matters. It should work for the greatest possible agreement with other states, not only for special objectives, but also with the purpose of organizing a stable union, which would include at least some of the European states, on a basis of law and justice, since at present it is not possible, on this basis, to have a union of all. We can proceed in this way, step by step, to the positive construction of that universal society which an indefectible postulate of human reason commands as a categorical imperative.

We ardently hope that the crisis which presently threatens the world shall be overcome and, according to the sublime invocation of Pope Paul VI, peace, indissolubly bound to justice, will triumph at last for all the ages to come.\*

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\* Translated from the Italian by Professor Jovimano Carvalho Neto, Sergipe, Brazil, with the advice and assistance of Professor Ralph A. Newman, Hastings College of the Law. This article may be found, in Italian, in 42 *RIVISTA INTERNAZIONALE DI FILOSOFIA DEL DIRITTO* 397 (1965).