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The Balance Sheet of Law and Religion

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Law and religion both arise from the needs of the society in which they exist. Speaking through the institutions of government and church, they disclose and enforce the ideals of the people. Those ideals may be good or bad. Law and religion exist both in democratic societies and in totalitarian states. The institutions of church and government may be instruments of oppression as well as instruments of freedom and liberty.

In a democratic society, the concept of substantial justice seeks more than the preservation of order -- it asserts and protects the rights of free ballot, free speech, free worship and fair trial. Religion provides not only the theological, but also the ethical standards which insure the leadership which make these goals attainable. Law, through government, provides the administration which insures these goals to the individual in his relations with the state and with his fellow men.

In sum, both law and religion seek to provide society with the stability necessary for social order and with the idealism which makes that social order worthwhile. Concerned with all the details of human activity, there is no
problem too small nor an issue too large for inquiry. But there can be no quibbling, nor can we avoid the fact that law and religion have at times fostered social stagnation as well as social well-being; that they have enforced tyranny as well as implemented justice. Thus, if we are to speak of the transformation of our culture into a spiritual culture we must view both law and religion as agencies by which men implement their desires for these goals rather than as panaceas which will insure the transformation.

Within the relatively short history of our own democracy, our forefathers who rebelled at the political tyranny of their mother country established their own systems of tyranny in the new land. Religion was not free; bigotry was condoned and decent citizens were persecuted as witches -- the social order was a social order for the privileged few. And yet, the spirit of freedom was not extinguished. It fought and won its battle for a better moral, ethical and religious life, for a fairer economic order and for a more truly democratic polity.

As the new nation grew its problems grew. Science and invention provided the machines. Immigrants from the old world provided the brawn and courage. Jefferson and Jackson fought for political and economic freedom. Emerson and
Channing expounded the basic worth of man. The new problems found solution. But these solutions were new, constructive and challenging. The democracy of the 18th century did not become a limiting dogma; courageous men saw that it was only an inspiration and that the 19th century would have to provide its own democracy expanded, changed and implemented if the spirit was to remain.

During the 1840's the church's position in the great expansion of our country was put to severe test. Though dogmatism of form and creed still remained, the church assumed the added responsibility of the social, moral and economic relation of man on earth. The social problems of the early 19th century -- the care of the insane, the protection of orphaned children, education for all, improved working conditions for the textile workers all became matters for appropriate discussion in the pulpit. It was a hard and challenging decision, but the church chose wisely and the human relations of man became a church responsibility.

But there were debit sides to the ledger as well. Although the churches supported the movement for better educational opportunities, they resisted free public education because it competed with their own schools. They
sponsored Blue Laws. They assumed the absolute validity of their own ideals and persecuted those who disagreed. They resisted the findings and discoveries of the scientists. Compassion was not always present in their dealings with their fellow men.

The history of law in that same period discloses similar inconsistencies. Support for education, the improvement of working conditions, the freeing of the ballot were all achieved in some degree. But political morality reached all-time lows. The era of business without social responsibility was sanctioned by government. Legislative eyes were shut to the working conditions of industry and the living conditions in cities.

Likewise, the court assumed the complete validity of the common law system and decided cases on the experience of earlier centuries although the problems then before them bore little if any relation to the issues of an earlier English society. When progressive legislation was presented to the judges, they found it unconstitutional because it was new and because it challenged former concepts. Judge-made law, which had provided the creative element of an earlier society now became immobilized and prevented society from progressing as the social and econ-
conomic factors in society required.

The long view of history makes these weaknesses apparent. In the 17th century we were a young, rough and sturdy lot. In the rapid race for westward expansion we gave little concern to those who fell along the way. Individualism not only justified our ethical standards of freedom and liberty but also relieved us of responsibility for our fellowmen. Inconsistently cooperation among men was high in the agrarian west. But cooperation was placed on the level of individual morality. Group responsibility for the social and economic consequences of community living was not as yet an ethical standard of our society.

Fortunately the heritage of the first half of the 20th century has been more encouraging. Although bigotry, prejudice, and intolerance has not vanished from religion, active amelioratory forces are discernible on the horizon. People, both in and out of religious organizations, are slowly acquiring religious tolerance, which, whether expressed as a complete disinterest in formal religion or as expressed through the church institutions themselves, implement the ultimate goal of religion, free from prejudice based on faith and creed.

In the realm of law the ever accelerated pace of our society has been reflected in legislative action cal-
culated to maintain the social order free from breakdown or revolt by establishing new standards for the fulfillment of the social and economic desires of the people. Likewise, the courts have recognized that although the judges will be criticized for overruling old precedents and creating uncertainty in the law, the courts must permit change in the social order if the Constitution is to remain an effective document.

There is never total agreement on the ethical postulates of a given society, for individual standards of morality are not in complete harmony. Thus, at any given time or place, the controlling postulates of the society are those upon which a majority agree. Usually these postulates are sufficiently well accepted that they crystallize into law either as a result of their adoption by courts or as the result of formal promulgation by legislative bodies. These postulates once adopted may remain the postulates acceptable to a majority of society or the ethical standards of society may develop in advance of the formal rule. The experience of our nation has been that the ethical standards have consistently outrun the formally accepted rules of law, and thus it is forever
the obligation of those who formulate the postulates to see to it that upon acceptance these postulates find legal expression.

The premise of legal liability is founded upon the proposition that one person owes a duty to another. This means a duty recognized by the law and enforceable in a court of law. The duty may arise as the result of agreement between persons or from the experience of society that particular activities are harmful to others and that thereafter the actors have an obligation to refrain from injurious conduct. Morality, however, may frequently dictate to the individual conscience the acceptance of a duty which is more extensive than that which the law directs. For example, one person may invite another into his home. The owner is by law under an obligation to warn the invitee of any hidden dangers but save for that obligation the law creates no duty. However, many home-owners feel a moral responsibility which is more extensive, so that if the guest is injured by falling on a stairs even though the stairs are properly safeguarded, the owner desires to reimburse the guest for his injuries. This the law does not countenance as a matter of right; but it is apparent that enough people
assume this obligation that it is now profitable for insurance companies to write policies providing this type of protection. In other words the moral responsibility assumed by the individual is more extensive than the legal responsibility.

Again, only certain promises are legally enforceable and yet the moral connotation of the phrase, "his word is as good as his bond," announces an ethical standard acceptable to many, so that even though the law does not require performance of a promise the individual stands ready to perform.

This concept is even accepted by the state. The rule of the common law was that the citizen could not sue the state for the fault of the state's servants. This was derivative from the concept that the king could do no wrong. Although the rule of the common law remains unchanged in most states, legislatures frequently pass "private bills" wherein the legislature assumes the moral responsibility to compensate people who have been injured by the carelessness of state employees.

Likewise the state has, through legislative action, frequently imposed responsibilities on individuals who are unwilling to accept them. For example, the majority
of society felt some 30 years ago that it was appropriate that the owners of businesses assume the risk of injury to employees resulting in the course of their employment. Certainly a majority of business men at that time felt no moral responsibility for such injuries. The common law doctrine of "assumption of risk" and the so-called "fellow-servant rule" justified their legal position. But the majority of people felt otherwise and as a result workmen's compensation laws became universal. Since that time we have seen the decadence of age and risk of unemployment become obligations either of industry or the state. We now push forward with demands for health insurance and are in the process through fiscal controls of controlling on one hand, the course of the economic cycle, and on the other, of assuming social responsibility through government for "full employment."

III

Since the middle of the 18th century, religion, through churches, has sought to mold the character and content of our society by urging men to accept ethical standards and moral responsibility above and beyond the law. The institutions of the church are not alone, how-
ever in this field. All members of society attempt to establish their concept of social control by formulating public opinion and by enacting or preventing the enactment of laws. Thus, in this representative democracy we have recognized that law is not an absolute which men cannot change. We recognize it as the accepted customs and the long record of human experience formulated into constitutions, laws, and judicial decisions which are forever subject to review and alteration.

It is difficult for the layman to accept law as so flexible an instrument, and yet judges and prosecutors, sheriffs and policemen feel the impact of public opinion and interpret their duties in terms of public acceptance or disapproval. This the church has recognized and from the pulpit above and beyond creed and doctrine the issues of human rights and decency are discussed to the end that moral and ethical values will be forever promoted among the members of society. There can be but little doubt that the churches have an important effect in determining the character of the society and the kind of law which society will support and enforce. To ignore the church as an instrument of social control both at and above the level of law would be to
ignore the compelling psychology of the church's program.

Although this activity has had important consequences in the formation of our society the influence of the church has been even more extensive. In a democracy it is the legislature which makes and decides policy - which in the end determines the kind of a society in which we live. And as the legislature is a representative body, in final analysis, it is the people who decide the kind of law and government which they will support.

The people both formally through elected representatives and informally through trade, labor, religious and civic associations participate in the law-making process. The interacting forces of special interest speaking through compromise and controversy produce laws which in a general way represent the democratic judgment of society. Conservative forces tend to tone down the tendency for rapid change and risky experimentation. The liberals and radicals tend to overcome the social inertia which stability produces. Thus, legislatures follow a conservative policy of controlled experimentation and all of us play our particular part in the formation of the final product.

This creative aspect of law has long been ignored by lawyers and students of government. Only the professional politician has been fully aware of the significance of
law-making. He alone recognizes that the law may be changed and that the immediate consequences of the law are not necessarily the ineptness or scurrilousness of individual administrators but may result from a policy which the legislature has fixed.

But where, you may inquire, does religion and the church fit into this picture. It participates in two ways: first, through its institutions - the churches, and second, through the men it influences. It should come as no surprise to this group that churches and church organizations have had a longer experience in influencing legislative action than any other organized group. A frank discussion with almost any legislature will disclose the power and influence the church lobbyists have exerted upon legislatures. For the most-part this influence has been good. Accepting the social responsibilities that churches generally assumed in the middle of the 19th century, church representatives have frequently appeared before legislative committees as the only disinterested group -- the only group who appeared solely because they believed the social order could be improved. When the church representatives so appeared they exerted powerful influence for social ad-
vance; but they did not always appear in that capacity. The record is too full of appearances for the particular institutional advantage of the church. Their representatives have fought for old forms from which the substance had gone. They have fought bitterly and acrimoniously for little issues and avoided the more fundamental controversies of political and economic freedom.

For tomorrow let the representatives of the church continue the fight for higher ethical standards and for improved relations of man - but let them be better trained in science, the social sciences and in philosophy. Let them represent as only they can represent the wider application of ethics to our society. Let them be aware that a part of individual liberty is tolerance. That good men may have differing ideals and beliefs and that from the interplay of all ideals will come progress if not perfection. Let them abandon personal advantage and special favor. Let the church assume the social responsibility for affirmative participation in government to the end that law may further the ethical and spiritual ideals of society.