

## THE PAGANISM OF CÆSAR.

**B**ROADLY speaking, the office of the law of the land is to deal with the rights and wrongs of individuals and of society. It does not profess to deal with every wrong of either, nor is it competent to do so with or without any such profession. It cannot reach all the wants of individuals, or of society. It aims, here and there, to protect virtue where it can, and at times to punish vice where some other person is wronged by it. It cannot teach morals, but it gives its aid, with its own lights, to what seems morality, and represses certain forms of immorality.

The State behind this law accepts God's moral law as it finds it, but it is neither able to interpret that law, nor to add to, nor diminish its provisions. In so far as this moral law is the measure of man's daily secular life, the civil power, the temporal power, is without office or jurisdiction. These large and most important duties fall within the spiritual order, and for them it is the province of the spiritual order—the Church—to legislate.

This division will not be accepted by those who do not recognize any King but Cæsar. For them the State or temporal order is a guide for the present life, leaving the regulations for the next life or for any other state of existence out of the question. Even for many who recognize a spiritual as well as a temporal order of things there is the overshadowing omnipotence of the State before which all mere spiritual regulations must give way. These indirectly put themselves as completely within and under the civil power as if there was no other. Of the two orders existing side by side, each independent of the other in its own sphere, and each supreme within its own sphere, but both closely connected and coming from the same God, there should theoretically be nothing but harmony; but when one comes to consider that every human act reaches out and touches the infinite and has its spiritual as well as human side, and that a multitude of human acts are obviously contained within the spiritual, one is not at a loss to see how easily conflicts may arise, and how readily a case may be found the settlement of which would be claimed by one of two co-ordinate powers.<sup>1</sup> "The Church within its rights, and the State over all," is not so often heard as it is meant to be heard. "The Church within its rights and the State to judge of those rights" is that

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<sup>1</sup> The Encyclical *Immortale Dei*, November, 1885, is the perfect pronouncement on this subject.

species of modern atheism that is so acceptable to the world. The Church and the State cannot be co-ordinate without conflict. If the State is to define the limits of all law then, not only can it legislate in the spiritual order, but it can legislate all churches and all morality out of legal existence. That would be the worse extreme because no matter what *ultra vires* ordinances the spiritual power would make, they could never be carried into effect without the aid of the civil executive.

Even in this utilitarian point of view, the superiority should be accorded to the spiritual power; but from the nature of things the spiritual authority should be paramount in spiritual matters, else there is an end to all consistency. Granting that the temporal order is from the same God, the spiritual is intrinsically as high above it, as the things of heaven are superior to the things of earth.

It is not intended, however, here to discuss the orders temporal and spiritual, but to state as a fact, what must be admitted in the long run, that in every question of a spiritual kind the final authority to decide lies in the spiritual and not in the temporal order, for if one is to obey God rather than man, the former is superior to the latter. This doctrine of the Catholic Church works no harm in practice, but simply gives God His place in the Church, as well as in the State. All laws to be binding must come from Him, and if there are many nations of the temporal order under His eye, there is, as Catholics believe, one Spiritual Commonwealth—one Church to which He has entrusted the spiritual government of the nations and of mankind individually. "For it is not enough to say with Carlyle, after many German philosophers had thought it, and the Hegelian synthesis had given it a recognizable name, that the world is a system with one life flowing into all its veins and arteries and binding up the elements thereby, lest they fall into hopeless disorder. This half truth may, and in the course of time must, have for a consequence the absorption of the individual's body and soul into the devouring State. This half truth needs yet to be completed by affirming that God is the Life of that life and deals directly with every human soul."<sup>1</sup>

What the Church teaches in spiritual matters is to be held above all human temporal law—not only because that law is unable to interpret or execute spiritual matters, but also because it is a usurpation of the prerogative of the Divine Commonwealth—the Church whose privilege and duty and mission it is to expound and enforce the moral law and determine its own sole and unfettered jurisdiction with reference thereto.

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<sup>1</sup> *Dublin Review*, vol. xxxi., pp. 194–195.

The militant Church in this as in a thousand other matters has to combat the usurpations and encroachments of the civil order in matters specially within her own jurisdiction. It is the purpose of this paper to draw attention to some of these and to treat them from the point of view of a lawyer, and not that of a theologian or churchman.

First of all the State may say to itself, as did the unwise builders of old, "Come, let us make a city and a tower the top whereof may reach to heaven," though, as happened on the plain of Sennaar, they may cease to build the city, and may be scattered over the face of the earth. They may not understand one another's speech, though before they were of one tongue and of the same speech. They will have done no more than raise a monument to confusion. This has been the great, the sublime, so to speak, effort of the post-mediæval age. By one bold step a nation usurps all spiritual rights, and proposes to establish by its own potency a spiritual order which shall exist for all purposes human and divine. True, it will endure only so long as the temporal order exists, and die out when the temporal state is subverted or falls into decay, but in the meantime it will tower to heaven though it rests on the clay. This miserable conception of a church and of all things spiritual was realized in the sixteenth century, and has in its stronghold all but run its race. It will perish, as Cardinal Manning has beautifully said, by "that law of mortality which consumes all earthly things." It was not simply a bringing in the bondwoman to be mistress of the household, but it was a turning out the lawful consort to starve and die on the highway. It was such a monstrous treason to divine government as the world had never seen. The ignorant pagan rejected and persecuted the Catholic religion; but it was reserved for those professedly of the faith, and trained in the belief of a Divine Guide to throw off their allegiance to constituted authority and voluntarily exchange the yoke of Christ for the yoke of man. And so these sons of confusion speaking theretofore one tongue and one speech were scattered abroad, each speaking a language of his own—each at variance with the other and all with their former selves.

This experiment of combining the spiritual and temporal order, wherein the temporal was the acknowledged master, as history shows, has failed; and, as reason might have predicted, could not help failing. It was mighty in design, and promised all things in a legal and constitutional way. When the moral rule was acceptable to the State, and fitted it like the rare guest in the Procrustean bed, well and good; but if too long or too short it was lopped off or stretched to meet the required standard. And so morality

and spiritual matters were enacted, and amended, and repealed, along with the Game laws and the Civil Service regulations, and men were legal Christians and justified by Act of Parliament. The spectacle of the civil power, the temporal State establishing a Department of State for the spiritual guidance of a people, was, in view of the awful seriousness of the undertaking, apart from the arrogant assumption, enough to make the angels in heaven stand aghast.

Take the example of the Falck laws in Germany. Mr. Frederick Harrison, in the *Fortnightly Review*, discussed the practical effect of these laws: "First they require, as the condition of fulfilling any function in the Christian community, that the priest or minister should submit to a specified system of State education, and should have three years of theological training under a State professor. Next they require the sanction of the government to the appointment or the transfer of a cleric to any sacred duty, great or small, in every Christian community. Then they place the direction of the education in every clerical training-school in the kingdom in the hands of the minister of State, and make illegal any new religious seminary of whatever sect and however supported, including boarding-schools for young persons. These, then, are the main provisions. That is to say, the State undertakes the theological training of every kind of Christian cleric, Protestant or Catholic. It regulates the appointment of every kind of clerical duty, Protestant or Catholic, and it suppresses every theological education other than its own."

It is not necessary to particularize what ordinances a State may make in regard to religion; in discipline, in doctrine, in dogma, it is enough to see that it assumed to have all power in heaven and on earth. It was a mere question of lay votes in the House, not so much whether there should be sacraments or sacrifice, kneeling or bowing, but whether there should be altar, creed, or any visible form of worship whatever.

When the human, temporal, shadowy, and perishable power of man sets aside the Divine Guide and offers himself as a substitute, promising legal salvation, one is apt to think of the lying, boastful promises of the Tempter when he said to the Guide Himself: "All these things I will give thee if falling down thou wilt adore me." And so the State promised much to those who fell down and adored it, and they fell down and adored. More than that; rising they got possessions and lands and everything that the State could give, and these they kept, and will keep them always. To have a legal right to the things of this world is the religion and highest morality of the State. Its Kingdom is of this world.

The usurpation of the State in the case of a Church Establishment—a phrase as humiliating and significant as if one would say the Post-Office Establishment or the Army and Navy Establishment—is one that, when complete, effectually disposes of public worship and of all things spiritual. One well-worded Statute of Conformity makes short work of Dissenters and their churches and creeds. State churches, however, are going out of fashion, and it is not usurpations of this sort one must now expect, but encroachments more or less harmless in appearance, but in reality, and in the long run, totally subversive of religion.

The modern State having seen the failure of an Establishment in religion has gone to the other extreme. It will have nothing now to do with God or religion. There remains, however, some remnant of the spirit of old days when the civil arm helped the spiritual one to preserve decent respect towards the Creator of all things. There is a legend, preserved among other legal fictions, that Christianity is part of the law of the land. Well, to some extent it is part of the law of the land, but to what extent more than fifty other things which are part of the law of the land? It is, no doubt, contrary to law to speak or write or publish any profane words villifying or ridiculing God, Jesus Christ, the Old or the New Testament, or Christianity in general, with an intent to shock or insult believers, or to pervert or mislead the ignorant and unwary.<sup>1</sup> This is Blasphemy as legally defined, and renders the guilty person liable to fine or imprisonment, according to the discretion of the Court. The intent is the material point; consequently, we may villify and ridicule God and everything sacred, and yet the law of the land will take no notice thereof unless the jury find there was the intention of shocking or insulting believers or perverting or misleading the ignorant and unwary. Thus a man may “soberly and reverently” examine and question the truths of those doctrines essential to the Christian faith, no matter how fundamental, without offending the law.<sup>2</sup> No opinion, however heretical, no sarcasm or ridicule to the verge of profane scoffing or irreverent levity, can be held to be legal blasphemy and within the reach of the civil law. “The common law of England . . .” says Lord Mansfield, “knows of no persecution for mere opinions.” “I apprehend,” says Mr. Justice Coleridge, “that there is nothing unlawful at common law in reverently denying doctrines, parcel of Christianity, however fundamental.” To those who are familiar with the ordinary civil law of libel and slander, there is nothing here that the State does for God and Christianity that it does not

<sup>1</sup> See Odgers *On Libel*, 2d ed., page 332.

<sup>2</sup> Mr. Justice Erskine in *Shore & Wilson*, Cl. & F. (House of Lords), 524, 5.

do every day for any citizen or subject, or any of the institutions, recognized by the law of the land. The secular Courts interfered to punish blasphemous libels for the same reason as they did in the case of any other libel, viz., in order to prevent a disturbance of the peace.<sup>1</sup>

If the State stopped at this point it would be somewhat a justification of the phrase that it regards Christianity as part of the law of the land and further that it will see that God, the Three Persons of the Blessed and Undivided Trinity, are duly respected and that the Scriptures are not burnt contemptuously and irreverently.<sup>2</sup> This puts all these sacred persons and subjects on an exact level, before the law, with mankind and its institutions. But the State has not stopped at this point. Unitarianism for example, is not and never was blasphemous before the law, and the law will uphold a bequest "towards the support of Unitarians."<sup>3</sup> These and other bequests that have been upheld for this monstrous heresy may not so obviously "strike at the root of Christianity," as Lord Raymond said in *Rex v. Woolston*,<sup>4</sup> but what about trusts and bequests for the spread of the Jewish religion? One would suppose that to help the Jewish religion would be scarcely a recognized principle in a commonwealth where Christianity is part of its law. Lord Hardwicke, it is true, in the year 1754 decided<sup>5</sup> that a bequest of twelve hundred pounds to found "an assembly for reading the law and instructing people in our holy religion" (the Jewish) was void as being in "contradiction to the Christian religion which is part of the law of the land." Now however the case is different. By a Victorian statute<sup>6</sup> Jews are now placed on the same footing as Protestant dissenters, and all bequests to promote the propagation of Judaism are valid. And long before this statute, by a case decided in 1813, trusts and legacies in favor of Jewish synagogues were held to be valid.<sup>7</sup> The spirit of Liberalism could not be fairly expected to do more than this, to legalize divisions in its own household.

The encroachments of the State are perhaps more baneful in process of time than its most daring usurpations. For it may not only take its property by delicate confiscation but it may debauch the household and at last may gradually wean and then carry off

<sup>1</sup> Odgers *On Libel*, 2d ed., page 340.

<sup>2</sup> Father Petcherini was indicted in Ireland in 1855 for having contemptuously, irreverently and blasphemously burnt a Bible in public and with intent to bring the same into disregard, etc., etc. After a one sided charge by Baron Green the monk was acquitted. See 7 Cox, C. C., 79.

<sup>3</sup> *Re Barnett*, 29 L. J. Chy., 871.

<sup>4</sup> 2 Str., 834.

<sup>5</sup> *Da Costa v. De Pas*, Ambler 228.

<sup>6</sup> 9 and 10 Vic., cap. 59 (1846).

<sup>7</sup> *Lasarus v. Simmonds*, 3 Mer., 393.

all its inmates. And all this may be done so plausibly, so patriotically, that we may be reprehended and abused for not being charmed with the process.

The modern State, with the benefit of some experience in bolder methods, says in effect: We will have nothing to do with religion, the name of God shall not appear in our constitutions, we shall prohibit the recognition of any form of worship; we will banish the crucifix from our courts of law and the mention of salvation from our systems of instruction; we will give freedom to every one in the churches but let us have the training, the education of the country. Give us the Child. The world is wise in its methods—the child of to-day is the man of the next generation. And so a State system of education is legalized and the next step is to make it compulsory. That is the tendency of the present age and it is nothing more or less than the most dangerous attack that has ever been made on the very existence of Christianity. It is worse than an Establishment, it is worse than a Persecution. It is such an abridgment of parental and spiritual rights as will lead to the most disastrous results. The old writers on law would have held up their hands in horror at this invasion of the natural rights of man. The Church always taking the ground that intellectual training should go hand in hand with moral and religious instruction, sees the State taking under its control what it deemed as the sum of all education and either neglecting or repressing or perverting the larger half of it. Yet when the State is through with its so-called education when and how can the foundation of all education be laid? How can you prop up the foundation while the gingerbread ornamentation is glittering on the roof? It would be, perhaps, better for a Christian father that his child should have been trained in a school of what he deemed the deadliest errors of religion and morality than that he should be brought up in an atmosphere in which religion and morality were legally excluded. There from necessity a false religion and false morality would have taken its place. One can attack and correct the errors of a known system, but how can one be certain he has ever reached the influences of a thousand indefinite impressions? One cannot attack an unknown quantity as well as one can a positive, tangible, and determinate system. When once a State is determined that the education of its children is its duty and the duty neither of Church nor of parent, you can count, humanly speaking, on the next generation being as far from the Church and with as little of the belief of its members as human laws and worldly associations can make it. The great danger of this present day is the loss of the child. Could this be actualized now all would be lost.

“The education of children in a manner suitable to their station

and calling," says Chancellor Kent, "is another branch of parental duty, of imperfect obligation generally in the eye of the municipal law, but of very great importance to the welfare of the State. A parent who sends his son into the world uneducated and without any skill in any art or science does a great injury to mankind as well as to his own family, for he defrauds the community of a useful citizen and bequeaths to it a nuisance. This parental duty is strongly, persuasively inculcated by the writers on natural law. Solon was so deeply impressed with the force of the obligation that he even excused the children of Athens from maintaining their parents if they had neglected to train them up in some art or profession." The learned jurist goes on to show how several of the nations of antiquity were so impressed with the duty that they feared to entrust it to the parent. This however was "upon the principle totally inadmissible in the modern civilized world of the absorption of the individual in the body politic and of his entire subjection to the despotism of the State." It is this despotism that we complain of.

The rights of the parents result from these duties. They are bound to maintain and educate their children and the State cannot rightfully interfere to deprive parents of this sacred trust unless for good and sufficient cause. The interference of the State is not to be dreaded in particular instances where the law rightfully steps in and deprives the parents of the custody of the child. These are not grievances but good, wholesome remedies. The real grievance is where the State sets up its own idol of education and insists upon all bowing down before it. That is an infringement on parental rights that cannot be defended. It is a blow at human liberty—at the liberty of the person.

If the morality of national or State education is to be judged by a defective system, at what depths may we suppose it to be where the leaders and types of that system are themselves devoid of Christian feeling? In England a few years ago there was an inspector of national schools who had a world wide reputation. His name was Matthew Arnold—the so-called apostle of "sweetness and light." Yet Mr. Arnold scoffed at the Three Persons of the Holy Trinity in language too brutal for repetition: he denied the divinity of Christ and ridiculed the inspiration of the Holy Scriptures. He did all this in open day, and yet was a model school inspector for Christian England all the while. He acted in a manner that certainly rendered him amenable to the civil law for blasphemous libel.<sup>1</sup> After this *quis custodiet custodes?*

Again, the State, if unable to reach the child, may try its influ-

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<sup>1</sup> See his *Literature and Dogma* and the shocking comparison of the three Lord Shaftesburys.



ence on the family. It has attacked the sanctity of marriage and has disputed the position of parents as the guardians of their children. Once the foundation of society in the family is endangered, a whole train of evils may be expected. Yet the civil law, by improperly unloosing what Heaven has joined together, strikes a serious blow at the Divine law. Marriage, with it, is a civil contract, to be dissolved or annulled on grounds more or less trivial, but always with regard to the parties interested, and not with reference to the inherent indissolubility of the relation in which they have voluntarily placed themselves. If the home is to have any sanctity, it must be preserved with a higher sense of morality than prevails in the partnership of a business-house or the by-laws of a joint-stock company. The family was the foundation of ancient society, even in pagan times; but modern theories not only disregard the family, but disintegrate it. This is a dangerous encroachment, and one that is subversive of a species of morality most essential to the well being of any State. The history of Rome affords a sample of woman at one time degraded from her lofty position as mother and mistress of her family, and at another time forced up out of her proper sphere in the opposite direction during the effeminacy of the later Cæsars. The Church alone assigns her her true place, and its Founder ennobled marriage and elevated it to the dignity of a Sacrament. The civil purpose of the modern State is to weaken and destroy the marriage tie, and to allow the contracting parties to contract other unions to the confusion of their own offspring and the scandal of society.

And so, in various ways, the State goes on, little by little, eating into the Divine law, and by mere human regulations adapting itself to the fallen and depraved natures of its subjects. The Church as an organization, the family, the children, the rights of parents and guardians, become at length matters of civil law, until there is no law beyond it. It does more than all this—it seeks to withdraw the firm ground from beneath the Church and leave it nothing to rest upon. With this object it attacks the Church's rights to property, and enacts what it calls Mortmain laws. No land, or money to be invested in land, or mortgage securities, or any of those species of property called chattels real, can be left by will, and sometimes not by deed, *inter vivos*, to religious bodies or for religious purposes. Not a farthing's worth of these, out of the wealth of a millionaire, in some countries styled Christian, can be devised or conveyed, to have one Mass said for the repose of his soul, much less to build or help to build a church for the most struggling parish in the land. The law favors everything of earth and nothing of heaven. What an extraordinary thing it is, that in a country where Christianity is said to be part of the law of the

land—as in England, for instance—you will find a score of statutes repressing in every way the devoting of one solid acre of land to perpetuate the name and religion of the Founder of Christianity, or purchasing a few feet of earth for the burial of one of God's poor. Such is the fact, however, and such is and has been the policy of the law, even when England was not of the religion it is to-day. The State, as it fights for the things of the world, is the same State, whether in the time of Richard II. or George II., whether in England or in France. Truly, its kingdom is not only of this world but it begrudges and restrains any gift or disposition that looks beyond it.

The State, however, is not without its arguments against the foregoing, and it has a morality of its own to offer. The Sunday must be decorously observed, though not with the strictness of a Scotch Sabbath, nor with the exactness of the Blue laws of New England. A day of rest is a human necessity, and any Divine Ordinance is well as a corroboration, but not essential to the validity of the statutes. Men and animals require rest, and it was a habit of even pagan nations. And so the moral precept can be followed where good reasons exist, apart from the precept. Sunday must, therefore, be decently devoted to rest or idleness—or rather to ceasing from labor. But there the ordinance ends, and there is nothing spiritual in it, no more than in the “three days of grace” on a promissory note. There is no morality about it, and there could be none no matter what was intended.

The State, however, recognizes God in its courts of justice. This, when inquired into, has no great depth. Perjury is a crime when any one is injured pecuniarily, but as a sin simply, perjury is of no consequence from a legal point of view. To be a crime, perjury must be a wilful false swearing in any judicial proceeding. Then, the matter of the oath must be material to the issue or point in question, and the oath must be a lawful one, administered by some person of competent authority. When you come to regard all these, the moral complexion of perjury is lost sight of altogether—it is the highest contempt of the civil court, and the law must take care of its own self-respect and that of my lord the judge.

Again, blasphemy and sacrileges are punishable—the former when it disturbs the peace or is occasion of scandal to decency; the latter, when there is injury done to the material church. Of common swearing, lewdness, immorality, and all the species of offences known to the criminal law up to murder and treason, the safety of the citizen, as the Roman law has it, was the supreme law; the sin was not only not punished, but not taken into account. Therein the State was right—the sins that do not concern persons or property do not come within its jurisdiction. Admittedly, there-

fore, if mankind is to be governed by law, the civil law can only take its own share of rights and wrongs—the remainder of the list must be decided by some other law. So far as there is a visible outward authority for that purpose, it must be the Church. The Divine command is no less to render to God the things that are God's than to render to Cæsar his due.

These are a few of the encroachments of pagan Cæsar, but there are others, and the general design is to make his rule complete.

"The State," says Fr. Parkinson, "makes war on the practice of the Evangelical counsels, . . . it proscribes religious orders, and sets the brand of exile on its members. The State tears the priest from the sanctuary, and forces him to bear arms in wars, just or unjust, as it lays hands on the student in the seminary and educates him as a soldier, though God calls him to the altar. The State takes the child from the parent and the pastor, and educates him in its own schools in a mixed religion of its own; it even enters once more into the seminary, prescribes what the future priest shall learn, what books he shall study, and makes itself the final judge as to his fitness to enter upon the sacred ministry; and then, it supervises his doctrine and preaching, and takes into its own hands the control of his relations to his bishop, of the conditions of his communications with the chief Pastor of all the faithful. . . . But surely, these are enough to describe the system, which is the Anti-Christian system of relations between Church and State, which is the result of the working of the same domineering and impious spirit which carried the Roman ensigns into the Holy Place, and which shall have the fullest manifestation which God will ever permit when Antichrist shall seat himself in the Temple of God, showing himself as if he were God."<sup>1</sup>

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<sup>1</sup> *The Month*, December, 1874. See, also, article in *Dublin Review*, commenting on this.