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Author: Dale Ahlquist+

+ Dale Ahlquist is the President of the American Chesterton Society, the publisher of Gilbert Magazine, and the author of G.K. Chesterton: The Apostle of Common Sense.

Text

[*685]

G.K. Chesterton ¹ would have made an outstanding lawyer. In fact, I cannot imagine anyone whom I would rather have as my advocate. He would have argued my case clearly and thoroughly, taken apart my opponent's case completely and handily, charmed the jury, and convinced the judge. Though he would not have proved that I am innocent (because I certainly am not), he would have demonstrated that the judge is more guilty than I am, and rightfully should serve my sentence for me. And best of all, the judge would do it and feel good about it.

There are at least three good reasons why Chesterton would have made a good lawyer. First, he had a passion for justice. If a lawyer is not moved by that passion, it is hard to imagine why he should become a lawyer. Chesterton championed the causes of the poor and the oppressed; fought for housing, labor, and prison reform; and never failed to point out legal favoritism aimed at benefiting the wealthy and powerful. ² This is especially evident in his support of the social theory of Distributism, which I will discuss later in this essay. Second, he demonstrated a keen understanding of the law, from its basics to its fine points. Third, he loved to argue. Not only that, he believed in the benefits of a good argument: "Many people will tell you that nothing has ever come out of arguments; and I tell you that everything has always come out of arguments" ³

[*686] Chesterton was not a lawyer. He was a writer. His observations, however, on law and lawyers are not only insightful in themselves, but they are useful because they are part of a tightly and intricately woven philosophy with profound insight into society and the law. He offered candid and well-reasoned advice on making laws, presiding

¹ Gilbert Keith Chesterton (1874-1936) was one of the most prolific writers of all time, and had a great deal to say on law, lawyers, and ordering society. For biographical information on Chesterton, see Joseph Pearce, *Wisdom and Innocence: A Life of G.K. Chesterton* (1996).

² See Sara Bowen & Michael Bowen, *Chesterton and the Law*, in *The Gift of Wonder: The Many Sides of G.K. Chesterton* 39, 44-45 (Dale Ahlquist ed., 2001).

³ G.K. Chesterton, *The Finger of Stone*, in *The Poet and the Lunatics* 111, 136 (Sheed & Ward 1955) (1929).

over cases, practicing law, and governing. Underlying Chesterton's ideas is a tremendous respect for the common sense of the common man.

G.K. Chesterton was a complete thinker, one of the rarest of birds in the intellectual aerie. As an author of a hundred books and a journalist who penned thousands of essays in early twentieth-century England, Chesterton managed to write about everything. And he wrote with a clarity and consistency quite unmatched by any other modern writer. He was a complete thinker because his first principles were right, and that informed everything he wrote. His outlook is perhaps best summed up in his famous line: "The Christian ideal has not been tried and found wanting. It has been found difficult; and left untried."⁴ He used "the Christian ideal" as an eternal and unchanging reference point to put all of the world's fashions, fads, and failings into their proper perspective.

Law and Common Sense

There are any number of reasons why Chesterton was not a lawyer, but certainly one reason is that his strong suit was common sense. This is not to say that lawyers do not have common sense, but they are condemned to hack their way through a jungle of laws that are not only lacking in that commodity, but are often directly contrary to it. The very existence of those laws indicates that most of our law-making is based on the philosophy that common sense does not exist. Most rules and regulations and restrictions either assume that people are stupid, or prove that they are by the fact that such laws are made.

When laws defy common sense, it is not hard to understand why there is widespread disrespect for the law. The common man disrespects the law because the laws disrespect the common man. Chesterton, an Englishman, offers an insightful observation: "In the case of the laws of our American friends, it may be said that they **[*687]** break them too easily because they make them too easily."⁵ He said that courts, judges, and juries produce between them, not a tyranny, but simply anarchy: "Nobody seems to know at any minute whether he is keeping the law or not, or whether or how he will be punished even if he is breaking it."⁶ When the law cannot be understood, it cannot be respected nor obeyed. And the poor and uneducated will not even attempt to understand such a complicated, many-headed monster. They will learn only enough law so as "to avoid the policeman."⁷

Chesterton's observations describe our current regulatory state so accurately it is hard to imagine they were made almost a century ago. Time has proven the truth of Chesterton's warnings: we now labor under "a legal colossus unprecedented in the history of civilization, with legal dictates numbering in the millions of words and growing larger every day."⁸ The result is exactly as Chesterton said it would be. Legal commentator Philip Howard has noted:

Increasingly, law makes us feel like its victims. We divert our energies into defensive measures designed solely to avoid tripping over rules that seem to exist only because someone put them there... .

... When law is too dense to be known, too detailed to be sensible, and is always tripping us up, why should we respect it?⁹

Big Laws Versus Small Laws

⁴ G.K. Chesterton, *What's Wrong with the World* (1910), reprinted in 4 *The Collected Works of G.K. Chesterton* 33, 61 (James V. Schall, S.J. ed., 1987) [hereinafter *What's Wrong with the World*].

⁵ G. K. Chesterton, *The Decalogue Again*, *G.K.'s Weekly*, Feb. 6, 1926.

⁶ G.K. Chesterton, *The Novelist and Our Libel Laws*, *Illustrated London News*, Feb. 11, 1911, reprinted in 29 *The Collected Works of G.K. Chesterton* 35, 36 (Lawrence J. Clipper ed., 1988).

⁷ *What's Wrong with the World*, supra note 4, at 171.

⁸ Philip K. Howard, *The Death of Common Sense* 10 (1994).

⁹ *Id.* at 48-49.

How did we get ourselves into such a morass? Chesterton's explanation of the mind-numbing growth of laws in our society is one of the plainest and most profound ever given: "When you break the big laws, you do not get liberty: you do not even get anarchy. You get the small laws."¹⁰ Most of our laws were made to mop up after the big laws were broken. The result is the small laws are given **[*688]** extraordinary attention, while the big laws are not given even ordinary attention.¹¹

One of Chesterton's most fascinating and creative novels, *Manalive*, is in part a courtroom drama. In *Manalive*, Chesterton introduces us to the wonderfully-named character, Innocent Smith, who startles everyone around him because he breaks the conventions and keeps the commandments.¹² The commandments are the big laws, for example, "Thou shalt not murder" and "Thou shalt not steal." In contrast, conventions are mere patterns of behavior that do not stem from unchangeable moral norms. Notably, breaking the conventions does not entail wanton hedonism or acting with a lack of respect for others - "Smith's manners were as courteous as they were unconventional."¹³ Thus, Innocent Smith has a profound respect for human life and the property of others, while engaging in unconventional activities such as climbing trees and eating lunch on the rooftop. The key to sanity and salvation, and even good humor, is to keep the commandments and maintain a relaxed attitude towards the conventions. But we have it exactly backwards.

A man's minor actions and arrangements ought to be free, flexible, and creative; the things that should be unchangeable are his principles, his ideals. But with us the reverse is true; our views change constantly; but our lunch does not change. Now, I should like men to have strong and rooted conceptions, but as for their lunch, let them have it sometimes in the garden, sometimes in bed, sometimes on the roof, sometimes in the top of a tree.¹⁴

Instead of relying on unchanging moral principles, our society has turned to an increasingly complex system of rules to provide a guide for conduct. In a free society governed by the big laws, people have the liberty to act as they choose within the boundaries of the big laws. **[*689]** However, the regime of highly detailed rules destroys this freedom: "We can't do what we want because the law details our course."¹⁵ This attempted micro-managing of human behavior is incapable of producing the desired results. Philip Howard has eloquently described the situation:

Principles are like trees in open fields. We can know where we are and where to go. But the path we take is our own. What good is law today? We fight off rules like branches hitting us in the face, losing any sense of where we are supposed to be going and bleeding from illogical dictates that serve no one's purpose.

The sunlight of common sense shines high above us whenever principles control: What is right and reasonable, not the parsing of legal language, dominates the discussion.¹⁶

¹⁰ G.K. Chesterton, *On Good Taste*, *Daily News* (London), July 29, 1905.

¹¹ The big laws can ultimately be reduced to the Golden Rule: "Do to others whatever you would have them do to you." Matthew 7:12. When society removes the Ten Commandments from schools and public buildings, it is not surprising that the Golden Rule is neglected as well. Society then enacts a plethora of small laws as a poor substitute. Consider smoking: in a society governed by the Golden Rule, smokers could be expected to refrain when the practice would cause discomfort to others. Instead, we have heavy-handed, overbroad laws that regulate public smoking.

¹² G.K. Chesterton, *Manalive* (1912), reprinted in *7 The Collected Works of G.K. Chesterton* 259, 414 (Iain T. Benson ed., 2004).

¹³ *Id.* at 288.

¹⁴ G.K. Chesterton, *On Lying in Bed*, in *On Lying in Bed and Other Essays* by G.K. Chesterton 33, 36 (Alberto Manguel ed., Bayeaux Arts 2000) (1909).

¹⁵ Howard, *supra* note 8, at 20-21.

¹⁶ *Id.* at 177.

By rejecting principle as a guide to conduct, we are placing a burden on the law it was not designed to bear. The results have been disastrous.

A scheme of official control which is too ambitious for human life has broken down, and broken down exactly where we need it most. Instead of law being a strong cord to bind what it is really possible to bind, it has become a thin net to cover what it is quite impossible to cover. It is the nature of a net so stretched to break everywhere; and the practical result of our bureaucracy is something very near to anarchy.¹⁷

We have come to the point where our laws actually enforce the breaking of the commandments - abortion which is murder, no-fault divorce which is adultery, crass commercialism which is coveting - but we prosecute businesses for failing to fill out hazardous chemical safety forms for bottles of Windex used by employees.¹⁸

[*690] The word "anarchy" has come up a number of times already and will continue to come up. It is not possible to talk about the law without referring to anarchy. This raises a fundamental question: how do we defend the proposition that an ordered society based on law is preferable to anarchy? The answer should be obvious, but explaining obvious things is never simple. Most of us have not bothered to question our own assumptions or the assumptions that are the foundation upon which our society is based. If we did, we might be surprised to discover that the best explanation of the basis for an ordered society based on law comes from Christian doctrine.

Freedom and the Law

The very existence of law implies the truth of the doctrine of free will. Obedience or disobedience involves choice; otherwise, the words are meaningless. Free will does more than imply the existence of sin. Chesterton says that original sin is the one doctrine that can actually be proved - just look around.¹⁹

The existence of evil, which is evident, implies the existence of good, even when it is not evident. Goodness, Chesterton says, exists outside the human race, and men either rise to it or fall away from it.²⁰ The logical conclusion is that natural law, the divine order of things, is "as much demonstrated in the breach as in the observance."²¹

Thus, there is a right way and a wrong way to do things. There is an inside and an outside. Freedom exists not outside the law, but inside the law. The often-criticized "negative morality" of the commandments' "Thou shalt not

¹⁷ G.K. Chesterton, *The Efficiency of the Police*, *Illustrated London News*, Apr. 1, 1922, reprinted in 32 *The Collected Works of G.K. Chesterton* 347, 349 (Lawrence J. Clipper ed., 1989).

¹⁸ Howard, *supra* note 8, at 37 ("Two years ago a two-person company in Florida was cited for not having MSDS [Material Safety Data Sheets] forms for the Windex and Joy cleaning solutions that were found on the premises."). Unfortunately, it has become all too common for the larger commandments to be subordinated to man-made regulations. In 1988, nuns from the Missionaries of Charity, under the guidance of Mother Teresa, attempted to convert abandoned buildings in New York into homeless shelters. *Id.* at 3-4. The Missionaries eschew the routine use of modern conveniences, which brought them into conflict with the New York building code. *Id.* The city required elevators to be installed, at a cost of over \$ 100,000, even though the nuns would never use them. *Id.* Mother Teresa eventually cancelled the project, since the extra expenditure would not benefit the poor. *Id.* One is reminded of the words of Jesus to the Pharisees: "And why do you break the commandment of God for the sake of your tradition?" Matthew 15:3.

¹⁹ G.K. Chesterton, *Orthodoxy* (1908), reprinted in 1 *The Collected Works of G.K. Chesterton* 209, 217 (David Dooley ed., 1986) [hereinafter *Orthodoxy*].

²⁰ G.K. Chesterton, *The Morality of Fielding*, *Illustrated London News*, May 11, 1907, reprinted in 27 *The Collected Works of G.K. Chesterton* 458 (Lawrence J. Clipper ed., 1986).

²¹ *Id.* at 462.

..." actually provides a very wide liberty: "If there are only Ten Commandments, it means that there are only ten things forbidden; and that means that there are ten million things that are not forbidden." ²²

[*691] That freedom exists within the big laws is demonstrated by what happens when we break these big laws. Doing things the wrong way gets us into trouble and makes things complicated. If it does not land us in a physical prison, it will certainly land us within a psychological one.

Do a lawless thing and you will only get into an atmosphere much more suffocating than that of law. Indeed, it is a mistake to speak of a man as "breaking out." The lawless man never breaks out; he breaks in. He smashes a door and finds himself in another room, he smashes a wall and finds himself in yet a smaller one. The more he shatters the more his habitation shrinks. Where he ends you may read in the end of Macbeth. ²³

Christian doctrine states that we are responsible for our actions. Traditionally, law relied on the same principle. However, many modern defenses for law-breakers rely on the idea that the defendant was somehow not responsible for his actions. He was insane; he had eaten too much sugar; he had bad parents (anyone who is a parent knows that this is true). But this is a reflection of the philosophies that have invaded what was once a Christian culture. Darwinism, Marxism, Freudianism, and a host of other theories reduce all human behavior to a mere mechanical reaction and not to an act of the will. ²⁴ Our actions are either predetermined by biology, economics, sex, candy, or something else. All these determinist philosophies are also defeatist. How do we make and enforce laws in such a world? Why should we even bother? ²⁵

[*692]

Logic, Theology, and the Law - First Things First

We cannot fully argue these questions without bringing up theology and religion. Chesterton succinctly defined religion as "that which puts the first things first." ²⁶ In contrast, "it is the fundamental principle of true Modern Thought to put first things last." ²⁷

Theology, however, is not used in place of logic; the two work hand in hand. As Chesterton observed, "Wherever men are still theological there is still some chance of their being logical." ²⁸ It does not take a blind leap of faith to

²² G.K. Chesterton, *Our Notebook*, *Illustrated London News*, Oct. 1, 1932, at 480.

²³ G.K. Chesterton, *The Macbeths*, in *The Spice of Life* 43, 46-47 (Dorothy Collins ed., Darwen Finlayson 1964) (1951).

²⁴ It might also be possible to trace decreasing societal notions of responsibility to Calvinist doctrine. Of course, all Christian theological systems must wrestle with the nexus between man's free will and God's sovereignty. Catholic thought generally emphasizes free will, while the Calvinist system emphasizes the sovereignty of God. While Calvinism specifically affirms that men act in accordance with their will, and are responsible for their actions, its nuanced view of free will has arguably led to a decreased sense of personal responsibility.

²⁵ The shift away from personal responsibility is also seen in the way official decision-making is handled. In an effort to reduce corruption, governments have implemented detailed procedures that greatly limit discretion, and, as a result, responsibility; it is difficult to hold officials accountable when they are merely following procedure. Rather than limit corruption, however, these procedures prove greater opportunities for abuse, as officials learn to manipulate the accountability-free system. See Howard, *supra* note 8, at 94-104.

²⁶ G.K. Chesterton, *The Worship of Education*, *Illustrated London News*, Apr. 26, 1930, reprinted in 35 *The Collected Works of G.K. Chesterton* 295, 298 (Lawrence J. Clipper ed., 1991).

²⁷ G.K. Chesterton, *Our Notebook*, *Illustrated London News*, Feb. 15, 1936, at 266.

²⁸ G.K. Chesterton, *Irish Impressions* (1919), reprinted in 20 *The Collected Works of G.K. Chesterton* 83, 177 (James V. Schall ed., 2001) [hereinafter *Irish Impressions*].

accept a legal system founded on Christian principles. In fact, quite the opposite is true: our laws can be justified using logical arguments.

We must begin with obvious things. Chesterton admonishes modern thinkers for forgetting this simple premise: "The chief evil of all modern argument is that it will not begin, like Euclid, with the things that are obvious."²⁹ Note how Chesterton uses logic and common sense to establish a need for the law in a case involving a certain Miss Billington, a "lady who has gone to prison for her political excitability."³⁰

Miss Billington denied that a Court of Justice had any authority to try her. The last person who made this modest claim was, as far as I remember, Charles I: I do not suggest any similarity in the circumstances or in the sequel. She based her denial on the ground that the laws are not made by women, and so should not be enforced on them, which seems an exhilarating prospect for female poisoners, baby-farmers, mistresses who thrash servant-girls, and mothers who kill their children for the insurance. But the essence of this view of authority was answered long ago, in what some people call the Dark Ages. It was St. Thomas Aquinas (I think) who pointed out that authority is the same as authorship - in *auctore auctoritas*. We owe a certain respect to human society, just as we owe a certain respect to [*693] parents, because without them we could not have been. In merely walking about the street unmolested we are accepting the parental care of the State. The State has given us life in preventing us from being murdered: without the law, I might be dead; with the law I must be law-abiding. It is only on one exceptional and unpleasant occasion that the policeman comes bodily forward and lays violent hands on Miss Billington. All the rest of the time the policeman (like a modest lover) watches unseen over Miss Billington's safety.³¹

For Chesterton, the benefits of a strong, paternal state and the law are readily apparent.

Law, Anarchy, and Civilization

The law helps make civilization possible. It is an agreement that usually is practiced without any problem, but occasionally has to be enforced. Chesterton would say it is even a polite agreement. He explains the connection between the words "policeman" and "politeness"; they are both connected to the Greek word for city (*polis*).

Politeness means the atmosphere and ritual of the city, the symbol of human civilisation. The policeman means the representative and guardian of the city, the symbol of human civilisation... . Politeness is not really even a thing merely suave and deprecating. Politeness is an armed guard, stern and splendid and vigilant, watching over all the ways of men; in other words, politeness is a policeman. A policeman is not merely a heavy man with a truncheon: a policeman is a machine for the smoothing and sweetening of the accidents of everyday existence. In other words, a policeman is politeness: a veiled image of politeness - sometimes impenetrably veiled.³²

Even those who attack the law recognize the need for the law. Chesterton makes this point in a very amusing manner in his most famous novel, *The Man Who Was Thursday*. The plot involves an undercover policeman infiltrating an underground group of [*694] anarchists. It turns out that the anarchists operate according to very strict procedures. They rely on order and obedience, otherwise they would not exist. They are a comical oxymoron: an organization of anarchists.

²⁹ G.K. Chesterton, *On Books*, *Morning Post*, Oct. 18, 1906, reprinted in John Sullivan, *G.K. Chesterton: A Bibliography* 17, 17 (1958).

³⁰ G.K. Chesterton, *Revival of Small Nations: The True Middle Ages*, *Illustrated London News*, July 14, 1906, reprinted in *The Collected Works of G.K. Chesterton* 232, 237 (Lawrence J. Clipper ed., 1986).

³¹ *Id.* at 237-38 (Clipper notes that in *auctore auctoritas* "can be translated as 'the authority in the authority.' The meaning of the phrase is that the authority (in the sense of warrant or influences) lies with the author of the piece of information or one who guarantees its truth.").

³² G.K. Chesterton, *Spelling Reform and Hidden Meanings*, *Illustrated London News*, Sept. 29, 1906, reprinted in *The Collected Works of G.K. Chesterton* 290, 292-93 (Lawrence J. Clipper ed., 1986).

But the fact that they are anarchists demonstrates they are dissatisfied with the larger order of things. They may have an objection to the law, but they are especially aggrieved by those who flout the law. "The poor have sometimes objected to being governed badly; the rich have always objected to being governed at all." ³³ And even the most constructive commentators on modern civil law are distressed by its unequal application or its ineffectiveness or its abuse. Like any good and loyal critic, these commentators are not trying to annihilate the objects of their criticism. They criticize because they want the thing they are criticizing to be better, to rise higher, to do what it is supposed to do. The law is always fending off anarchy. But the real problem with anarchy is not with the anarchists who are out to destroy the system; the problem is with those who promote anarchy within the system for their own selfish ends.

According to Chesterton, there are two types of people who favor anarchy and actually assist it because they benefit from it: the wealthy elite and the intellectual elite. The plutocrat favors anarchy because "in anarchy the proudest and greediest person always gets on top." ³⁴ The intellectual snob "also likes anarchy, because he is not obliged to accept the authority of anything." ³⁵ They both dislike the idea of an intelligible rule that can be applied equally in all cases. They dislike it because they do not want the law to apply to them. They do not wish to follow the rules. They wish to rule. The one wants to be above the law he breaks, and the other, "even more earnestly, wants to be above the law that he administers." ³⁶

Chesterton as Judge

Chesterton's provocative musings on law and liberty make us realize that not only would he have been an excellent lawyer, he **[*695]** would have been a great judge - or Supreme Court Justice. It is easy to picture Chesterton as a judge. In fact, he once played the judge, complete with horsehair wig, in an elaborate mock trial which attempted to solve the mystery of Charles Dickens's unfinished last novel, *The Mystery of Edwin Drood*. ³⁷ When he discussed matters of law in his many newspaper columns, his lucid explanations certainly sounded like those of a judge making a ruling:

This harm which all human beings constantly do each other is only punished with damages when it is something exceptional and avoidable. If I have a secret precipice in my Brixton back garden, I might have to pay a man who fell down it; because Brixton gardens are flat, and secret precipices are rare in them. But I do not have to pay a man whose weak heart may have suffered by going up my front doorsteps: because doorsteps are usual and heart disease is unusual. I may pay for a man who is ill from the smell of my dustbin, but not for a man who is ill at the sight of my window-blinds, though these may be of the most emetic tints: because the first is a normal, the second an abnormal sensibility. And this is the principle admitted in most civilised law. A man may do a woman real injury by not offering to marry her. He may do her even more injury by marrying her. Yet we do not give damages for Absence of Promise of Marriage; nor even for Fulfilment of Promise of Marriage. We do give damages for Breach of Promise; because there the man has taken an abrupt, a non-obvious or unexpected course. The average man must marry one woman, and therefore must not marry most women. The pledge-breaker is an exception, and can come under the law. But one might as well fine a man for all the women he hasn't married ³⁸

³³ G.K. Chesterton, *The Man Who Was Thursday* (1907), reprinted in 6 *The Collected Works of G.K. Chesterton* 467, 584 (Denis J. Conlon ed., 1991).

³⁴ G.K. Chesterton, *Moral Principles and the Law*, *Illustrated London News*, Mar. 23, 1912, reprinted in 29 *The Collected Works of G.K. Chesterton* at 261, 263 (Lawrence J. Clipper ed., 1988).

³⁵ *Id.*

³⁶ *Id.* at 264.

³⁷ Alzina Stone Dale, *The Outline of Sanity: A Biography of G.K. Chesterton* 190 (1982).

³⁸ G.K. Chesterton, *The Novelist and Our Libel Laws*, *Illustrated London News*, Feb. 11, 1911, reprinted in 29 *The Collected Works of G.K. Chesterton* 35, 38-39 (Lawrence J. Clipper ed., 1988).

Chesterton was acutely aware of the two polar threats to the judiciary: unrestrained judicial activism and unfettered restriction of judicial discretion. The weakness of the modern judge, says Chesterton, is not that he is partial or impartial, but that he tries to be "ingenious."³⁹ After listening to "two ingenious theories" from two [*696] lawyers, the judge gives us not "a dull summary of all the facts, but ... some third ingenious theory of his own."⁴⁰ Chesterton argues strenuously that judges should not do this. They should not have the power to rewrite the written law. For one thing, "it encourages legislators to be lazy and leave a bad statute they ought to repeal."⁴¹ But more importantly, it gives judges arbitrary power to do away with standards they no longer recognize because of whatever ideas are currently fashionable. Chesterton warned of the dangers of allowing our liberty to be safeguarded by the whims of "clever men."

In our legal method there is too much lawyer and too little law. For we must never forget one fact, which we tend to forget nevertheless: that a fixed rule is the only protection of ordinary humanity against clever men - who are the natural enemies of humanity. A dogma is the only safeguard of democracy. The law is our only barrier against lawyers.⁴²

The flexibility or humanity of the judge really should only come into play when something exceptional arises, something not foreseen by the law. However, the humanity of the judge is threatened when the law lays down inflexible rules. The virtue of the common law was that it provided rules and guidelines, but they were made "subservient to broader principles."⁴³ The problem nowadays, however, is that most legislation tries to deal with all the exceptions. This is why so many laws defy common sense. The rule itself is lost, and we have nothing left but a welter of exceptions. It is the triumph of the small laws over the big laws. Chesterton finds the solution to [*697] this dilemma, once again, in Christian doctrine: "It not only discovered the law, but it foresaw the exceptions."⁴⁴ Only a judge who recognizes and respects the big laws can also recognize the rare exceptions. Mercy is meaningful only when justice is done.

Chesterton's advice on being an arbitrator could hardly be wiser. His contemplation led him to see the wisdom of judging with mercy, compassion, and a respect for the big laws:

The only way to end a quarrel is to get on to both sides of it. We must have not merely a calm impartiality, but rather a sympathy with partiality, as it exists in both partisans. It may appear paradoxical, but it is exceedingly practical. We must be not so much impartial as partial to both sides.⁴⁵

³⁹ G.K. Chesterton, *The Obscurity of British Law*, *Illustrated London News*, Dec. 9, 1911, reprinted in 29 *The Collected Works of G.K. Chesterton* 200, 200 (Lawrence J. Clipper ed., 1988).

⁴⁰ *Id.*

⁴¹ G.K. Chesterton, *The Lawlessness of Lawyers*, in *The Uses of Diversity* 79, 86 (1921).

⁴² G.K. Chesterton, *Fancies and Facts*, *Illustrated London News*, Sept. 22, 1906, reprinted in 27 *The Collected Works of G.K. Chesterton* 285, 290 (Lawrence J. Clipper ed., 1986).

⁴³ Howard, *supra* note 8, at 175.

The common law is the opposite of ironclad rules that seek to predetermine results. Application of the common law always depends on the circumstances: The accident caused by swerving to avoid the child is excusable; falling asleep at the wheel is not. The most important standard is what a reasonable person would have done. Every principle has its exceptions. More than anything else, the common law glorifies the particular situation and invites common sense. It was the common law that developed the jury system, in which a group of peers, not an expert in law, would decide right and wrong in each case.

Id. at 22-23.

⁴⁴ *Orthodoxy*, *supra* note 19, at 303.

⁴⁵ G.K. Chesterton, *Our Notebook*, *Illustrated London News*, June 25, 1932, at 1034.

This compassion and open-mindedness is not the judicial "ingenuity" Chesterton deplored, but rather sensitivity toward the big laws coupled with a respect for the parties involved and the law as written.

Chesterton's Experience with the Law

Chesterton had first-hand experience with the fallibility of a legal system produced by a society that had rejected over-arching moral principles. In 1913, Chesterton's faith in the legal system was severely tested when his brother Cecil, who published a small newspaper, was put on trial for libel. Cecil had exposed what is known as "The Marconi Scandal," a case of insider trading involving government officials who, instead of resigning in disgrace, went on to positions of even greater power, included in David Lloyd George (who would become Prime Minister) and Sir Rufus Isaacs (who would become Lord Chief Justice). Rufus Isaacs's brother, Godfrey, sued Cecil for libel. It seems astonishing, but the case was not about whether or not Cecil's claims were true, but whether they did damage to the Isaacs name. Cecil represented himself, while Godfrey Isaacs was represented by England's leading lawyer, Sir Edward Carson. Not surprisingly, Cecil lost.⁴⁶ Although Chesterton's gift for satire had [*698] always been present in his commentary on the legal system,⁴⁷ there is an added cynical edge in his references to the laws and the courts after he experienced "The Marconi Scandal." For example, he wrote, "The libel law [is] now used, not to crush lies about private life, but to crush truths about public life."⁴⁸ Similarly, he stated: "Our fathers hanged men for petty thefts, whereas we only exalt and ennoble men or put them in the House of Lords for really large and impressive thefts."⁴⁹

Unfortunately, results of this type are to be expected when society moves away from the Christian conception of the human person. Christian thought views men as having inherent dignity and possessing certain fundamental rights against the state. When this view is abandoned, however, human rights must be constructed from scratch, often with harmful consequences. Philip Howard has noted:

The new rights aren't rights at all: They are blunt powers masquerading under the name of rights. They have nothing to do with rights. The rights our forefathers died for are a shield - government can't tell me what to do or say - to preserve our freedom from others ordering us around. The new rights are a sword. They are hailed under the flag of freedom. But no one doing the saluting is looking at how these rights impinge on what others consider to be their own freedoms. The coinage of the new rights regime has a flip side; it is called coercion.⁵⁰

Thus, the right of the Isaacs brothers to their reputation trumped Cecil's right to speak the truth.

Chesterton's cries for justice, however, are not cries of despair. He is always hopeful of reform and his criticisms are always a way of pointing to that ideal that has been found difficult and left untried. There are some things that are always criticized or always made fun of. Among these are priests, mothers-in-law, and lawyers. They can, however, withstand the jokes and the criticism because, according to Chesterton, it is obvious that they are permanent; they will always be [*699] around. It is not because we hate them that we make fun of them, but because we rely on them and hold them accountable, something we seldom do with ourselves. Chesterton's warnings to lawyers about the pitfalls of their profession are worth noting. Besides the dangers of accumulating great wealth,⁵¹ the common peril of the legal trade is "its easy degeneration into that of a hired bully and a

⁴⁶ For an account of "The Marconi Scandal," see Pearce, *supra* note 1, at 187-89.

⁴⁷ The experiences of the Founder of Christianity have perhaps left us in a vague doubt of the infallibility of courts of law." G.K. Chesterton, *The Blatchford Controversies* (1904), reprinted in 1 *The Collected Works of G.K. Chesterton* 367, 388 (David Dooley ed., 1986).

⁴⁸ G.K. Chesterton, *The Crimes of England* (1916), reprinted in 5 *The Collected Works of G.K. Chesterton* 291, 366 (John McCarthy ed., 1987) [hereinafter *The Crimes of England*].

⁴⁹ G.K. Chesterton, *Our Notebook*, *Illustrated London News*, July 9, 1932, at 38.

⁵⁰ Howard, *supra* note 8, at 167.

sophistical butcher." ⁵² The lawyer's duty is a sacred one, it is one of service. It is not supposed to be gamesmanship and trickery. Chesterton lamented that "representation has become mere misrepresentation; a maze of loopholes." ⁵³

Chesterton's Stories

Chesterton's works capture in a most entertaining bent his opinions on the legal system, justice, and morality. He explored the problems of law and justice in his detective fiction, and is best known as the creator of a great fictional detective, Father Brown. Detective fiction is the first cousin of the courtroom drama, and actually its necessary antecedent. One must first figure out who the murderer is, and then catch him, before one can put him on trial. Father Brown is always interested in justice, but he is not always as interested in law, often letting a criminal escape after he had heard his confession. Interestingly enough, Chesterton's first fictional detective, before Father Brown, is a judge - Basil Grant in *The Club of Queer Trades*. Grant is a retired judge. He takes up a new profession, one of the "queer trades" of the title, as "a purely moral judge to settle purely moral differences." ⁵⁴ Grant describes the workings of his "court" as follows:

People were tried before me not for the practical trifles for which nobody cares, such as committing a murder, or keeping a dog without a licence. My criminals were tried for the faults which really make social life impossible... for selfishness, or for an impossible [*700] vanity, or for scandal-mongering, or for stinginess to guests or dependents. Of course these courts had no sort of real coercive powers. The fulfillment of their punishments rested entirely on the honour of the ladies and gentlemen involved, including the honour of the culprits. But you would be amazed to know how completely our orders were always obeyed. ⁵⁵

Chesterton's Solution

The fictional fantasy in *The Club of Queer Trades* reflects Chesterton's genuine hope for a just society. He spent his life arguing that such a society was really possible. Argumentation is about persuasion. Chesterton wanted to convince the world that there was a better social structure than either Socialism or Capitalism. But it was not a system that could be imposed on a society; it was something a society had to learn about and then choose. Distributism, he argued, is not something "done to people," but "done by people." ⁵⁶ Like Christianity, Distributism has not been an ideal tried and found wanting, but found difficult and left untried.

Fundamental to the Distributist philosophy is the idea of property, that each family should own its own land, which is not only a family's haven, but also its tool, its means of support. Small, local government is better than big government. Small, local business is better than big business. The law must protect private property and the family not only against intrusion from the state, but against intrusion from huge companies, which are not accountable to anybody. The family should not be dependent on either the government or mega-corporations. The ideal is independence - liberty.

⁵¹ To be clever enough to get all that money, one must be stupid enough to want it." G.K. Chesterton, *The Wisdom of Father Brown* (1929), reprinted in *The Penguin Complete Father Brown* 169, 184 (1981).

⁵² G.K. Chesterton, *The Incomplete Vision of Modernity*, *Illustrated London News*, Aug. 31, 1912, reprinted in 29 *The Collected Works of G.K. Chesterton* 350, 351 (Lawrence J. Clipper ed., 1988).

⁵³ *The Crimes of England*, supra note 48, at 366.

⁵⁴ G.K. Chesterton, *The Club of Queer Trades* (1904), reprinted in 6 *The Collected Works of G.K. Chesterton* 49, 212 (Denis J. Conlon ed., 1991).

⁵⁵ *Id.*

⁵⁶ G.K. Chesterton, *The Outline of Sanity* (1926), reprinted in 5 *The Collected Works of G.K. Chesterton* 35, 201 (George J. Marlin et al. eds., 1987).

The whole point of liberty, and only point of democracy, is expressed in the word self-government. The word implies that a man should not be governed by another than himself; but it also implies that a man should be governed by himself. It implies that there is a moral authority in man, because there is a moral authority above man; and that the divine part of human nature has legitimate rule over the bestial. But it also implies that over large parts of his [*701] life at least, he must exercise this moral authority himself, and if it is taken from him he becomes a slave.⁵⁷

Democracy can work only if it recognizes that the basic unit of society is the family. The family is itself a tiny kingdom. The family has greater authority than the state. It should make the basic decisions about life. In a broken society, that is, a society of broken families, individual rights trump family rights and the family is undermined. That is how we have come to see the rise of homosexual rights, abortion rights, and a myriad of other little bizarre special interests that were once unimaginable in a normal society. The State has replaced the natural authority of the family and has become, in turn, a very unnatural authority over the family, doing by coercion what was previously accomplished by a much greater force - love. The force in the family is not a hammer, it is a magnet. But when the State is the authority, the force is a hammer.

We have forgotten the first principles. We have forgotten the first things. Chesterton still reminds us that "the first things must be the very fountains of life, love and birth and babyhood; and these are always covered fountains, flowing in the quiet courts of the home."⁵⁸ Chesterton's Distributist philosophy is centered on the first things of home and family. Property, of course, is a necessary component in creating "the quiet courts of the home."

Property, however, is not an entitlement. It is an ideal, something that must be achieved, and a just society should try to achieve it for everyone, distributing property as widely as possible. It is a matter of justice. But how can it be done? This is the giant question when it comes to Distributism. Let the arguments begin. It can only be accomplished by persuasion and not by coercion. But at some point, it involves the rich helping the poor, which must be done directly, without government programs or private foundations. "The obligation of wealth," says Chesterton, "is to chuck it."⁵⁹ The beggar [*702] is a man "who offers you [the opportunity] to fulfil your own ideals."⁶⁰

It is supposed that charity makes a man dependent; though in fact charity makes him independent, as compared with the dreary dependence usually produced by organisation. Charity gives property, and therefore liberty. There is manifestly much more emancipation in giving a beggar a shilling to spend, than in sending an official after him to spend it for him.⁶¹

Conclusion

To sum up, Chesterton's views on law and lawyers form another solid brick in the foundation of his complete philosophy. He argued that there would be greater justice and liberty in a society where the emphasis is on keeping the big laws instead of keeping the small laws. There is freedom in keeping the commandments and breaking senseless conventions. Democracy, which is self-government, means fewer laws and less regulation because the more laws a society has, the less self-government it enjoys. At the same time, more liberty means more responsibility and more respect for property - the property of others, as well as one's own. Chesterton's preferred model for government was Distributism, which relies on the common sense of the common man.

⁵⁷ G.K. Chesterton, Liberty and Self-Government, Illustrated London News, June 5, 1920, reprinted in 32 The Collected Works of G.K. Chesterton 31, 33-34 (Lawrence J. Clipper ed., 1989).

⁵⁸ G.K. Chesterton, Eugenics and Other Evils (1922), reprinted in 4 The Collected Works of G.K. Chesterton 291, 398 (James V. Schall ed., 1987).

⁵⁹ G.K. Chesterton, At the Sign of the World's End, New Witness (London), Oct. 14, 1915, at 580, 581.

⁶⁰ G.K. Chesterton, What Is a Beggar?, Illustrated London News, Feb. 25, 1911, reprinted in 29 The Collected Works of G.K. Chesterton 43, 44 (Lawrence J. Clipper ed., 1988).

⁶¹ Irish Impressions, supra note 28, at 117.

There is one element of our jurisprudence that completely reinforces the Democratic and Distributist ideal, the idea that the most important decisions in a society must be made not by the State, not by the rich, not by snobs or experts, but by "the common man." Chesterton had first-hand knowledge of how it works. Although he was neither a lawyer nor a judge, Chesterton did once serve the court in another important role - he was a member of a jury. As a result of his experience, Chesterton wrote an essay entitled *The Twelve Men* that ranks as one of his most popular. Its conclusion is also my own:

Our civilization has decided, and very justly decided, that determining the guilt or innocence of men is a thing too important to **[*703]** be trusted to trained men. It wishes for light upon that awful matter, it asks men who know no more law than I know, but who can feel the things that I felt in the jury box. When it wants a library catalogued, or the solar system discovered, or any trifle of that kind, it uses up its specialists. But when it wishes anything done which is really serious it collects twelve of the ordinary men standing round. The same thing was done, if I remember right, by the Founder of Christianity.⁶²

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⁶² G.K. Chesterton, *The Twelve Men*, in *On Lying in Bed and Other Essays* by G.K. Chesterton 482, 485 (Alberto Manguel ed., Bayeaux Arts 2000) (1909).