UST LAW REVIEW

MORALS IN JUDICIAL PROCESSES*

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I owe a thousand thanks to the Committee in charge of these monthly cultural series commemorating the 350th anniversary of the founding of this Royal and Pontifical University for the privilege of speaking before this distinguished audience on "Morals in Judicial Processes". For a better comprehension of this subject, I deem it proper to define you these terms—"Morals", "Judicial" and "Processes".

According to Webster's New International Dictionary, "Morals" is a "science or doctrine of conduct, specially as to the sense of duty." In the Encyclopedia of the Social Sciences, Vol. X, p. 643, Horace M. Kallen states that morals as "a system presumed to be single, unchanging and necessary" is "ascribed to universal principle of right conduct endemic to mankind." "Morals", therefore, may be said to be the standard used in the determination of what is right and what is wrong in human actions resulting from the will regulated and controlled by reason.

"Judicial", in the words of Webster's New International Dictionary, refers to that which pertains "to the administration of justice, or courts of justice, or a judge thereof, or the proceedings therein." While "Processes" means, according to Webster, the "act of proceeding; procedure". Therefore, "Judicial Processes" may be understood as the acts of proceeding in the settlement of controversies between litigants in court, such processes being "as coldly objective and impersonal" in the opinion of the late Justice Benjamin N. Cardozo of the United States Supreme Court.

Accordingly, our subject—"Morals in Judicial Processes"—concerns mainly with principles regarding right conduct or sense of duty to be followed and observed by the ones enjoined by law to work together in the administration of justice,—the lawyer and the judge. Hence, these questions necessarily arise: (1) Should the lawyer as an officer of the Court be restrained by morals in the discharge of his professional duties? (2) Should the judge as the presiding officer of the Court be guided by morals in the exercise of his judicial functions?

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In this modest dissertation I shall dwell on the answers to these questions.

Almost half a century ago morals and law used to be linked together in such a way that our lawyers and judges regarded the one as an indispensable counterpart of the other. Both lawyers and judges were so imbued with the sense of morality that their conduct in life, both public and private, was controlled by moral precepts. So, in their dealings with their clients lawyers were perfectly candid and honest; they were faithful to the interests of their clients and diligent in the affairs for which they were engaged. There was disinterestedness; the ego was relegated to the background; the dictates of conscience were followed; immorality and sin were avoided. And in their relations with the Court, respectfulness was paramount, discipline was evident. Judges, on their part, were symbols of uprighteousness and impartiality; they were not swayed by fear or favor, by popular outcry or personal ambition. Moral principles were not ignored in the interpretation and application of the law. On the contrary, they were the beacon-light that guided both lawyers and judges in the prosecution and disposition of cases.

But as years rolled by a change in the attitude of lawyers and judges towards morals has taken place apparently due to the juristic philosophy of Oliver Wendell Holmes, Jr., late justice of the Supreme Court of the United States, who disregarded morals in connection with law, since, according to him, "the essence of law is physical force." In advocating his juristic philosophy Holmes said, "Just so far as the aid of the public force is given a man, he has a legal right, and this right is the same whether his claim is founded in righteousness or iniquity." Furthermore, Holmes maintained that moral concepts should be eliminated from law to avoid the many "evil effects of the confusion between legal and moral ideas" since, according to him, it would be a gain "if every word of moral significance could be banished from the law altogether and other words adapted which should convey legal ideas uncolored by anything outside the law." And the reason behind Holmes' philosophy is his belief that "there is no such thing as morality in the traditional sense of that word, because there is no omnipotent personal God whose will could be the basis of what we know as moral obligation."

As Catholic lawyers and judges we cannot agree wth Justice Holmes. We cannot divorce law from morals not only because many legal terms have been taken from morals, not only because in speaking of rights and duties we cannot ignore or disregard their moral sense, but because law—I mean human law—to be just must necessarily be a deduction from the principles laid down by natural law

which requires the observance of the moral order. But Holmes unfortunately admitted no natural law since he said that "the idea of natural law was a product of mere wishful thinking."

So, in spite of Holmes' philosophy that law is "sheer physical force," we, as Catholics, have to hold that law in its essence must be founded upon morals. Catholic lawyers should not only see to it that the law applicable to their case is in consonance with morals but also should observe in their relations with their clients those moral principles which are taught by our Mother Church. For their part, Catholic judges should ever be mindful that every case has its moral aspect and in deciding it they should not only consider the law applicable thereto but also its moral applications.

Unfortunately, however, nowadays many lawyers and judges fail or neglect to give serious consideration with regard to the application of moral principles in the determination of cases. This is mostly due to the fact that in their student days they did not learn of the importance and indispensability of moral concepts in relation to law. Luckily, our students in the Faculty of Civil Law are taught in Legal Deontology that as Catholic lawyers and judges our first and foremost duty is towards the Supreme Judge, our Lord Jesus Christ.

Thus, our law students know that a lawyer commits sin if he prosecutes a civil case which is clearly unjust or devoid of any moral right. But when it is merely doubtful or only probably just, a lawyer may act either for the plaintiff or for the defendant. Some moralists, nevertheless, are of the opinion that if the case of the defendant is less or equally probable a lawyer may take it but he is not allowed to do so if the plaintiff's case is the one that is less or equally probable.

And when a lawyer who accepted a civil case in the belief that it was just, discovers later in the course of the process that it is really unjust or his client is entirely in the wrong, charity to himself demands that he should withdraw from the case since he cannot honestly cooperate with iniquity. St. Thomas Aquinas states the matter in this way: "If in the beginning the lawyer believed the case to be just, and afterwards in the procedure it becomes evident that it is unjust, he must not betray the case in such wise as to help the other side, or to reveal the secrets of his case to the other party. But he can and must abandon the case or induce his client to yield or to compromise without injury to his adversary." The same principle holds true if a client insists upon unjust courses in support of his civil case, even though the cause itself is just.

Our law students likewise know that in criminal cases the prosecution is unjust if the accused is clearly innocent. And when

the case of the People is doubtful or less probable, a lawyer to avoid the commission of sin may not prosecute for the reason that life, reputation or other grave issue is thereby involved. But the defense of the accused is not unjust, even though he is known to be guilty, for both natural and positive law give him a right of defense. In such a case, inspite of his guilt, the accused may choose or may be given an advocate, who can lawfully make use of all honest means to save his client from the verdict of "guilty". Accordingly, the defense counsel may show gaps and inconsistencies in the evidence adduced by the prosecution, point out to facts that would tend to prove that the accused could not have been at the scene of the crime, or question the legality of the prosecution. A lawyer, however, may not employ perjury or induce witnesses to lie on the stand. But suppose a witness for the accused gives false testimony without the knowledge or connivance of the defense counsel, is the latter bound to expose the perjury? No, but in the opinion of Reverend Francis J. Connell, dean of the School of Sacred Theology at the Catholic University of America, he, the defense counsel, cannot "propose the perjured testimony as something which he himself regards as true."

Now, suppose you ask our law students if a lawyer, in the presentation or defense of a case, may commit sin whenever he conceals the truth. They will answer you in the negative. The reason is that a lawyer may conceal facts which he has learned in confidence or will be harmful to the cause of his client since concealment in such a case is not unjust or mendacious because the adverse party has no right to the knowledge of such facts. Also, a lawyer is not bound in justice to point out to the adverse party matters of which the latter ignores even if they are favorable to his case.

What about professional secrecy? Is a lawyer morally bound to respect his client's confidence? As a general rule, our law students will tell you, a lawyer is bound to observe professional secrecy regarding information given him by his client in the course of their relationship. However, there are occasions when a lawyer, as a matter of right and duty, should disclose whatever information he has acquired in the discharge of his professional duties. Thus, if a lawyer finds out that his client is planning to commit a crime, he would be obliged in charity to warn his client to desist from doing it and if the latter refuses to follow his advice, he should notify the police authorities. The "Canons of Professional Ethics" of the Association of the Bar of the City of New York provide that "the announced intention of a client to commit a crime is not included within the confidence which the lawyer is bound to respect. He may properly make such disclosures as may be necessary to prevent the act or protect those against whom it is threatened."

Last but not least, a lawyer should observe those moral principles relative to compensation for services rendered and restitution. In this connection, suffice it to say that his fees should represent a fair return for what he gave. So, the wealth of a client does not justify an excessive charge but the poverty of a client makes it a duty of charity to lessen his charges or to make no charges at all. And in the event he has demanded exorbitant rates for his services, or has dragged out a case to justify additional fees, or has retained his client's money or property, or has not refunded whatever he has received from his client before he withdrew from the case, it is his duty under pain of committing sin to return what in conscience is due to the client.

We come now to the judge, who, paraphrasing Blackstone, is the "living oracle of the law." As to the nature of his office, Father Francis J. Connell says: A civil judge x x x occupies a position of great dignity and responsibility. On his judgments depend the property, liberty, and sometimes even the lives of his fellow citizens. No department of government stands in greater need of wisdom and integrity on the part of its incumbents than the judiciary. Even when the legislative and executive branches are permeated with incompetency and corruption, the welfare of the citizens is safeguarded in great measure if the judges as a whole are capable and virtuous men. No one should dare aspire to a judgeship if he realizes that he lacks the intellectual or moral qualifications for this high office. The words of the son of Sirach are as timely today as when they were first penned by the inspired writer: "Seek not to be made a judge unless thou have strength enough to extirpate iniquities."

A judge must possess intellectual qualifications in the sense that he must be endowed with knowledge of the law and with prudence so as to be competent to pronounce correctly on the questions that are brought to him for decision. If he realizes that he is incompetent, he must either resign his office or make up for his deficiency by study or consultation with those who are more learned than himself. A judge must possess also moral qualifications, that is, he must be a lover of justice, that moral virtue which inclines us to give to every one that which is his due, for the proper office of the judge is to apply the law to particular cases and to declare officially the mutual rights and obligations of litigants who are before him. A judge must not be a respecter of persons; a judge must not be moved for or against a man on account of rank, position or wealth.

A judge is required to have such intellectual and moral qualifications because his basic obligation is to render decisions honestly and impartially, in conformity with the law applicable to the case

and the facts presented at the hearing. On the part of a Catholic judge, any sign of favoritism will bring discredit on himself and on his Church. And in deciding a criminal case, a Catholic judge must bear in mind the fundamental ethical tenet, defended by Catholic philosophers and theologians, that the accused has a right to be held innocent until reasonable moral certainty of his guilt has been established. He must also bear in mind the teaching of Catholic theologians that even if he knows from some extrajudicial source that the accused is innocent, he must decide in favor of conviction if the evidence adduced in the trial is sufficient to prove guilt beyond reasonable doubt. In this connection, it is not amiss to state that, according to St. Thomas Aquinas, if a judge could disregard at will the evidence offered on account of private knowledge he claims to have, the confidence of the public in the integrity of courts would be shaken, men would take the law into their own hands, and peace and order on which the happiness of the community depends would be at an end. St. Bonaventure was of the opinion, however, that the judge should acquit the accused, since it is intrinsically wrong to condemn a person about whose innocence one is certain. But St. Alphonsus held the opinion that the judge should condemn in minor criminal cases wherein only pecuniary penalties are imposed but should acquit in major cases in which personal punishments are inflicted because society has no right to deprive an innocent person of life or liberty.

It is said that even though a judge does not personally approve of a law, thinking it unwise or unnecessary or over-severe, he should nevertheless enforce it; for he is appointed, not to change or reform, but to apply the law, yet so, however, that the spirit is not sacrificed. But if the law is manifestly opposed to divine or natural law and sentence under it would command the commission of an act intrinsically evil, such as cohabitation of those who are not really married, or in the case of euthanasia or "mercy killing", a Catholic judge should resign rather than give such a sentence. Again, if the law is manifestly opposed to divine or natural law and sentence under it would inflict a grievous penalty, such as death or long imprisonment on the transgressor of the law, sentence would be unlawful. However, if only a light penalty would be imposed like a small fine or short confinement, it seems that sentence could be tolerated since the person condemned might be considered to yield his right for the sake of the public good, which would suffer from the loss of a conscientious judge. But if the law is manifestly opposed to ecclesiastical law, sentence may be given lawfully, if scandal is avoided and the Church yields her right in the case, as is sometimes done in favor of a Catholic judge, lest he is deprived of his position.

A judge must be above suspicion, since respect for the courts is the very life of the State. But there is good reason to suspect a judge who decides his own case, or one in which he will be naturally inclined to favor one side. Hence the duty of abstaining from certain things. Thus, he should avoid business, social and political activities that will give ground for belief that he uses his office for the promotion of private interests. In this connection, allow me to digress in order to state that a judge should give sufficient time and effort to the study of a case in such a way that, like the priest and doctor, he should be willing to sacrifice his personal amusements and social engagements for the sake of his judicial duties.

Again, a judge should not act in a case in which his own advantage or the advantage of his friends might appear to conflict with the duty of strict impartiality. Moreover, he should refrain from conduct that would tend to arouse doubts of his impartial attitude, such as incivility to counsel or witnesses, unexplained rulings that have the appearance of arbitrariness, private interviews or dealings with one of the parties in a case pending in his court in ways calculated to influence his action.

Very often it is said that there is unnecesary delay in the trial of cases. What is the responsibility of the judge in this regard? There is no doubt that a judge should expedite business in order that litigants might not be harmed by needless delays; he should avoid waste of time and unnecessary interruptions. In brief, as St. Alphonsus asserts: "A judge sins mortally by failing to expedite cases for a notable period of time without a just reason."

Now, with reference to the Catholic judge in particular. Oftentimes he finds himself perplexed as to the lawfulness of doing an act concerning which the Church has its own definite teachings. Fortunately, under existing law he is no longer called upon to grant absolute divorce. But may he officiate at civil marriage? When both parties are not Catholics, and there exists no impediment of divine or ecclesiastical law, a Catholic judge may officiate. But when the parties are Catholics, he may decline to solemnize the civil marriage ceremony. However, if grave difficulties or complications should arise from his refusal to perform such civil marriage ceremony, in the opinion of the late Cardinal Gasparri based on a decision of the Sacred Penitentiary, a Catholic judge may accordingly officiate provided that he would make a public statement of his faith in the doctrine of the Church regarding the unity and indissolubility of marriage, that he would officiate through necessity, and that he would warn the bride and groom of the gravity of their sin and the nullity of their marriage before God.

This humble dissertation will be incomplete if I fail to mention about the judge-made law, which, in the words of the late Justice Benjamin N. Cardozo, is "one of the existing realities of life." You all know that the principal task of a judge is to apply the law. Nevertheless, it cannot be rightly said that his work is perfunctory and mechanical. Oftentimes interpretation of the law becomes a necessity in order to discover its meaning which, however obscure and latent, had a real and ascertainable pre-existence in the mind of the lawmaker. There are gaps in the law to be filled, doubts and ambiguities to be cleared, new conditions to be met. In these cases it is the function of the judge to supply to the law what is lacking, to make a restatement if necessary, to give to the law proper shape and form, to furnish it with a new content. In such instances, there is judicial legislation, that is, the judge makes the law, and "there is no guaranty of justice," says Ehrlich, "except the personality of the judge." True it is that the judge legislates only between gaps as he fills the open spaces in the law, but within the narrow limits of his power to legislate he finds the opportunity to uphold and maintain the relation between law and morals, between the precepts of jurisprudence and those of reason and good conscience. And a Catholic judge should grasp such opportunity lest "the constant insistence that morality and justice are not law" might breed, according to the late Justice Cardozo, "distrust and contempt of law as something to which morality and justice are not merely alien but hostile." It is on such an occasion when a Catholic judge must innovate by infiltrating into the law those moral precepts or concepts which will give to it real life, true strength and vivid force as they are based on the teachings and commandments of our Lord, Jesus Christ.

Thus, having in mind that a judge should inculcate morality in the relations between attorney and client, I stated in a decision penned by me in the case of Quintillana Sanson vs. Plaridel Sotto, administrator of the Estate of the late Vicente Sotto, CA-G. R. No. 17465-R, interpreting the nature and extent of Article 1459 of the old Civil Code to the effect that said article "is based on moral reasons. Its purpose is to prevent the persons named therein from placing their personal interests over and above the interests of those whom they represent; its objective is to avoid loyalty and faithfulness from being undermined or prevailed upon by greed and ambition. It is a sort of safeguard for them, particularly attorneys, in order to be protected from the temptations arising out of the conflict between their interests and the interests of those with whom they are related in a more or less fiduciary or confidential character. That is why said article is as broad in its scope as the

policy behind it; the incapacity to acquire provided therein should therefore not be restricted. So that in so far as transactions between attorney and client are concerned they should be presumed to be fraudulent and invalid irrespective of how the relation between them was created. The incapacity or prohibition to acquire should not be limited to transactions had between attorney and client at the time their relation as such had already existed but should be extended to transactions entered into even before the property had been involved in litigation provided the attorney had expected such litigation or had been aware of the same considering his relation to the client."

Many more things may be said about morals in judicial processes. But I do not desire to overtax your patience. Suffice it to say that all of us as Catholics have the duty and the right to demand that morals should not be relegated to oblivion by both lawyers and judges in the accomplishment of their noble task of administering justice. Let morality be the beacon-light that should guide the lawyer and the judge in their joint duty of dispensing justice both to the poor and the rich.