

12.1 | *Law and Lawyers*

Among the quotations collected here, the reader will find a number that distinguish different kinds of law: divine law and man-made law, natural law and positive law, and the moral law and the law of the state. All of the kinds mentioned share in the property that distinguishes statements of law from other pronouncements: laws are commands or prohibitions that prescribe how people ought or ought not to behave; laws are violable rules of conduct. The so-called “laws of nature” discovered and formulated by natural scientists, being inviolable, are not laws in this sense at all.

This section concentrates mainly on one kind of law: positive law, the man-made laws that are one of the principal instruments of government. The reader will find the treatment of the natural moral law and the divine law in Section 9.3. The reader will also find matters closely related to the discussion of law in Section 12.2 and Section 12.3.

The passages assembled here discuss most of the critical questions that have been raised about the nature and operation of positive law: the difference between a constitution as the fundamental law of the state and the laws enacted by the legislative assemblies set up by the constitution; coercive force as an essential property of law; the educative influence of law; the difference between the written and the unwritten law, or between legislative enactments and customary law; the distinction between a gov-

ernment of laws and a government of men; the role of courts and judges in the application of law, and the need for equity to prevent injustice in the application of a just law to a particular case not foreseen by the law-maker; the considerations favoring or disfavoring the change of laws; and the settlement of disputes by laws and courts instead of by force and fighting as indispensable to the maintenance of peace.

One issue, more fundamental than all the others, is disputed in a number of quotations. On the one hand, the reader will find an expression of the view that laws represent the sovereign’s will; or as Ulpian, a Roman jurist, put it, “whatever pleases the prince has the force of law.” According to this view, justice consists solely in obedience to law; the laws themselves cannot be said either to be just or unjust; being the ultimate standard of justice, they cannot be measured by it. On the other hand, the reader will find passages expressing the diametrically opposite view that justice is the standard by which the goodness of laws is measured. According to this view, an unjust law is a law in name only, not binding on the conscience of those who are subject to it.

Included here also are diatribes against law and lawyers, akin to the attacks on physicians that the reader will find in Section 18.2. On the other side of the balance are eulogiums in praise of great lawgivers, such as Solon and Lycurgus, together with the honoring of law as basic to civilized life.

1 Ye shall have one manner of law, as well for the stranger, as for one of your own country.

Leviticus 24:22

2 *Menelaus*. Laws will never be rightly kept in a city

That knows no fear or reverence.

Sophocles, Ajax, 1073

3 *Aethra*. The power that keeps cities of men together

- Is noble preservation of the laws.
Euripides, *Suppliant Women*, 312
- 4 *Cleon*. Bad laws which are never changed are better for a city than good ones that have no authority.
Thucydides, *Peloponnesian War*, III, 37

- 5 *Socrates*. Then consider the matter in this way:—Imagine that I am about to play truant (you may call the proceeding by any name which you like), and the laws and the government come and interrogate me: "Tell us, Socrates," they say; "what are you about? are you not going by an act of yours to overturn us—the laws, and the whole state, as far as in you lies? Do you imagine that a state can subsist and not be overthrown, in which the decisions of law have no power, but are set aside and trampled upon by individuals?" What will be our answer, Crito, to these and the like words? Any one, and especially a rhetorician, will have a good deal to say on behalf of the law which requires a sentence to be carried out. He will argue that this law should not be set aside; and shall we reply, "Yes; but the state has injured us and given an unjust sentence." Suppose I say that?

Crito. Very good, Socrates.

Soc. "And was that our agreement with you?" the law would answer; "or were you to abide by the sentence of the state?" And if I were to express my astonishment at their words, the law would probably add: "Answer, Socrates, instead of opening your eyes—you are in the habit of asking and answering questions. Tell us,—What complaint have you to make against us which justifies you in attempting to destroy us and the state? In the first place did we not bring you into existence? Your father married your mother by our aid and begat you. Say whether you have any objection to urge against those of us who regulate marriage?" None, I should reply. "Or against those of us who after birth regulate the nurture and education of children, in which you also were trained? Were not the laws, which have the charge of education, right in commanding your father to train you in music and gymnastic?" Right, I should reply. "Well then, since you were brought into the world and nurtured and educated by us, can you deny in the first place that you are our child and slave, as your fathers were before you? And if this is true you are not on equal terms with us; nor can you think that you have a right to do to us what we are doing to you. Would you have any right to strike or revile or do any other evil to your father or your master, if you had one, because you have been struck or reviled by him, or received some other evil at his hands?—you would not say this? And because we think right to destroy you, do you think that you have any right to destroy us in return, and your country as far as in you lies? Will

you, O professor of true virtue, pretend that you are justified in this? Has a philosopher like you failed to discover that our country is more to be valued and higher and holier far than mother or father or any ancestor, and more to be regarded in the eyes of the gods and of men of understanding? also to be soothed, and gently and reverently entreated when angry, even more than a father, and either to be persuaded, or if not persuaded, to be obeyed? And when we are punished by her, whether with imprisonment or stripes, the punishment is to be endured in silence: and if she leads us to wounds or death in battle, thither we follow as is right; neither may any one yield or retreat or leave his rank, but whether in battle or in a court of law, or in any other place, he must do what his city and his country order him; or he must change their view of what is just: and if he may do no violence to his father or mother, much less may he do violence to his country." What answer shall we make to this, Crito? Do the laws speak truly, or do they not?

Cr. I think that they do.

Plato, *Crito*, 50A

- 6 *Athenian Stranger*. Consider, then, to whom our state is to be entrusted. For there is a thing which has occurred times without number in states—
Cleinias. What thing?

Ath. That when there has been a contest for power, those who gain the upper hand so entirely monopolize the government, as to refuse all share to the defeated party and their descendants—they live watching one another, the ruling class being in perpetual fear that some one who has a recollection of former wrongs will come into power and rise up against them. Now, according to our view, such governments are not polities at all, nor are laws right which are passed for the good of particular classes and not for the good of the whole state. States which have such laws are not polities but parties, and their notions of justice are simply unmeaning. I say this, because I am going to assert that we must not entrust the government in your state to any one because he is rich, or because he possesses any other advantage, such as strength, or stature, or again birth: but he who is most obedient to the laws of the state, he shall win the palm; and to him who is victorious in the first degree shall be given the highest office and chief ministry of the gods; and the second to him who bears the second palm; and on a similar principle shall all the other offices be assigned to those who come next in order. And when I call the rulers servants or ministers of the law, I give them this name not for the sake of novelty, but because I certainly believe that upon such service or ministry depends the well- or ill-being of the state. For that state in which the law is subject and has no authority, I perceive to be on the highway to ruin; but I see that the state in which the law is above

the rulers, and the rulers are the inferiors of the law, has salvation, and every blessing which the Gods can confer.

Plato, *Laws*, IV, 715A

- 7 *Athenian Stranger*. Laws are partly framed for the sake of good men, in order to instruct them how they may live on friendly terms with one another, and partly for the sake of those who refuse to be instructed, whose spirit cannot be subdued, or softened, or hindered from plunging into evil.

Plato, *Laws*, IX, 880B

- 8 The equitable is just, but not the legally just but a correction of legal justice. The reason is that all law is universal but about some things it is not possible to make a universal statement which shall be correct. In those cases, then, in which it is necessary to speak universally, but not possible to do so correctly, the law takes the usual case, though it is not ignorant of the possibility of error. And it is none the less correct; for the error is not in the law nor in the legislator but in the nature of the thing, since the matter of practical affairs is of this kind from the start. When the law speaks universally, then, and a case arises on it which is not covered by the universal statement, then it is right, where the legislator fails us and has erred by over-simplicity, to correct the omission—to say what the legislator himself would have said had he been present, and would have put into his law if he had known. Hence the equitable is just, and better than one kind of justice—not better than absolute justice but better than the error that arises from the absoluteness of the statement. And this is the nature of the equitable, a correction of law where it is defective owing to its universality.

Aristotle, *Ethics*, 1137^b11

- 9 It is difficult to get from youth up a right training for virtue if one has not been brought up under right laws; for to live temperately and hardily is not pleasant to most people, especially when they are young. For this reason their nurture and occupations should be fixed by law; for they will not be painful when they have become customary. But it is surely not enough that when they are young they should get the right nurture and attention; since they must, even when they are grown up, practise and be habituated to them, we shall need laws for this as well, and generally speaking to cover the whole of life; for most people obey necessity rather than argument, and punishments rather than the sense of what is noble.

This is why some think that legislators ought to stimulate men to virtue and urge them forward by the motive of the noble, on the assumption that those who have been well advanced by the formation of habits will attend to such influences; and that punishments and penalties should be im-

posed on those who disobey and are of inferior nature, while the incurably bad should be completely banished. A good man (they think), since he lives with his mind fixed on what is noble, will submit to argument, while a bad man, whose desire is for pleasure, is corrected by pain like a beast of burden. This is, too, why they say the pains inflicted should be those that are most opposed to the pleasures such men love.

However that may be, if (as we have said) the man who is to be good must be well trained and habituated, and go on to spend his time in worthy occupations and neither willingly nor unwillingly do bad actions, and if this can be brought about if men live in accordance with a sort of reason and right order, provided this has force,—if this be so, the paternal command indeed has not the required force or compulsive power (nor in general has the command of one man, unless he be a king or something similar), but the law *has* compulsive power, while it is at the same time a rule proceeding from a sort of practical wisdom and reason. And while people hate *men* who oppose their impulses, even if they oppose them rightly, the law in its ordaining of what is good is not burdensome.

Aristotle, *Ethics*, 1179^b31

- 10 The habit of lightly changing the laws is an evil, and, when the advantage is small, some errors both of lawgivers and rulers had better be left; the citizen will not gain so much by making the change as he will lose by the habit of disobedience. The analogy of the arts is false; a change in a law is a very different thing from a change in an art. For the law has no power to command obedience except that of habit, which can only be given by time, so that a readiness to change from old to new laws enfeebles the power of the law.

Aristotle, *Politics*, 1269^a15

- 11 He who bids the law rule may be deemed to bid God and Reason alone rule, but he who bids man rule adds an element of the beast; for desire is a wild beast, and passion perverts the minds of rulers, even when they are the best of men. The law is reason unaffected by desire.

Aristotle, *Politics*, 1287^a28

- 12 Good laws, if they are not obeyed, do not constitute good government. Hence there are two parts of good government; one is the actual obedience of citizens to the laws, the other part is the goodness of the laws which they obey; they may obey bad laws as well as good. And there may be a further subdivision; they may obey either the best laws which are attainable to them, or the best absolutely.

Aristotle, *Politics*, 1294^a4

- 13 In all well-tempered governments there is nothing which should be more jealously maintained

than the spirit of obedience to law, more especially in small matters; for transgression creeps in unperceived and at last ruins the state, just as the constant recurrence of small expenses in time eats up a fortune.

Aristotle, *Politics*, 1307^b30

- 14 Particular law is that which each community lays down and applies to its own members: this is partly written and partly unwritten. Universal law is the law of Nature. For there really is, as every one to some extent divines, a natural justice and injustice that is binding on all men, even on those who have no association or covenant with each other.
Aristotle, *Rhetoric*, 1373^b4
- 15 Law is only a principle of right derived from the will of the gods. It commands what is decent and forbids the opposite.
Cicero, *Philippics*, XI, 12
- 16 Injustice often comes about through trickery, in other words, through an over-subtle or perhaps fraudulent construction of law. This is the origin of the familiar proverb, "More law, less justice."
Cicero, *De Officiis*, I, 10
- 17 We should never prosecute the innocent. But we need have no scruples about undertaking the defense of a guilty person, so long as he is not utterly depraved and evil. People expect it; custom sanctions it; and humanity condones it. It is, after all, the business of the judge in a trial to find out the truth.
Cicero, *De Officiis*, II, 14
- 18 The fairness of a law does not consist in its effect being actually felt by all alike, but in its having been laid down for all alike.
Seneca, *Letters to Lucilius*, 107
- 19 Woe unto you also, ye lawyers! for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers.
Luke 11:46
- 20 Lycurgus would never reduce his laws into writing. . . . For he thought that the most material points, and such as most directly tended to the public welfare, being imprinted on the hearts of their youth by a good discipline, would be sure to remain, and would find a stronger security, than any compulsion would be, in the principles of action formed in them by their best lawgiver, education. And as for things of lesser importance, as pecuniary contracts, and such like, the forms of which have to be changed as occasion requires, he thought it the best way to prescribe no positive rule or inviolable usage in such cases, willing that their manner and form should be altered according to the circumstances of time, and determinations of men of sound judgment. Every end and object of law and enactment it was his design education should effect.
Plutarch, *Lycurgus*
- 21 When he perceived that his more important institutions had taken root in the minds of his countrymen, that custom had rendered them familiar and easy, that his commonwealth was now grown up and able to go alone, then, as Plato somewhere tells us, the Maker of the world, when first he saw it existing and beginning its motion, felt joy, even so Lycurgus, viewing with joy and satisfaction the greatness and beauty of his political structure, now fairly at work and in motion, conceived the thought to make it immortal too, and, as far as human forecast could reach, to deliver it down unchangeable to posterity. He called an extraordinary assembly of all the people, and told them that he now thought everything reasonably well established, both for the happiness and the virtue of the state; but that there was one thing still behind, of the greatest importance, which he thought not fit to impart until he had consulted the oracle; in the meantime, his desire was that they would observe the laws without any the least alteration until his return, and then he would do as the god should direct him. They all consented readily, and bade him hasten his journey; but, before he departed, he administered an oath to the two kings, the senate, and the whole commons, to abide by and maintain the established form of polity until Lycurgus should be come back.
This done, he set out for Delphi, and, having sacrificed to Apollo, asked him whether the laws he had established were good, and sufficient for a people's happiness and virtue. The oracle answered that the laws were excellent, and that the people, while it observed them, should live in the height of renown. Lycurgus took the oracle in writing, and sent it over to Sparta; and, having sacrificed the second time to Apollo, and taken leave of his friends and his son, he resolved that the Spartans should not be released from the oath they had taken, and that he would, of his own act, close his life where he was.
Plutarch, *Lycurgus*
- 22 This . . . is a property of the rational soul, love of one's neighbour, and truth and modesty, and to value nothing more than itself, which is also the property of Law. Thus then right reason differs not at all from the reason of justice.
Marcus Aurelius, *Meditations*, XI, 1
- 23 The heavenly city, or rather the part of it which sojourns on earth and lives by faith . . . while it sojourns on earth, calls citizens out of all nations and gathers together a society of pilgrims of all

languages, not scrupling about diversities in the manners, laws, and institutions whereby earthly peace is secured and maintained, but recognizing that, however various these are, they all tend to one and the same end of earthly peace.

Augustine, *City of God*, XIX, 17

- 24 A private person cannot lead another to virtue efficaciously; for he can only advise, and if his advice be not taken, it has no coercive power, such as the law should have, in order to prove an efficacious inducement to virtue. . . . But this coercive power is vested in the whole people or in some public personage, to whom it belongs to inflict penalties.

Aquinas, *Summa Theologica*, I-II, 90, 3

- 25 A law is imposed on others by way of a rule and measure. Now a rule or measure is imposed by being applied to those who are to be ruled and measured by it. Therefore, in order that a law obtain the binding force which is proper to a law, it must be applied to the men who have to be ruled by it. Such application is made by its being notified to them by promulgation. Therefore promulgation is necessary for the law to obtain its force.

Thus . . . the definition of law may be gathered; and it is nothing other than an ordinance of reason for the common good, made by him who has care of the community, and promulgated.

Aquinas, *Summa Theologica*, I-II, 90, 4

- 26 Man has a natural aptitude for virtue; but the perfection itself of virtue must be acquired by man by means of some kind of training. Thus we observe that man is helped by industry in his necessities, for instance, in food and clothing. Certain beginnings of these he has from nature, that is, his reason and his hands; but he has not the full complement, as other animals have, to whom nature has given sufficient covering and food. Now it is difficult to see how man could suffice for himself in the matter of this training; for the perfection of virtue consists chiefly in withdrawing man from undue pleasures, to which above all man is inclined, and especially the young, who are more capable of being trained. Consequently a man needs to receive this training from another, through which to arrive at the perfection of virtue. And as to those young people who are inclined to acts of virtue by their good natural disposition, or by custom, or rather by the gift of God, paternal training suffices, which is by admonitions. But since some are found to be depraved, and prone to vice, and not easily amenable to words, it was necessary for such to be restrained from evil by force and fear, in order that at least they might cease from evil-doing and leave others in peace, and that they themselves, by being accustomed in this way, might be brought to do will-

ingly what hitherto they did from fear, and thus become virtuous. Now this kind of training, which compels through fear of punishment, is the discipline of laws. Therefore, in order that man might have peace and virtue, it was necessary for laws to be framed. . . . As the Philosopher [Aristotle] says, "it is better that all things be regulated by law than left to be decided by judges," and this for three reasons. First, because it is easier to find a few wise men competent to frame right laws than to find the many who would be necessary to judge rightly of each single case. Secondly, because those who make laws consider long beforehand what laws to make; but judgment on each single case has to be pronounced as soon as it arises. And it is easier for man to see what is right by taking many instances into consideration, than by considering one solitary fact. Thirdly, because law-givers judge universally and of future events, while those who sit in judgment judge of things present, towards which they are affected by love, hatred, or some kind of cupidity, so that their judgment is perverted.

Since then the animated justice of the judge is not found in every man, and since it can be deflected, therefore it was necessary, whenever possible, for the law to determine how to judge, and for very few matters to be left to the decision of men.

Aquinas, *Summa Theologica*, I-II, 95, 1

- 27 The common principles of the natural law cannot be applied to all men in the same way on account of the great variety of human affairs, and from this arises the diversity of positive laws among various people.

Aquinas, *Summa Theologica*, I-II, 95, 2

- 28 The purpose of human law is to lead men to virtue not suddenly, but gradually. Therefore it does not lay upon the multitude of imperfect men the burdens of those who are already virtuous, namely, that they should abstain from all evil. Otherwise these imperfect ones, being unable to bear such precepts, would break out into yet greater evils.

Aquinas, *Summa Theologica*, I-II, 96, 2

- 29 Laws may be unjust in two ways. First, by being contrary to human good . . . as when an authority imposes on his subjects burdensome laws, conducive not to the common good but rather to his own cupidity or vainglory; or . . . as when a man makes a law that goes beyond the power committed to him; or . . . as when burdens are imposed unequally on the community, although with a view to the common good. The like are acts of violence rather than laws. . . .

Secondly, laws may be unjust through being opposed to the Divine good. Such are the laws of tyrants inducing to idolatry, or to anything else contrary to the Divine law; and laws of this kind

must in no way be observed.

Aquinas, *Summa Theologica*, I-II, 96, 4

- 30 The notion of law contains two things: first, that it is a rule of human acts; secondly, that it has coercive power. Hence a man may be subject to law in two ways. First, as the regulated is subject to the regulator, and in this way whoever is subject to a power is subject to the law framed by that power. But it may happen in two ways that one is not subject to a power. In one way, by being altogether free from its authority. Hence the subjects of one city or kingdom are not bound by the laws of the sovereign of another city or kingdom, since they are not subject to his authority. In another way by being under a yet higher law. Thus the subject of a proconsul should be ruled by his command, but not in those matters in which the subject receives his orders from the emperor; for in these matters he is not bound by the mandate of the lower authority, since he is directed by that of a higher. In this way, one who is subject absolutely to a law may not be subject to it in certain matters, in respect of which he is ruled by a higher law.
- Secondly, a man is said to be subject to a law as the coerced is subject to the coercer. In this way the virtuous and the just are not subject to the law, but only the wicked. Because coercion and violence are contrary to the will; but the will of the good is in harmony with the law, while the will of the wicked is discordant from it. Therefore in this sense the good are not subject to the law, but only the wicked.
- Aquinas, *Summa Theologica*, I-II, 96, 5
- 31 Human law is a dictate of reason, by which human acts are directed. Thus there may be two causes for the just change of human law: one on the part of reason; the other on the part of man whose acts are regulated by law. The cause on the part of reason is that it seems natural to human reason to advance gradually from the imperfect to the perfect. . . .
- On the part of man, whose acts are regulated by law, the law can be rightly changed on account of the changed condition of man, to whom different things are expedient according to the difference of his condition.
- Aquinas, *Summa Theologica*, I-II, 97, 1
- 32 Human law is rightly changed in so far as such change is conducive to the common weal. But, to a certain extent, the mere change of law is of itself prejudicial to the common good, because custom avails much for the observance of laws, seeing that what is done contrary to general custom, even in slight matters, is looked upon as grave. Consequently, when a law is changed, the binding power of the law is diminished, in so far as custom is abolished. Therefore human law should never be changed, unless, in some way or other, the common welfare be compensated according to the extent of the harm done in this respect.
- Aquinas, *Summa Theologica*, I-II, 97, 2
- 33 For such law as man gives to other wight,
He should himself submit to it, by right.
Chaucer, *Canterbury Tales*:
Man of Law's Prologue, Intro.
- 34 The chief foundations of all states, new as well as old or composite, are good laws and good arms; and as there cannot be good laws where the state is not well armed, it follows that where they are well armed they have good laws.
- Machiavelli, *Prince*, XII
- 35 There are two ways of contesting, the one by the law, the other by force; the first method is proper to men, the second to beasts; but because the first is frequently not sufficient, it is necessary to have recourse to the second.
- Machiavelli, *Prince*, XVIII
- 36 For as good habits of the people require good laws to support them, so laws, to be observed, need good habits on the part of the people.
- Machiavelli, *Discourses*, I, 18
- 37 The strictest right is the greatest wrong, and therefore equity is necessary. This is not a rash relaxation of laws and discipline. It is, rather, an interpretation of laws which in some cases finds mitigating circumstances, especially in cases in which the law doesn't decide on principle. According to the circumstances equity weighs for or against. But the weighing must be of such kind that the law isn't undermined, for no undermining of natural law and divine law must be allowed.
- Luther, *Table Talk*, 4178
- 38 The law is a silent magistrate, and a magistrate a speaking law.
- Calvin, *Institutes of the Christian Religion*, IV, 20
- 39 It is very doubtful whether there can be such evident profit in changing an accepted law, of whatever sort it be, as there is harm in disturbing it; inasmuch as a government is like a structure of different parts joined together in such a relation that it is impossible to budge one without the whole body feeling it.
- Montaigne, *Essays*, I, 23, Of Custom
- 40 There is little relation between our actions, which are in perpetual mutation, and fixed and immutable laws. The most desirable laws are those that are rarest, simplest, and most general; and I even think that it would be better to have none at all

than to have them in such numbers as we have.
Montaigne, *Essays*, III, 13, Of Experience

- 41 Now laws remain in credit not because they are just, but because they are laws. That is the mystic foundation of their authority; they have no other. And that is a good thing for them. They are often made by fools, more often by people who, in their hatred of equality, are wanting in equity; but always by men, vain and irresolute authors.

There is nothing so grossly and widely and ordinarily faulty as the laws. Whoever obeys them because they are just, does not obey them for just the reason he should.

Montaigne, *Essays*, III, 13, Of Experience

- 42 *Dick the Butcher*. The first thing we do, let's kill all the lawyers.

John Cade. Nay, that I mean to do. Is not this a lamentable thing, that of the skin of an innocent lamb should be made parchment? that parchment, being scribbled o'er, should undo a man? Some say the bee stings: but I say, 'tis the bee's wax; for I did but seal once to a thing, and I was never mine own man since.

Shakespeare, *II Henry VI*, IV, ii, 82

- 43 Reason is the life of the Law. Nay the Common Law itself is nothing else but reason; which is to be understood of an artificial perfection of reason, gotten by long study, observation, and experience, and not of every man's naturall reason.

Sir Edward Coke, *Commentary Upon Littleton*, 138

- 44 The most obvious and natural way of discovering the truth is by referring to laws, which derive their force and efficacy from the general consent of mankind; so that if a law rests upon the presumption of any fact, which in reality has no existence, such a law is not binding. For when no evidence of the fact can be produced, the entire foundation, on which that law rests must fail.

Grotius, *Rights of War and Peace*, Bk. II, XI, 6

- 45 As men, for the attaining of peace and conservation of themselves thereby, have made an artificial man, which we call a *Commonwealth*; so also have they made artificial chains, called *civil laws*, which they themselves, by mutual covenants, have fastened at one end to the lips of that man, or assembly, to whom they have given the sovereign power, and at the other end to their own ears. These bonds, in their own nature but weak, may nevertheless be made to hold, by the danger, though not by the difficulty of breaking them.

Hobbes, *Leviathan*, II, 21

- 46 Of positive laws some are *human*, some *divine*: and of human positive laws, some are *distributive*, some

penal. *Distributive* are those that determine the rights of the subjects, declaring to every man what it is by which he acquireth and holdeth a propriety in lands or goods, and a right or liberty of action: and these speak to all the subjects. *Penal* are those which declare what penalty shall be inflicted on those that violate the law; and speak to the ministers and officers ordained for execution. For though every one ought to be informed of the punishments ordained beforehand for their transgression; nevertheless the command is not addressed to the delinquent (who cannot be supposed will faithfully punish himself), but to public ministers appointed to see the penalty executed. And these penal laws are for the most part written together with the laws distributive, and are sometimes called *judgements*. For all laws are general judgements, or sentences of the legislator; as also every particular judgement is a law to him whose case is judged.

Hobbes, *Leviathan*, II, 26

- 47 To the care of the sovereign belongeth the making of good laws. But what is a good law? By a *good law*, I mean not a just law: for no law can be unjust. The law is made by the sovereign power, and all that is done by such power is warranted and owned by every one of the people; and that which every man will have so, no man can say is unjust. It is in the laws of a Commonwealth, as in the laws of gaming: whatsoever the gamesters all agree on is injustice to none of them. A good law is that which is needful, for the good of the people, and withal perspicuous.

For the use of laws (which are but rules authorized) is not to bind the people from all voluntary actions, but to direct and keep them in such a motion as not to hurt themselves by their own impetuous desires, rashness, or indiscretion; as hedges are set, not to stop travellers, but to keep them in the way. And therefore a law that is not needful, having not the true end of a law, is not good. A law may be conceived to be good when it is for the benefit of the sovereign, though it be not necessary for the people, but it is not so. For the good of the sovereign and people cannot be separated.

Hobbes, *Leviathan*, II, 30

- 48 Let not the Law of thy Country be the non ultra of thy Honesty; nor think that always good enough which the law will make good.

Sir Thomas Browne, *Christian Morals*, I, 11

- 49 I look at the law which they [the Jews] boast of having obtained from God, and I find it admirable. It is the first law of all and is of such a kind that, even before the term *law* was in currency among the Greeks, it had, for nearly a thousand years earlier, been uninterruptedly accepted and observed by the Jews. I likewise think it strange

that the first law of the world happens to be the most perfect; so that the greatest legislators have borrowed their laws from it, as is apparent from the law of the Twelve Tables at Athens, afterwards taken by the Romans, and as it would be easy to prove, if Josephus and others had not sufficiently dealt with this subject.

Pascal, *Pensées*, IX, 619

50 We cannot even conceive, that every citizen should be allowed to interpret the commonwealth's decrees or laws. For were every citizen allowed this, he would thereby be his own judge, because each would easily be able to give a colour of right to his own deeds, which . . . is absurd.

Spinoza, *Political Treatise*, III, 4

51 Civil jurisprudence depends on the mere decree of the commonwealth, which is not bound to please any but itself, nor to hold anything to be good or bad, but what it judges to be such for itself. And, accordingly, it has not merely the right to avenge itself, or to lay down and interpret laws, but also to abolish the same, and to pardon any guilty person out of the fulness of its power.

Spinoza, *Political Treatise*, IV, 5

52 The obligations of the law of Nature cease not in society, but only in many cases are drawn closer, and have, by human laws, known penalties annexed to them to enforce their observation. Thus the law of Nature stands as an external rule to all men, legislators as well as others. The rules that they make for other men's actions must, as well as their own and other men's actions, be conformable to the law of Nature—*i.e.*, to the will of God, of which that is a declaration, and the fundamental law of Nature being the preservation of mankind, no human sanction can be good or valid against it.

Locke, *II Civil Government*, XI, 135

53 These are the bounds which the trust that is put in them by the society and the law of God and Nature have set to the legislative power of every commonwealth, in all forms of government. First: They are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favourite at Court, and the countryman at plough. Secondly: These laws also ought to be designed for no other end ultimately but the good of the people.

Locke, *II Civil Government*, XI, 142

54 First, the law of God; secondly, the law of politic societies; thirdly, the law of fashion, or private censure, are those to which men variously compare their actions: and it is by their conformity to one of these laws that they take their measures, when they would judge of their moral rectitude,

and denominate their actions good or bad.

Locke, *Concerning Human Understanding*,
Bk. II, XXVIII, 13

55 I said that those who made profession of this science [law] were exceedingly multiplied, being almost equal to the caterpillars in number; that they were of diverse degrees, distinctions, and denominations. The numerousness of those that dedicated themselves to this profession were such that the fair and justifiable advantage and income of the profession was not sufficient for the decent and handsome maintenance of multitudes of those who followed it. Hence it came to pass that it was found needful to supply that by artifice and cunning, which could not be procured by just and honest methods: the better to bring which about, very many men among us were bred up from their youth in the art of proving by words multiplied for the purpose that *white is black*, and *black is white*, according as they are paid. The greatness of these mens assurance and the boldness of their pretensions gained upon the opinion of the vulgar, whom in a manner they made slaves of, and got into their hands much the largest share of the practice of their profession. These practitioners were by men of discernment called *pettifoggers*, (that is, *confounders*, or rather, *destroyers of right*).

Swift, *Gulliver's Travels*, IV, 5

56 Law, in a free Country, is, or ought to be, the Determination of the Majority of those who have Property in Land.

Swift, *Thoughts on Various Subjects*

57 Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through.

Swift, *A Trritical Essay Upon the Faculties of the Mind*

58 The hungry Judges soon the sentence sign,
And wretches hang that jury-men may dine.

Pope, *The Rape of the Lock*, III, 21

59 An attorney may feel all the miseries and distresses of his fellow-creatures, provided he happens not to be concerned against them.

Fielding, *Tom Jones*, XII, 10

60 Before laws were made, there were relations of possible justice. To say that there is nothing just or unjust but what is commanded or forbidden by positive laws, is the same as saying that before the describing of a circle all the radii were not equal.

Montesquieu, *Spirit of Laws*, I, 1

61 If it be true that the temper of the mind and the passions of the heart are extremely different in different climates, the laws ought to be in relation both to the variety of those passions and to the variety of those tempers.

Montesquieu, *Spirit of Laws*, XIV, 1

62 I am told that there are laws among thieves, and also laws of war. I ask what are these laws of war. I learn that they mean hanging a brave officer who has held fast in a bad post without cannon against a royal army; that they mean having a prisoner hanged, if the enemy has hanged one of yours; that they mean putting to the fire and the sword villages which have not brought their sustenance on the appointed day, according to the orders of the gracious sovereign of the district. "Good," say I, "that is the 'Spirit of the Laws.'"

It seems to me that most men have received from nature enough common sense to make laws, but that everyone is not just enough to make good laws.

Voltaire, *Philosophical Dictionary*: Laws

63 The first and most important rule of legitimate or popular government, that is to say, of government whose object is the good of the people, is . . . to follow in everything the general will. But to follow this will it is necessary to know it, and above all to distinguish it from the particular will, beginning with one's self: this distinction is always very difficult to make, and only the most sublime virtue can afford sufficient illumination for it. As, in order to will, it is necessary to be free, a difficulty no less great than the former arises—that of preserving at once the public liberty and the authority of government. Look into the motives which have induced men, once united by their common needs in a general society, to unite themselves still more intimately by means of civil societies: you will find no other motive than that of assuring the property, life and liberty of each member by the protection of all. But can men be forced to defend the liberty of any one among them, without trespassing on that of others? And how can they provide for the public needs, without alienating the individual property of those who are forced to contribute to them? With whatever sophistry all this may be covered over, it is certain that if any constraint can be laid on my will, I am no longer free, and that I am no longer master of my own property, if any one else can lay a hand on it. This difficulty, which would have seemed insurmountable, has been removed, like the first, by the most sublime of all human institutions, or rather by a divine inspiration, which teaches mankind to imitate here below the unchangeable decrees of the Deity. By what inconceivable art has a means been found of making men free by making them subject; of using in the service of the State the properties, the persons and even the lives of all its members, without constraining and without consulting them; of confining their will by their own admission; of overcoming their refusal by that consent, and forcing them to punish themselves, when they act against their own will? How can it be that all should obey, yet nobody take upon him to command, and that all should serve, and yet

have no masters, but be the more free, as, in apparent subjection, each loses no part of his liberty but what might be hurtful to that of another? These wonders are the work of law. It is to law alone that men owe justice and liberty. It is this salutary organ of the will of all which establishes, in civil right, the natural equality between men. It is this celestial voice which dictates to each citizen the precepts of public reason, and teaches him to act according to the rules of his own judgment, and not to behave inconsistently with himself. It is with this voice alone that political rulers should speak when they command; for no sooner does one man, setting aside the law, claim to subject another to his private will, than he departs from the state of civil society, and confronts him face to face in the pure state of nature, in which obedience is prescribed solely by necessity.

Rousseau, *Political Economy*

64 I mean to inquire if, in the civil order, there can be any sure and legitimate rule of administration, men being taken as they are and laws as they might be.

Rousseau, *Social Contract*, I, Introduction

65 If there is, in each State, only one good system, the people that is in possession of it should hold fast to this; but if the established order is bad, why should laws that prevent men from being good be regarded as fundamental? Besides, in any case, a people is always in a position to change its laws, however good; for, if it choose to do itself harm, who can have a right to stop it?

Rousseau, *Social Contract*, II, 12

66 Why . . . is so much respect paid to old laws? For this very reason. We must believe that nothing but the excellence of old acts of will can have preserved them so long: if the Sovereign had not recognised them as throughout salutary, it would have revoked them a thousand times. This is why, so far from growing weak, the laws continually gain new strength in any well constituted State; the precedent of antiquity makes them daily more venerable: while wherever the laws grow weak as they become old, this proves that there is no longer a legislative power, and that the State is dead.

Rousseau, *Social Contract*, III, 11

67 A lawyer has no business with the justice or injustice of the cause which he undertakes unless his client asks his opinion, and then he is bound to give it honestly. The justice or injustice of the cause is to be decided by the judge.

Johnson, *Tour of the Western Islands of Scotland* (Aug. 15, 1773)

68 *Johnson*. It is sufficient for our purpose that every just law is dictated by reason; and that the practice of every legal Court is regulated by equity. It

is the quality of reason to be invariable and constant; and of equity, to give to one man what, in the same case, is given to another. The advantage which humanity derives from law is this: that the law gives every man a rule of action, and prescribes a mode of conduct which shall entitle him to the support and protection of society. That the law may be a rule of action, it is necessary that it be known; it is necessary that it be permanent and stable. The law is the measure of civil right; but if the measure be changeable, the extent of the thing measured never can be settled.

Boswell, *Life of Johnson* (1772)

- 69 The laws of a nation form the most instructive portion of its history.
Gibbon, *Decline and Fall of the Roman Empire*, XLIV
- 70 People, crushed by law, have no hopes but from power. If laws are their enemies, they will be enemies to laws; and those who have much to hope and nothing to lose, will always be dangerous, more or less.
Burke, *Letter to Charles James Fox* (Oct. 8, 1777)
- 71 Bad laws are the worst sort of tyranny.
Burke, *Speech at Bristol* (1780)
- 72 In the making of a new law it is undoubtedly the duty of the legislator to see that no injustice be done even to an individual: for there is then nothing to be unsettled, and the matter is under his hands to mould it as he pleases; and if he finds it untractable in the working, he may abandon it without incurring any new inconvenience. But in the question concerning the repeal of an old one, the work is of more difficulty; because laws, like houses, lean on one another, and the operation is delicate, and should be necessary: the objection, in such a case, ought not to arise from the natural infirmity of human institutions, but from substantial faults which contradict the nature and end of law itself,—faults not arising from the imperfection, but from the misapplication and abuse of our reason.
Burke, *Tract on the Popery Laws*, I, 3
- 73 The general object which all laws have, or ought to have, in common, is to augment the total happiness of the community; and therefore, in the first place, to exclude, as far as may be, every thing that tends to subtract from that happiness: in other words, to exclude mischief.
Bentham, *Principles of Morals and Legislation*, XIII, 1
- 74 Laws are a dead letter without courts to expound and define their true meaning and operation.
Hamilton, *Federalist* 22
- 75 Nations pay little regard to rules and maxims calculated in their very nature to run counter to the necessities of society. Wise politicians will be cautious about fettering the government with restrictions that cannot be observed, because they know that every breach of the fundamental laws, though dictated by necessity, impairs that sacred reverence which ought to be maintained in the breast of rulers towards the constitution of a country, and forms a precedent for other breaches where the same plea of necessity does not exist at all, or is less urgent and palpable.
Hamilton, *Federalist* 25
- 76 It will be of little avail to the people that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule which is little known and less fixed?
Hamilton or Madison, *Federalist* 62
- 77 One Law for the Lion and Ox is Oppression.
Blake, *Marriage of Heaven and Hell*, 24
- 78 The hatred of law, of right made determinate in law, is the shibboleth whereby fanaticism, flabby-mindedness, and the hypocrisy of good intentions are clearly and infallibly recognized for what they are, disguise themselves as they may.
Hegel, *Philosophy of Right*, 258, fn.
- 79 Laws are of two kinds—laws of nature and laws of the land. The laws of nature simply are what they are and are valid as they are; they are not liable to encroachment, though in certain cases man may transgress them. To know the law of nature, we must learn to know nature, since its laws are rigid and it is only our ideas about them that can be false. The measure of these laws is outside us; knowing them adds nothing to them and does not assist their operation; our knowledge of them can expand, that is all. Knowledge of the laws of the land is in one way similar, but in another way not. These laws too we learn to know just as they exist; the citizen's knowledge of them is more or less of this sort, and the student of positive law equally stops at what is given. But the difference in the case of laws of the land is that they arouse the spirit of reflection, and their diversity at once draws attention to the fact that they are not absolute. Positive laws are something posited, something originated by men. Between what is so originated and man's inner voice there may be an inevitable clash or there may be agreement. Man does not stop short at the existent, but claims to have in himself the measure of what is right. He

may be subjected to the compulsion and dominion of an external authority, though never as he is to the compulsion of nature, because his inner self always tells him how things ought to be and he finds within himself the confirmation or denial of what passes as valid. In nature, the highest truth is that there is a *law*; in the law of the land, the thing is not valid simply because it exists; on the contrary, everyone demands that it shall comply with his private criterion. Here then an antagonism is possible between what ought to be and what is, between the absolutely right which stands unaltered and the arbitrary determination of what is to be recognized as right. A schism and a conflict of this sort is to be found only in the territory of mind, and because mind's privilege seems therefore to lead to discontent and unhappiness, men are often thrown back from the arbitrariness of life to the contemplation of nature and set themselves to take nature as an example. But it is precisely in these clashes between what is absolutely right and what arbitrariness makes pass as right that there lies the need for studying the fundamentals of right. In the right, man must meet with his own reason; consequently, he must consider the rationality of the right, and this is the task of our science in contrast with the positive study of law which often has to do only with contradictions.

Hegel, *Philosophy of Right*, Additions, Preface

80 The law is only a memorandum. We are superstitious, and esteem the statute somewhat: so much life as it has in the character of living men is its force. The statute stands there to say, Yesterday we agreed so and so, but how feel ye this article to-day? Our statute is a currency which we stamp with our own portrait: it soon becomes unrecognizable, and in process of time will return to the mint.

Emerson, *Politics*

81 Good men must not obey the laws too well.

Emerson, *Politics*

82 The less government we have the better—the fewer laws, and the less confided power.

Emerson, *Politics*

83 *Mr. Brownlow*. "You were present on the occasion of the destruction of these trinkets, and indeed are the more guilty of the two, in the eye of the law; for the law supposes that your wife acts under your direction."

"If the law supposes that," said Mr. Bumble, squeezing his hat emphatically in both hands, "the law is a ass—a idiot."

Dickens, *Oliver Twist*, LI

84 Law never made men a whit more just; and, by means of their respect for it, even the well-disposed are daily made the agents of injustice.

Thoreau, *Civil Disobedience*

85 Unjust laws exist: shall we be content to obey them, or shall we endeavor to amend them, and obey them until we have succeeded, or shall we transgress them at once? Men generally, under such a government as this, think that they ought to wait until they have persuaded the majority to alter them. They think that, if they should resist, the remedy would be worse than the evil. But it is the fault of the government itself that the remedy is worse than the evil.

Thoreau, *Civil Disobedience*

86 The laws of most countries are far worse than the people who execute them, and many of them are only able to remain laws by being seldom or never carried into effect.

Mill, *Subjection of Women*, II

87 Laws never would be improved, if there were not numerous persons whose moral sentiments are better than the existing laws.

Mill, *Subjection of Women*, II