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## On Law (Philip Melanchthon)

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#### “On Law”

By Philip Melanchthon

(b. 1497–d. 1560)

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The topic on Laws will much more clearly reveal the power and nature of sin, since the law is said to be the knowledge of sin. Wherefore if anything will seem to be lacking in the preceding topic, it will be supplied, if I mistake not, in that which follows. Nevertheless I do not do this in order to heap up all the things that can be said of each individual head, but I am giving only the nomenclature of the most common topics, so that one may see on what the whole of Christian doctrine hangs, and whither Scripture above all must be referred. And, too, I do not wish you to learn these topics from me as a teacher, but as from one who advises from Scripture and not from his own commentary. For believe me, it matters much whether you seek the substance of such things from the fountains or from the caverns.

Here not only sweeter waters are drawn, as the poet has said, but also purer. For how much more certain is that which the Scripture prescribes than what is gathered from the commentaries?

Moreover law is a judgment whereby the good is enjoined and the evil is prohibited. Legal right is the power of acting according to the law.<sup>[1]</sup> Many things both for and against laws have been spoken by the ancients, and I shall indicate a little later from what fountain these things have flowed.

Of laws, some are natural, others Divine, still others human. Concerning natural laws, I have not yet seen anything worthily written whether by theologians or lawyers. For since they are designated “natural,” their formulas ought to be collected by a method of human reasoning through a natural syllogism. That is precisely what I have not yet seen done by anyone, and I by no means know whether

it can at all be done, since our human reason is so enslaved and blinded. Paul moreover, in Rom. 2:15, teaches by a marvelously elegant and clear argument, that within us there is a natural law. He says that the Gentiles have conscience defending or accusing a thing done; and it is therefore a law unto them. For what is conscience but the judgment of our action which is demanded by some law or common formula? And so a natural law is a common judgment to which all men alike assent, and therefore one which God has inscribed upon the soul of each man, adapted to form and shape character. For as in the theoretical disciplines such as mathematics, there are certain common principles or κοινὰ ἔννοιαι ἣ προλήψεις (“common notions or concepts”) (as for instance: “The whole is greater than its parts”) so in the moral disciplines there are first common principles then conclusions—these words must be used for the sake of teaching—as the first rules of all human functions. You have rightly called these “natural laws.” Cicero in his book *De Legibus* following Plato, derives the formulas of laws from the nature of man. Now although I do not condemn this notion, yet I think that it was more urbanely than exactly done.

Moreover, very many impious sayings occur in that disputation of Cicero, as customarily happens when we follow the methods and compendiums of our reason, rather than the precepts of Scripture. For a judgment of human comprehension is, on a whole, fallacious, due to innate blindness. And accordingly even though there are certain forms of character imprinted with us, nevertheless they scarcely can be apprehended. But I do say this that those natural laws imprinted on human minds, I mean the knowledge of those things which they call “concreated characters,” were not acquired by our character but were placed there by God to serve as a rule for the judgment of character. Now that this view may agree with Aristotelian philosophy, is not the point I labor. For what difference does it make to me what that wrangler has thought? However I omit those things which we have in common with the brute beasts such as the preservation and production of life, and the procreation of one’s kind; and what lawyers refer to the category of natural law, I simply denominate certain “natural impulses” common to all living things.

Moreover of the laws which belong properly to man, the ones I have submitted seem to me to be the chief:

- I. God ought to be revered.
- II. Because we are born into a definite society of life, no man ought to be injured.
- III. Human society demands that we use all things in common.

The first law concerning the reverence of God we receive from Romans I, where there is no doubt but that the Apostle considers it among the natural laws when he says that God has declared his majesty to all men by the foundation and administration of the world. But whether or not the fact that God is can be deduced by human syllogism, is a matter more for the curious than for the pious to dispute. This latter fact is especially true since it is not safe for human reason to argue about all things, as I said in the outset of this compendium.[\[2\]](#)

The second law which provides that no man be harmed, without doubt is deduced from the common necessity that all of us are born bound and united to all. Scripture indicates this when in Gen. 2:18 it says: It is not meet that man should live alone, but that he be given assistance for his life. And so the law orders that no man be harmed; that is, that we should all earnestly love one another in order that all might experience our benevolence with zeal and kindness.

Now if you should say, “why then do the magistrates kill criminals?” my answer is at hand. Seeing that the state of human affairs since the fall of Adam is such that it has tainted all of us with sin, so that very often the evil injure the good, therefore it results that all mankind must exert itself to see that the law concerning injury is especially preserved. Hence those who have disturbed the public peace and injured the innocent must be restrained and put from our midst and coerced in order that the many, by the removal of offenders, may be preserved. But still the law remains: Injure no man, but if anyone should have been injured, he who inflicted the injury ought to be removed so that the many may not be injured. It is of more importance to preserve the many than just one or two; therefore he is done away who threatens the many by one or two crimes. Hence in the state there are magistrates, the punishment of criminals and wars, all of which lawyers have referred to “*Jus gentium*” (“the law of nations”).<sup>[3]</sup>

The third law concerning the common use of things, plainly takes its rise from the very nature of human society. For if among a very few things that common saying should be valid which being interpreted means: “that friends ought to share all things in, common,”<sup>[4]</sup> why should it not likewise hold good among many men? Especially so, seeing that they should be so closely united with each other that brothers would cling to brothers, children to parents, and parents to children. Now the law against injury decreed this. But because man’s cupidity does not suffer us to use all things in common, this law must be corrected by a higher one: let no man be injured. And too, possessions are to be shared so far as public peace and the welfare of the many may permit. For inferior laws are amended entirely by higher ones, and mutual participation of the many must be urged to a certain limit. Then a third law must be joined: that property is to be divided since the common safety of the man demands it. Moreover because the state of human nature is such that there is need of at least some mutual sharing of property, since property ought by nature be common, it has been ordained that the use of property is to be shared, to be sure through contracts, buying, selling, leasing, farming out, and in other ways. And here you may discern what is the origin of contracts or agreements.<sup>[5]</sup>

Plato saw this when in the fifth book of his *De Legibus* he says that, that state is best administered in which accession is made as nearly as possible to the common statement: “the possessions of friends are common to all.” And further, when not only possessions of friends are held in common, but even when the very members of each one: eyes, hands, feet, mouth, serve public utility. Nor ought any other example of a well constituted republic be sought than that state in which the common statement τὰ φίλων κοινὰ (“the possessions of friends are common [to all]”) can be observed. And thus agreements (contracts) have been devised, through which each man’s possessions are equally shared by the many, lest there should be no sharing of property at all. Now of the general formulas of natural laws you can divide them somewhat as follows:

I. Love God.

II. Because we are born unto a kind of common society, injure no man but assist whomever you may

with kindness.

III. If it cannot be that no man is injured, let this be done in order that the smallest amount of people be injured by the removal of those who disturb the public peace. For this duty let magistrates be appointed, and punishments for the guilty be instituted.

IV. Divide property for the safety of public peace. As to the rest, let some alleviate the wants of others through contracts.

Now whoever wishes, let him add to these from the poets, orators, and historians the particular judgments that are customarily referred to "*jus gentium*," ("law of nations") such as what is everywhere written about marriages, adulteries, restitution, ingratitude, hospitality, permutation of property and other like things. For it seemed sufficient to me to note merely the most common forms. But do not indiscreetly consider certain ideas of the gentile writers. For very many of their common judgments imitate the depraved affections of our nature and not our laws. For example that from Hesiod (Opp. et. dies 353-354:):

Τὸν φιλέοντα φιλεῖν καὶ τὸ προσιόντι προσεῖναι. Καὶ δόμεν ὅς κεν δῶ καὶ μὴ δόμεν ὅς κεν μὴ δῶ. ("To be a friend to the one who is a friend to you, and to attack him who is against you. And to give [to] whomever gives and not to give [to] whomever does not give.")

For in these verses friendship is measured decidedly by utility. Such is also that common saying:

Δός τι καὶ λάβε τι. ("Give something and take something.")

To this belongs also what they style "the repulsion of force by force," as is evidenced from the following quotation from the *Ion* of Euripides, (1045-47):

Τὴν δ'εὐσέβειαν, εὐτυχοῦσιν μὲν, καλὸν τιμᾶν. Ὅταν δὲ πολεμίους δράσαι κακῶς θέλῃ τις, οὐδεὶς ἐμποδὼν κεῖται νόμος. ("For those who are fortunate, it is noble to honor piety; but whenever someone wishes to do evil to their enemies, no law stands in the way.")

And, too, in "*jus civile*" ("civil law") as they call it, there are very many things indicating human affections more than natural laws. For what is more foreign to natural law than the captivity of slaves?<sup>[6]</sup> And that which is of interest is uncivilly protected by contracts. But of this later. A good man will adjust civil constitutions to fairness and equity, that is, to divine and natural laws, against which it cannot be right for anything to be instituted. So much for natural laws which, if you can, divide more exactly and subtly.

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<sup>[1]</sup> This definition of law was formulated by a medieval jurist, cf. C. R. 13,552. The source is otherwise unknown. The text reads: "*Jus est auctoritas agendi secundum legem.*" K. 110.

<sup>[2]</sup> Melanchthon apparently flinches from the problem just stated because he deduces the first principle of his natural law not on the nature of man, but grounds it on the Scripture. In (C.) 1522 after an enumeration of the three laws just mentioned, he writes: "*Primam legem—principio monui: Posteriores duas leges facile colligat argumentis humana ratio. Primam legem quomodo colligere possit, non video, sic occæcata, post Adæ lapsum. Videmus enim ingeniosissimos quosque in eo fuisse ut nihil esse deum sentirent. Non percipit enim animalis homo ea quæ sunt spiritus dei. Certe de potentia et voluntate dei judicare per sese ratio non potest.*" ("The first law I taught about in the beginning (*principio*); let human reason easily deduce the next two laws by argumentation. I do not see how reason could deduce the first law, blinded as it is after Adam's fall. For we see that all (*quosque*) have been so clever in that regard that they do not at all sense God. For the animal man does not perceive the things that are of the Spirit of God. Certainly concerning the power and will of God reason cannot judge by itself.")

<sup>[3]</sup> The following explanation of the Tertia Lex proves that, the Augustinian Medieval notion that the state grounded on law is a consequence of sinful development in the life of mankind is re-echoed here. It is to be observed that Thomas and his disciples taught that the state would arise even without any Fall from original righteousness. Cf. J. J. Baumann, "Die Staatslehre des Thomas von Aquino." S. 167ff. Here and there one finds in Luther ideas which remind of this view only Luther looks upon the State as some moral good. Cf. Luther: Von Weltlicher Obrigkeit" 1523: "Wenn alle welt rechte Christen das ist recht Gläubigen wären, so wäre kein Fürst, König, Herr, Schwert noch Recht noth oder nutz. Denn wozu sollts ihn? Dieweil sie den heiligen Geist im Herzen haben, der, sie lehret, und macht, dass sie Niemand unrecht thun, Jedermann lieben, von Jedermann gerne und fröhlich leiden, auch den Tod." E. A. 22, 66 ff. and also on 68.

<sup>[4]</sup> τὰ τῶν φίλων κοινὰ. Cf. Aristotle, *Nicomachean Ethics*, Book 8, C. II.

<sup>[5]</sup> The view here expressed, which sees in commercial traffic and its various forms a moment of sin, agrees in the main with the view of the Scholastics, popularized by Gabriel Biel. Cf. Werner: Duns Scotus S. 504. Thomas following Aristotle argued against community ownership. Cf. Baumann, "Die Staatslehre des Thomas Von Aquino" S. 148. The strongly communistic trend of the Reformation in its early stage, which however is to be distinguished from the practical communistic groups of Anabaptists, is due partly to what has been said, and partly to the larger preference for Plato on the side of the humanistic school, whose view respecting community ownership was shared by such fathers as Lactantius, Ambrosius and Chrysostomus.

<sup>[6]</sup> Spalatin: "das gefenknuss der laybaygen leut." It is noteworthy that Melanchthon grounds the right of personal liberty in the very nature of man. It becomes more noteworthy when we remember that the Pope just a short while before had declared that the faithful should make his enemies the Venetians slaves. Cf. Gieseler: Lehrbuch d. Kichengeschichte II, 4, 182.

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