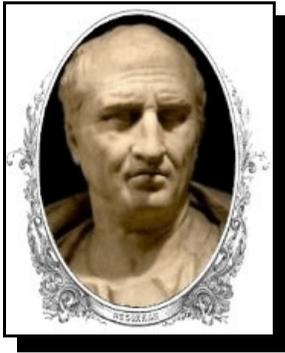


c. 50 BC
On The Laws
Marcus Tullius Cicero

Marcus.



Marcus Tullius Cicero

—Your observation, my Quintus, is not quite correct. It is not so much the science of law that produces litigation, as the ignorance of it, (*potius ignoratio juris litigiosa est quam scientia*). But more of this bye-and-bye.

With respect to the true principle of justice, many learned men have maintained that it springs from Law. I hardly know if their opinion be not correct, at least, according to their own definition; for “Law (say they) is the highest reason, implanted in nature, which prescribes those things which ought to be done, and forbids the contrary.” This, they think, is apparent from the converse of the proposition; because this same reason, when it is confirmed and established in men’s minds, is the law of all their actions.

They therefore conceive that the voice of conscience is a law, that moral prudence is a law, whose operation is to urge us to good actions, and restrain us from evil ones. They think, too, that the Greek name for law (*nomos*), which is derived from *nemô*, to distribute, implies the very nature of the thing, that is, to give every man his due. For my part, I imagine that the moral essence of law is better expressed by its Latin name, (*lex*), which conveys the idea of selection or discrimination. According to the Greeks, therefore, the name of law implies an equitable distribution of goods: according to the Romans, an equitable discrimination between good and evil.

The true definition of law should, however, include both these characteristics. And this being granted as an almost self-evident proposition, the origin of justice is to be sought in the divine law of eternal and immutable morality. This indeed is the true energy of nature, the very soul and essence of wisdom, the test of virtue and vice. But since every discussion must relate to some subject, whose terms are of frequent occurrence in the popular language of the citizens, we shall be sometimes obliged to use the same terms as the vulgar, and to conform to that common idiom which signifies by the word law, all the arbitrary regulations which are found in our statute books, either commanding or forbidding certain actions.

Atticus.

—Let us begin, then, to establish the principles of justice on that eternal and universal law, whose origin precedes the immeasurable course of ages, before legislative enactments were in being, or political governments constituted.

Quintus.

—By thus ascending to first principles, the order of our discourse will be more methodical, so as to conduct us by agreeable gradations to the practical bearings of the subject.

Marcus.

40 —You wish, then, that we should seek for justice in its native source, which being discovered, we shall afterwards be able to speak with more authority and precision respecting our civil laws, that come home to the affairs of our citizens?

Quintus.

—Such is the course I would advise.

Atticus.

—I also subscribe to your brother's opinion.

Marcus.

50 —Well then, I shall endeavour to describe a system of Laws adapted to that Commonwealth, which Scipio declares to be most desirable in those Six Books which I have written under that title. All our laws, therefore, are to be accommodated to that mixed kind of political government there recommended. We shall also treat of the general principles of morals and manners, which appear most appropriate to such a constitution of society, but without descending to particular details.

Quintus.

—You therefore derive the principles of justice from the principles of nature, to investigate which is the main object of all our discussions.

Atticus.

—Certainly, and when she is our guide, we are not very likely to err.

Marcus.

60 —Grant me, then, my Atticus, (for I know my brother's opinion already),—grant me that the entire universe is overruled by the power of God, that by his nature, reason, energy, mind, divinity, or some other word of clearer signification, all things are governed and directed; for if you will not grant me this, I must proceed to prove it.

Atticus.

—Respecting the existence of God, and the superintendence of divine providence, I grant you all you can desire. But owing to this singing of birds and babbling of waters, I fear my friends can scarcely hear me.

Marcus.

70 —You are quite right to be on your guard, my Atticus; for even the best men occasionally fall into a passion, and what would your fellow-students, the Epicureans, say, if they

heard you denying the first article of that notable book, entitled the Chief Doctrines of Epicurus, in which he says “that God takes care of nothing, neither of himself nor of any other being?”

Atticus.

—Pray proceed, for I am waiting to know what advantage you mean to take of the concession I have made you.

Marcus.

80 —I will not detain you long. Since you grant me the existence of God, and the superintendence of Providence, I maintain that he has been especially beneficent to man. This human animal—prescient, sagacious, complex, acute, full of memory, reason and counsel, which we call man,—is generated by the supreme God in a more transcendent condition than most of his fellow—creatures. For he is the only creature among the earthly races of animated beings endued with superior reason and thought, in which the rest are deficient. And what is there, I do not say in man alone, but in all heaven and earth, more divine than reason, which, when it becomes ripe and perfect, is justly termed wisdom?

90 There exists, therefore, since nothing is better than reason, and since this is the common property of God and man, a certain aboriginal rational intercourse between divine and human natures. This reason, which is common to both, therefore, can be none other than right reason; and since this *right reason* is what we call *Law*, God and men are said by Law to be consociated. Between whom, since there is a communion of law, there must be also a communication of Justice.

Law and Justice being thus the common rule of immortals and mortals, it follows that they are both the fellow—citizens of one city and commonwealth. And if they are obedient to the same rule, the same authority and denomination, they may with still closer propriety be termed fellow—citizens, since one celestial regency, one divine mind, one omnipotent Deity then regulates all their thoughts and actions.

100 This universe, therefore, forms one immeasurable Commonwealth and city, common alike to gods and mortals. And as in earthly states, certain particular laws, which we shall hereafter describe, govern the particular relationships of kindred tribes; so in the nature of things doth an universal law, far more magnificent and resplendent, regulate the affairs of that universal city where gods and men compose one vast association.

When we thus reason on universal nature, we are accustomed to reason after this method. We believe that in the long course of ages and the uninterrupted succession of celestial revolutions, the seed of the human race was sown on our planet, and being scattered over the earth, was animated by the divine gift of souls. Thus men retained from their terrestrial origin, their perishable and mortal bodies, while their immortal spirits were ingenerated by Deity. From which consideration we are bold to say that we possess a certain consanguinity and kindred fellowship with the celestials. And so far as we know, among

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all the varieties of animals, man alone retains the idea of the Divinity. And among men there is no nation so savage and ferocious as to deny the necessity of worshipping God, however ignorant it may be respecting the nature of his attributes. From whence we conclude that every man must recognize a Deity, who considers the origin of his nature and the progress of his life.

Now the law of virtue is the same in God and man, and cannot possibly be diverse. This virtue is nothing else than a nature perfect in itself, and developed in all its excellence. There exists therefore a similitude between God and man; nor can any knowledge be more appropriate and sterling than what relates to this divine similitude.

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Nature, attentive to our wants, offers us her treasures with the most graceful profusion. And it is easy to perceive that the benefits which flow from her are true and veritable gifts, which Providence has provided on purpose for human enjoyment, and not the fortuitous productions of her exuberant fecundity. Her liberality appears, not only in the fruits and vegetables which gush from the bosom of the earth, but likewise in cattle and the beasts of the field. It is clear that some of these are intended for the advantage of mankind, a part for propagation, and a part for food. Innumerable arts have likewise been discovered by the teaching of nature; for her doth reason imitate, and skilfully discover all things necessary to the happiness of life.

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With respect to man this same bountiful nature hath not merely allotted him a subtle and active spirit, but moreover favoured him with physical senses, like so many guardians and messengers. Thus has she improved our understanding in relation to many obscure principles, and laid the foundation of practical knowledge; and in all respects moulded our corporeal faculties to the service of our intellectual genius. For while she has debased the forms of other animals, who live to eat rather than eat to live, she has bestowed on man an erect stature, and an open countenance, and thus prompted him to the contemplation of heaven, the ancient home of his kindred immortals. So exquisitely, too, hath she fashioned the features of the human face, as to make them symbolic of the most recondite thoughts and sentiments. As for our two eloquent eyes (*oculi nimis arguti*), do they not speak forth every impulse and passion of our souls? And that which we call *expression*, in which we infinitely excel all the inferior animals, how marvellously it delineates all our speculations and feelings! Of this the Greeks well knew the meaning, though they had no word for it.

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I will not enlarge on the wonderful faculties and qualities of the rest of the body, the modulation of the voice, and the power of oratory, which is perhaps the greatest instrument of our influence over human society. These matters do not belong to the occasion of our present discourse, and I think that Scipio has already sufficiently explained them in those books of mine which you have read.

As the Deity, therefore, was pleased to create man as the chief and president of all terrestrial creatures, so it is evident, without further argument, that human nature has made the greatest advances by its intrinsic energy; that nature, which without any other instruction than her own, has developed the first rude principles of the understanding, and strengthened and perfected reason to all the appliances of science and art.

150 **Atticus.**

—Good heavens, my Cicero! from what a tremendous distance are you deducing the principles of justice! However, I wont hurry too eagerly to what I expect you to say on the Civil Law. But I will listen patiently, even if you spend the whole day in this kind of discourse, for assuredly these are grander topics which you introduce as a preamble than those to which they prepare the way.

Marcus.

160 —You may well describe these topics as grand, which we are now briefly discussing. For of all the questions on which our philosophers argue, there is none which it is more important thoroughly to understand than this, *that man is born for justice, and that law and equity are not a mere establishment of opinion, but an institution of nature.* This truth will become still more apparent if we investigate the nature of human association and society.

There is no one thing more like to another, more homogeneous and analogous, than man is to man. And if the corruption of customs, and the variation of opinions, had not induced an imbecility of minds, and turned them aside from the course of nature, no one would more nearly resemble himself than all men would resemble all men. Therefore whatever definition we give of man, it must include the whole human race. And this is a good argument, that no portion of mankind can be heterogeneous or dissimilar from the rest; because, if this were the case, one definition could not include all men.

170 In fact, reason, which alone gives us so many advantages over beasts, by means of which we conjecture, argue, refute, discourse, and accomplish and conclude our designs, is assuredly common to all men; for the faculty of acquiring knowledge is similar in all human minds, though the knowledge itself may be endlessly diversified. By the same senses we all perceive the same objects, and that which strikes the sensibilities of the few, cannot be indifferent to those of the many. Those first rude elements of intelligence which, as I before observed, are the earliest developments of thought, are similarly exhibited by all men; and that faculty of speech which is the soul's interpreter, agrees in the ideas it conveys, though it may differ in the syllables that express them. And therefore there exists not a man in any nation, who, adopting his true nature for his true guide, may not improve in virtue.

180 Nor is this resemblance which all men bear to each other remarkable in those things only which accord to right reason. For it is scarcely less conspicuous in those corrupt practices by which right reason is most cruelly violated. For all men alike are captivated by voluptuousness, which is in reality no better than disgraceful vice, though it may seem to bear some natural relations to goodness; for by its delicious delicacy and luxury it insinuates error into the mind, and leads us to cultivate it as something salutary, forgetful of its poisonous qualities.

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An error, scarcely less universal, induces us to shun death, as if it were annihilation; and to cling to life, because it keeps us in our present stage of existence, which is perhaps rather a misfortune than a desideratum. Thus, likewise, we erroneously consider pain as one of the greatest evils, not only on account of its present asperity, but also because it seems the precursor of mortality. Another common delusion obtains, which induces all mankind to associate renown with honesty, as if we are necessarily happy when we are renowned, and miserable when we happen to be inglorious.

In short, our minds are all similarly susceptible of inquietudes, joys, desires and fears; and if opinions are not the same in all men, it does not follow, for example, that the people of Egypt who deify dogs and cats, do not labour under superstition in the same way as other nations, though they may differ from them in the forms of its manifestation.

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But in nothing is the uniformity of human nature more conspicuous than in its respect for virtue. What nation is there, in which kindness, benignity, gratitude, and mindfulness of benefits are not recommended? What nation in which arrogance, malice, cruelty, and unthankfulness, are not reprobated and detested! This uniformity of opinions, invincibly demonstrates that mankind was intended to compose one fraternal association. And to affect this, the faculty of reason must be improved till it instructs us in all the arts of well-living. If what I have said meets your approbation, I will proceed; or if any of my argument appears defective, I will endeavour to explain it.

Atticus.

—We see nothing to object to, if I may reply for both of us.

Marcus.

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—It follows, then, in the line of our argument, *that nature made us just that we might participate our goods with each other, and supply each others' wants* You observe in this discussion whenever I speak of nature, I mean *nature in its genuine purity*, and not in the corrupt state which is displayed by the depravity of evil custom, which is so great, that the natural and innate flame of virtue is often almost extinguished and stifled by the antagonist vices, which are accumulated around it.

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But if our true nature would assert her rights, and teach men the noble lesson of the poet, who says, “I am a man, therefore no human interest can be indifferent to me,”—then would justice be administered equally by all and to all. For nature hath not merely given us reason, but right reason, and consequently that law, which is nothing else than right reason enjoining what is good, and forbidding what is evil.

Now if nature hath given us law, she hath also given us justice,—for as she has bestowed reason on all, she has equally bestowed the sense of justice on all. And therefore did Socrates deservedly execrate the man who first drew a distinction between the law of nature and the law of morals, for he justly conceived that this error is the source of most human vices.

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It is to this essential union between the naturally honorable, and the politically expedient, that this sentence of Pythagoras refers:—"Love is universal: let its benefits be universal likewise." From whence it appears that when a wise man is attached to a good man by that friendship whose rights are so extensive, that phenomenon takes place which is altogether incredible to worldlings, and yet it is a necessary consequence, that he loves himself not more dearly than he loves his friend. For how can a difference of interests arise where all interests are similar? If there could be such a difference of interests, however minute, it would be no longer a true friendship, which vanishes immediately when, for the sake of our own benefit, we would sacrifice that of our friend.

I have made these preliminary remarks, to prepare you the better for the main subject of our discourse, in order that you may more easily understand the principle, that nature herself is the foundation of justice. When I have explained this a little more at large, I shall come to the consideration of that civil law to which all my arguments refer.

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Marcus.

—Let us, then, once more examine, before we descend to particulars, what is the essence and moral obligation of law; lest, when we come to apply it to its subordinate relations, we should not exactly understand each other for want of explanation; and lest we should be ignorant of the force of those terms which are usually employed in jurisprudence.

Quintus.

—This is a very necessary caution, and the proper method of seeking truth.

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Marcus.

—This, then, as it appears to me, hath been the decision of the wisest philosophers; that law, was neither excogitated by the genius of men, nor is it any thing discovered in the progress of society; but a certain eternal principle, which governs the entire universe; wisely commanding what is right, and prohibiting what is wrong. Therefore, that aboriginal and supreme law is the Spirit of God himself; enjoining virtue, and restraining vice. For this reason it is, that this law, which the gods have bestowed on the human race, is so justly applauded. For it is the reason and mind of Wisdom, urging us to good, and deterring us from evil.

Quintus.

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—You have already touched on this topic. But before you come to treat of civil laws, endeavour to explain the force and power of this divine and celestial law, lest the torrent of custom should overwhelm our understanding, and betray us into the vulgar method of expression.

Marcus.

—From little children have we learned, my Quintus, such phrases as this, "that a man appeals to justice, and goes to law;" and a great many municipal laws have we heard

mentioned; but we should not understand that such commandments and prohibitions have sufficient moral power to make us practise virtue and avoid vice.

266 The moral power of law, is not only far more ancient than these legal institutions of states and peoples, but it is coeval with God himself, who beholds and governs both heaven and earth. For it is impossible that the divine mind should exist without reason; and divine reason must necessarily be possessed of a power to determine what is virtuous and what is vicious. Nor, because it was no where written, that one man should maintain the pass of a bridge against the enemy's whole army, and that he should order the bridge behind him to be cut down, are we therefore to imagine that the valiant Cocles did not perform this great exploit, agreeably to the laws of nature and the dictates of true bravery. Again, though in the reign of Tarquin there was no written law concerning adultery, it does not therefore follow that Sextus Tarquinius did not offend against the eternal law when he committed a rape on Lucretia, daughter of Tucipitinus. For, even then he had the light of reason
276 deduced from the nature of things, that incites to good actions and dissuades from evil ones. And this has the force of a law, not from the time it was written, but from the first moment it began to exist. Now, this existence of moral obligation is coeternal with that of the divine mind. Therefore the true and supreme law, whose commands and prohibitions are equally infallible, is the right reason of the Sovereign Deity.

Quintus.

—I grant you, my brother, that whatever is the just is always the true law; nor can this true law either be originated or abrogated by any written enactments.

Marcus.

286 —Therefore, as the Divine Mind, or reason, is the supreme law, so it exists in the mind of the sage, so far as it can be perfected in man. With respect to civil laws, which differ in all ages and nations, the name of law belongs to them not so much by right as by the favour of the people. For every law which deserves the name of a law ought to be morally good and laudable, as we might demonstrate by the following arguments. It is clear, that laws were originally made for the security of the people, for the preservation of cities, for the peace and benefit of society. Doubtless, the first legislators persuaded the people that they would write and publish such laws only as should conduce to the general morality and happiness, if they would receive and obey them. Such were the regulations, which being settled and sanctioned, they justly entitled *Laws*. From which we may reasonably conclude, that those who made unjustifiable and pernicious enactments for the people,
296 counteracted their own promises and professions; and established any thing rather than *laws*, properly so called, since it is evident that the very signification of the word *law*, comprehends the essence and energy of justice and equity.

I would therefore interrogate you on this point, my Quintus, like our inquisitive philosophers. If a state wants something, wanting which it is reckoned no state, must not that something be something good? (Quæro igitur a te Quinte, sicut illi solent,—quo si civitas careat, ob eam ipsam causam quod eo careat, pro nihilo habenda sit, id est ne numerandum in bonis?)

Quintus.

—A very great good

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Marcus.

—Now a state which has no law, is it not for that reason to be reckoned no state?

Quintus.

—We must needs say so.

Marcus.

—We must therefore reckon law among the very best things.

Quintus.

—I entirely agree with you.

Marcus.

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—If then in the majority of nations, many pernicious and mischievous enactments are made, as far removed from the law of justice we have defined as the mutual engagements of robbers, are we bound to call them laws? For as we cannot call the recipes of ignorant empirics, who give poisons instead of medicines, the prescriptions of a physician, we cannot call that the true law of the people, whatever be its name, if it enjoins what is injurious, let the people receive it as they will. For law is the just distinction between right and wrong, conformable to nature, the original and principal regulator of all things, by which the laws of men should be measured, whether they punish the guilty or protect the innocent.

Quintus.

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—I quite agree with you, and think that no law but that of justice should either be proclaimed as a law or enforced as a law.

Marcus.

—Then you regard as nullable and voidable the laws of Titius and Apuleius, because they are unjust.

Quintus.

—You may say the same of the laws of Livius.

Marcus.

—You are right, and so much the more, since a single vote of the senate would be sufficient to abrogate them in an instant. But that law of justice, which I have explained can never be rendered obsolete or inefficacious.

Quintus.

—And, therefore, you require those laws of justice the more ardently, because they would be durable and permanent, and would not require those perpetual alterations which all injudicious enactments demand.

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