

WHAT LAW IS

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Since we are so often spoken to about the law, it has become necessary to learn what it is we are being told about it. One thing is sure, the word *law* is both ancient and venerable; no other word more revered or more exalted has reached us, except *religion*. But so many respected factors that we considered everlasting have died before our eyes. We live in a world so new in its ruins that only something that remains standing startles us; we must be careful before revering it. The traveler sometimes comes across empty temples; let us avoid taking the shadows of the stones for the shadows of the gods.

Among the ancient nations, laws were the proper name for freedom. When a city freed itself from the authority of a king, however moderate it was, talk was that the city had *preferred laws*, without distinguishing between good laws and bad ones, because all of them were the expression of the will of the citizens. The citizen was the one who took part in legislative assemblies; the rest were slaves or foreigners. From that arises the stunning respect that antiquity had for laws, the heroic self-sacrifices by which they were honored, and why their name contained within itself: fatherland, freedom, glory, religion. As their own decision, the people carried their love of laws to the ends of the world. However far we are from their times, this love has been so strong as to perplex us today about the feelings we should have towards our own laws. It is evident, however, that there is no resemblance between our laws and theirs, and that nothing is so childish as to apply to the *Bulletin of Laws* the grand remembrances that came to us from the public places of antiquity. For some forty years in France, a few men, one after another, have transformed their private ideas into universal and sovereign commands. They called into being from the soil the entire ancient country, worked the generations at their whim, and after completing their reign on the scaffold, in contempt or in exile, they left us stained with their blood and a hundred unknown volumes stained with our own blood; these are our laws. Now, we

could believe, without being too bold, that antiquity did those books honor by having them burned at the hand of an executioner with their ashes thrown to the winds, as much for the horrible mysteries of their appearance as for the genuine character of the law which they lacked, namely, its source in the deliberation of all the citizens and in the consent of the majority. It was this character that made the law something sacred, something worth dying for, whatever is nature.

Among Christian nations, the law was even more hallowed because of the faith that intermingled with freedom. Placed at first under the yoke of the Low Empire,¹ the Christians were unable to revive that ancient remnant of paganism and refresh its degraded laws. The power of their morals failed against the eunuchs of the palace; six centuries after Jesus Christ, Justinian promulgated the body of Roman Law, a vast monument to pagan legislation corrupted by despotism, wherein one day our princes, with the help of their lawyers, were to draw such very deadly traditions. Catholicism could not live there, despite the protection of emperors; its death will be forever honorable. But it survived in the East, thanks to freedom; this existence, compared to its death, is an important lesson to learn in the history of nations and of religion. Laws reappeared in Europe along with their age-old influence, no longer confined to the walls of some rare republics, but penetrating everywhere a Christian republic was being established, everywhere a barbarian brought his freedom and a priest his faith. Freedom and faith intertwined; having become the expression of both, the laws took on, with the character of common deliberation that had given them influence in antiquity, an additional somewhat divine character. The Pope, kings, bishops, nobles, the people, all the elements of the new society, all the powers of conquest and of Catholicism would meet each other in the law, but all of them subject to the higher law of justice, revealed to them by the Gospel that was their first link to each other, being also their initial freedom. This was no longer a city in a byway of Greece, proclaiming for itself its unbridled wishes, to the pleasing sounds of its orators. It was great nations, of one mind in recognizing that something was impossible for them, namely injustice, but that everything else would follow their will. Of such was the foundation of Christian nations: emerged from the tomb of Arminius,² they passed the tomb of Christ, and mingled the morals of Germany with those of Christ. There were many troubles in their history, many contradictions, many wars; but the foundation of their life lay in faith and in freedom, and for a second time in the world, one would be willing to die for revered laws.

Those laws no longer exist; we know how they perished. The kings of Europe became jealous of Catholicism, and having found in Roman Law traces of the emperors of Byzantium, they overran everything they thought had encroached on some of their power, until, finally, the clergy, the nobility, the people had fallen back to their status in the Later Empire. At that point, no longer did anyone die in Europe except with the cry: *Long live the King!* The kings were indeed very guilty; every day, they added to their offenses against religion and freedom, leading to the belief that their transgression would follow its course to its end. That being the case, the press of France will have prophesied when it said: There go the kings! At least, they remained standing during the storms of our country, and they protected with part of their majesty the laws that were banished from the sanctuary and from the public place. But since the throne — that last hallowed authority, that unique rubbish of Christian society — had damaged itself because of all the destruction it had caused to grow and to lift itself up, what has become of the laws? The character given to them by the pagan republics, that of the common deliberation of all citizens, was not granted to them, and the character that Christianity had given them, that of submission to an eternal rule of justice revealed by the Gospel, was taken away more than ever before. Of the two societies that existed in the world, the laws retained nothing, nor anything of that short period when the throne was the world. Voluntarily separated from God, strangers to the people, deprived of ruffles, completely naked females, they have nothing left, not even shame. These are the laws we have.

It is unkind to say, but we are not the ones who provoked those bloody explanations. When a nation, after having atoned through prolonged calamities the crimes of servitude and the crimes of anarchy, lives under a regime where everything is fictitious and meaningless, we should not boast too highly of the government of shadows, to compel that nation to adore on its knees the void of the past, lest one day the people remember that it is man, and that it is alive. This should especially not be done to the detriment in the country of the only energetic and active being that is man, and immediately to call into question a Charter that changed Europe in three days with a hundred thousand sheets of paper. The Charter is our law, our flag, our safety, our victory over what has been, the portent of the future, the only reality in a finite world. Indeed, all that has been saved presses around it: religion, the nation, freedom. Who has not said to himself: Let us die. This is what we venerate; the rest, we put up with.

Now, what needs to be done for the laws to regain their hallowed state? Deliberation about them by all citizens is no longer possible, and with religion separated from the State, neither can they recover their Christian character. . . True enough. Nonetheless, there is one way left to make them hallowed: that is, to destroy them; to free the country from legal order as much as possible, to free it from centralization, to allow the family, the commune, the province, religion — all of them to administer themselves and to create for themselves their own practices, dear to them, without harming the unity of France, because the Charter will always be its center and its repository. Everything leads us to that; through the use of fear, the ministers will try to hold back the inevitable repercussions of the current society; but tomorrow, they will reverse themselves and overturn their incredible carriage. Any kingdom whose laws are despised cannot last. Accordingly, we defy any minister to create today, with centralization, laws that will not be despised, laws that can *face each other without laughing*. The proof that laws are despised is that I am able to speak of them as I do; if I were to treat the Charter in this way, I would be condemned by the first jury called, and stoned in the thoughts of my fellow citizens, until I be stoned in the street. In a word, if what I have said about the law is not true, I deserve to be hanged; the proof that what I have said is indeed true, is that no one, in reading me, has imagined that I ought to be hanged.

ENDNOTES [Trans.]

1. The second period of the Roman Empire, 235-395.
2. Arminius: ancient German champion, born c. 16 BC. AKA Hermann.

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