I

ORIGIN OF THE CANON LAW

THE greatest legacy of the Roman Empire to the modern world is the Civil Law. As triumphant legions carried the frontiers of that Empire to the ends of the world, the legal establishments of more ancient peoples found their place in the administration of the vast fabric and were wrought by jurists and emperors into the imperishable Roman Law.

After thirteen centuries of development that law was assembled and digested by eminent jurists and teachers under authority of the Emperor Justinian in the sixth century and wrought into the compilation now so widely known as the *Corpus Juris Civilis*—Body of the Civil Law. No other volume except the Bible has so deeply affected modern Europe and the New World.

As Teutonic invaders but slightly advanced in civilization poured out of the forests of northern Europe and wrecked the Roman Empire, they occupied its ruins and laid the foundations of modern European states. Their harsh and primitive legal systems were no match for that of the fallen Empire, embellished and perfected by so many jurists and statesmen and softened and refined by Greek culture and philosophy and by the Christian religion.

The Justinian and other compilations found their way into the medieval courts and universities and were carried throughout the continent. Establishment in the tenth century of the Holy Roman Empire, with a line of German princes at its head, facilitated the reception of the civil law of Rome in Germany beyond the borders of the ancient Empire. So does that law prevail in continental Europe and in those parts of the New World settled by French, Spanish and Portuguese.

But crude methods of international communication in past centuries left the British Isles far enough outside the pale of continental development that the civil law never prevailed fully there. Instead there grew up in England the distinct, juridical system known as, the Common Law, which has been transplanted into the United States, except Louisiana, to which the French brought the civil law. Enough Spanish footsteps have remained in some of our states in the Southwest also to impart there a coloring of the Roman system.

Growing dominance of the world by Europe and America has brought nine-tenths of the civilized portions of the earth under the civil law and the common law in about equal portions. Modern legislation and judicial construction have adapted both systems to the needs of a diversified and marvelous civilization and rounded them out to a high degree of perfection.

But when Constantine adopted Christianity as the religion of the Roman Empire legislative sanction began to be extended to canons and constitutions of the hierarchy already grown to considerable measure of organization and usurped ecclesiastical power. The early general councils of the Church assembled in the East at the call of the emperors reigning in Constantinople, who presided over their deliberations and enforced their canons and decrees by imperial authority.

Meantime growing development of the hierarchy into a vast imperial establishment resulted in a struggle among the bishops of Rome, Constantinople, Antioch, Alexandria and Jerusalem for universal supremacy. Each of those ambitious prelates assumed the title of patriarch. But the spread of Mohammedanism through the East swept away the sees in Antioch, Alexandria and Jerusalem, leaving the patriarchs of Rome and Constantinople to compete for dominion of the world.

The overthrow of the emperors in Rome left the bishop of that great capital the most commanding figure in the West, while their continued sway at Constantinople eclipsed and subordinated the patriarch of that city. Genius for organization in the West and the traditional glory of the old capital gave to the western prelate additional advantages in the struggle which proved decisive. Following the example of the empire, the Church divided in the eleventh century, leaving the Roman bishop supreme in the West.

The fallen empire afforded a model on which the western Church grew into a marvel of imperial coherency and power. At its head was the bishop of Rome, standing in the shoes of the departed emperors. The title of Pope, formerly applied to all eastern prelates, was now reserved exclusively to him. Lesser ecclesiastical dignitaries in all the cities of the West succeeded to positions and prerogatives analogous to those of the prefects and vicars who in past centuries had ruled under the emperors.

Thus indeed did a new Rome rise from the ashes of the old. In the figure of the Apostle Paul, the Emperor whose presence had previously restrained papal ambitions was at last "taken out of the way." From and after the beginning of the twelfth century the great Church councils assembled in the West and were dominated by popes instead of emperors. Their canons and decrees together with the bulls, letters, encyclicals, allocutions and decretals of the popes were added to relevant portions of like documents in earlier centuries as the immense volume of legislation known as the Canon Law.

Early in the twelfth century a great law school arose in connection with the University of Bologna in northern Italy. Thousands of students gathered there from all western Europe to study the civil law. But the canon law, produced by a hierarchy and clergy imbued with the spirit of the Roman Empire, was so nearly related to the civil law that both soon came to be offered side by side in the university.

To facilitate his work in the law school, Gratian, a Bolognese monk, gathered the scattered and somewhat discordant materials of the canon law into his famous compilation popularly known as the *Decretum*. Its arrangement was modeled upon that of the Justinian compilation of the civil law. A century later Pope Gregory IX added to the Decretum a supplement known as *Liber Extra* and gave the whole work the sanction of pontifical authority. When still further amplified by later additions, the compilation took the name of Corpus Juris Canonici—Body of the Canon Law.

From Bologna many thousands of students returned to the various countries and cities of the continent. The ablest of the civilians became advisers of emperors, kings and civil magistrates. The canonists entered the service of popes and prelates of Rome. In the subsequent strife between civil and ecclesiastical potentates for supremacy, the respective groups of trained lawyers played a most important part.

While authority of civil governments was admittedly confined within their respective territorial boundaries, the Pope claimed universal dominion and suzerainty over all civil powers. Under that claim his tribunals covered alike the continent and the British Isles. They constituted the most extended judicial establishment that ever existed with supreme original and appellate jurisdiction in the Sovereign Pontiff at Rome.

Though the civil and the common law mutually exclude each other from territory which either has occupied, the canon law, by the very nature of the papal claim of universal jurisdiction, enters alike lands subject to the civil law and those subject to the common law. So is every country which the Roman hierarchy inhabits embarrassed with two separate and conflicting systems of law administered on its soil and enforced upon its citizens or subjects.

Under that ruinous arrangement, conflict between the two is virtually universal. In consequence, the hierarchy and clergy of Rome everywhere engender strife by enforcement of their alien canon law and denounce as intolerant those who oppose their interference in basic civil and religious rights.

II

WHY KEPT IN LATIN

FOR convenience the history of canon law is divided into three principal epochs.That which was enacted prior to the time when Gratian compiled his *Decretum*, at Bologna, near the middle of the twelfth century, is known as Ancient Law. That produced between Gratian and the Council of Trent, about the

middle of the sixteenth century is Modern Law and that of later times is called Recent Law.—Preface *Codex Juris Canonici*.

The Roman hierarchy through all the centuries of its existence has deliberately identified itself with imperial Rome and stood aloof as an alien to all current civil governments by spurning every living tongue and couching its law and theology in the ponderous and difficult Latin. Since early in the twelfth century its general councils have assembled in the West and their canons and decrees and the papal constitutions have been recorded in the medieval corruption of that dead language.

So are the record and the law of the unique papal system diligently placed beyond the reach of the people. Under that arbitrary policy the vast lay membership of the Roman Church in every land was kept in dense ignorance of its legal rights till those rights were carefully eliminated. Two-thirds of the literature of the canon law of persons establishes the rights and privileges of the hierarchy and clergy and nearly all of the other third is devoted to the monastic class technically known as "religious." Little indeed is said about the laity and that little establishes no rights but imposes manifold and onerous legal duties.

No other judicial establishment in recorded history has vested in a titled nobility such prerogatives extorted from the submissive and untitled masses. No other system has so methodically held the people in ignorance to facilitate their exploitation and continued subjection to arbitrary power. Under no other law has despotism so perfected and matured its illegitimate fruit.

To the same end every official and unofficial compilation of the canon law has been couched in Latin. The great private compilation made by Gratian was in that tongue. The *Liber Extra* of Pope Gregory IX and the *Liber Sextus* of Boniface VIII were in the same language. In scores of ponderous tomes the constitutions, canons and decrees enacted during the six centuries intervening between the pontiff last named and our time likewise rest defiantly in the dead tongue of pagan Rome.

During the last sixty years legislation flowing from the Pontifical Throne has been officially chronicled in the monthly bulletin known as *Acta Sanctae Sedis* exclusively in Latin. It is thus sedulously closed to the hundreds of millions of Roman Catholic laymen, whose knowledge of it must come only through their respective parish priests.

In 1904 Pope Pius X announced to the world in a *motu proprio* his intention to have the vast accumulation of documents and statutes composing the literature of the canon law gathered into a new code. For thirteen years canonists assembled at Rome for that purpose worked on the immense undertaking. In 1917 Pope Benedict XV announced, to the college of cardinals in secret consistory that the new compilation was finished. By his bull *Providentissima* he

directed that it become binding on all Roman Catholics throughout the world on and after May 19, 1918.

True to the uniform policy of all the papal centuries, the new work, known as *Codex Juris Canonici*—Code of Canon Law—was issued from Rome only in Latin. In further confirmation of that policy the Sovereign Pontiff caused to be printed on the reverse side of the title page leaf this significant injunction in the same tongue: *"Nemini liceat sine venia Sanctae Sedis hunc Codicem denuo imprimere aut in aliam linguam vertere.*" Expressed in English, that injunction would say, "No one may, without permission of the Holy See, republish this Code or translate it into another tongue."

The binding force of that injunction justifies a brief explanation. Its purpose is to prevent the new Code from reaching Roman Catholic laymen in any tongue which they can read. For that purpose it is entirely effective. It enables the Holy See to censor and suppress any translations or reprints that Roman Catholics may project. While it has no binding force on Protestant scholars and publishers, their works are outlawed to every Roman Catholic by Canon 1399 of the new Code.

In addition to the policy of keeping lay members in ignorance of their legal status and rights and thus holding them in helpless subjection to the clergy, another potent incentive further accounts for the foregoing injunction and for the whole program of keeping the law and record of the papal government locked in a dead language. It is sought thus to conceal from the modern world the shocking chapters in that record and the arrant treason that permeates the canon law.

So well has this latter incentive been realized that public attention has been almost entirely diverted from the legal system of papal Rome. Though ancient law descended to the modern world through the two channels of civil and canon law, and though modern jurists and scholars have in consequence recognized the importance of the civil law in connecting the ancient and modern worlds, none but Roman priests have written treatises on canon law and the study of that subject has not generally found a place in the curriculums of modern law schools and universities.

If the statutes at large of the canon law which have accumulated during the past thousand years and never been translated were turned into the vernacular of any modern enlightened people it would shock and horrify the world. It is not translated because its sponsors love darkness rather than light. Institutions and legal systems that cannot endure full and exhaustive investigation have no legitimate place in the twentieth century. The most reactionary government in the world, the Papacy alone refuses to permit its laws to be written in the language of the people.

III

SOURCES ESSENTIALLY AUTOCRATIC.

AUTOCRACY is the very essence of the canon law. No other legal system has ever approached it in subjection of the people to arbitrary and irresponsible power. No layman has anything whatever to do, either directly or indirectly, with its enactment or administration.

The supreme and ultimate legislative authority in the Church of Rome is the Sovereign Pontiff. To his will every provision of the canon or ecclesiastical law owes its validity. Most Roman Catholic writers mention at least four sources of the canon law, but all agree that no contribution can reach that law from any source without the sanction and approval of the Pope. The *Catholic Encyclopedia*, Volume IX, at page 59, defines the source of canon law in part as follows:

"The sources or authors of this ecclesiastical law are essentially the episcopate and its head, the Pope, the successors of the Apostolic College and its divinely appointed head, Saint Peter. They are, properly speaking, the active sources of canon law. Their activity, is exercised in its most solemn form by the ecumenical councils, where the episcopate united with its head, and convoked and presided over by him, with him defines its teaching and makes the laws that bind the whole Church. The canons of the ecumenical councils, especially those of Trent, hold an exceptional place in ecclesiastical law. But without infringing on the ordinary power of the bishops, the Pope, as head of the episcopate, possesses in himself the same powers as the episcopate united with him."

The last sentence in the foregoing definition deserves special attention. It totally eliminates the episcopate or hierarchy as a factor in legislation by declaring that the Pope holds supreme law-making power equally with or without the hierarchy. That view is abundantly justified by decrees of the Vatican Council which were clearly designed to remove the necessity of any general council in the future to molest the Pope or hamper the play of his unique despotic powers.

In the fall of 1921 there was published at St. Louis, with *Imprimatur* of Archbishop Glennon, a Commentary on Canon Law, by Augustine. The work is in eight volumes. Beginning on page 10 of Volume I, that work enumerates the following sources of canon law:

"(1) Christ and the Apostles, (2) the Roman Pontiff, either alone or in unison with a general council, (3) the Bishops in their respective dioceses, and (4) Custom."

In 1877 there was published at New York, with *Imprimatur* of the late Cardinal McCloskey, a work in three volumes, by Sebastian B. Smith, on Elements of

Ecclesiastical Law. Though in some measure superseded by the subsequent appearance of the *Codex Juris Canonici*, Smith's work has long been recognized by Roman Catholic scholars and canonists as highly meritorious. In section 21 it defines the Sovereign Pontiff as the sole fountain of legislative power in these words:

"The decrees of the Roman Pontiffs constitute the chief source of the canon law; nay, more, the entire canon law, in the strict sense of the term, is based upon their legislative authority."

Speaking *ex cathedra* and therefore within the Vatican decree of papal infallibility, the ablest Pope of modern times, in his encyclical letter *Proeclara Gratulationis Publiae* of June 20, 1894, boldly declared:

"We HOLD UPON THIS EARTH THE PLACE OF GOD ALMIGHTY."—*Great Encyclical Letters of Leo XVIII*, page 304."

No other autocracy has ever laid claim to divine right to rule in words so arrogant and blasphemous. The pretensions of the ancient Caesars, the autocrats of the Holy Roman Empire created by the Papacy in the Middle Ages, the Bourbons of France and the Stuarts of England, as well as those of the. Kaisers of Germany and Austria and the Sultans of Turkey pale into harmless and beneficent democracy in comparison with the foregoing papal assumption. But in the *Codex Juris Canonici* the papacy has set forth its arrogant claims with more deliberation in the following canons or statutes:

"The Roman Pontiff as the successor of the primacy of St. Peter, has not only the prerogative of honor but also the full and supreme power of jurisdiction over the universal Church, in matters of faith and morals as well as in those that pertain to the discipline and government of the Church that extends itself throughout the whole world.
"This power is truly episcopal, ordinary and immediate, and extends over each and every pastor as well as over the faithful, and IS INDEPENDENT OF ANY HUMAN AUTHORITY." Canon 218.
"The Roman Pontiff after his legitimate election obtains at once, from the moment he accepts his election, BY DIVINE RIGHT, the full power of his supreme jurisdiction."—Canon 219."

In confirmation of the Vatican Council and the Catholic Encyclopedia, the *Codex* proceeds to annihilate the general or ecumenical council as a factor in canonical legislation. So does the entire hierarchy retire and leave the legislative field absolutely to the crowned Sovereign Pontiff alone. The language of the Codex on that subject reads thus:

"There can be no General Council unless it is convoked by the Roman Pontiff. It is the right of the Roman Pontiff to preside, either in person or through others, at

the General Council, to determine the matters to be discussed and in what order, to transfer, suspend, dissolve the Council, and to confirm its decrees."—Canon 222."

The English translation of the foregoing canons here used is that of Woywod, a Roman priest, published at New York in 1918 with *Imprimatur* of the late Cardinal Farley. His work is entitled *The New Code of Canon Law.*

The *Codex Juris Canonici*, which by Canons 5 and 6 of its own text repeals and supersedes all previous conflicting legislation, derives its authority in the field of canon law solely from the will of the Sovereign Pontiff' as expressed in the bull *Providentissima* of Benedict XV promulgating the Codex. The pertinent words of the bull on that point follow:

"Therefore, having invoked the aid of Divine grace, and relying upon the authority of the Blessed Apostles Peter and Paul, of Our own accord and with certain knowledge, and in the fullness of the Apostolic power with which we are invested, by this Our Constitution, which We wish to be valid for all time, We promulgate, decree and order that the present Code, just as it is compiled, shall have from this time forth the power of law for the Universal Church, and We confide it to your custody and vigilance. Commentary on Canon Law, by Augustine, Volume I, page 67."

No other monarchy, hereditary or elective, was ever so completely removed from influence and control by the will of the people as the Papacy clothed with powers so uniquely autocratic. In more than seven centuries no layman has been permitted to have any voice in the selection of the Supreme Pontiffs, about a hundred in number, who have occupied the papal throne during that time. Emperors, Kings and plutocrats have indeed meddled in the conclaves freely by secret intrigue, but the hundreds of millions of people subject to the papal sway have been barred.

The canon law commits the choice off the Pope to the cardinals alone, whose number is limited to seventy. Under that law, the Pope creates all the cardinals and the cardinals choose the Pope. By shaping at will the personnel of the college of cardinals, each Pope can determine in large measure the choice and policy of his successor.

Though composing less than fifteen per cent of the Roman Catholics of the world, Italians have for centuries been studiously kept in numerical majority in the college of cardinals to prevent the possibility of placing any other nationality on the Pontifical throne,and the cardinals have not in modern times chosen any but one of themselves to occupy that throne.
No more selfish and designing closed corporation ever encumbered the earth. As the oligarchy of cardinals and the autocracy of the Pope, perpetuate themselves from age to age by the most effective political steamroller that ever crushed

human rights, the will of the Roman Catholic people is suppressed and their voice is silenced by the canon law of the papal autocrat.

That law traverses and contradicts the American doctrine that governments derive their just powers from the consent of the governed and the French doctrine that sovereignty has its source in the nation. It asserts the basic papal doctrine that governments derive their power from God and that the Pope is the vicar and mouthpiece of God. America is the battlefield where the issue so presented must soon be determined for all mankind and for all time to come.

IIII

ECCLESIASTICAL COURTS AND JURISDICTION

THE judiciary of all governments has changed form in the course of time to facilitate the handling of litigation. Lawyers practicing in the Federal courts of the United States will remember that an Act of Congress in 1911 made somewhat sweeping changes in the form and jurisdiction of those courts. Similar changes have been made in the courts of various states. All judicial systems have been subject to like mutations.

The ecclesiastical courts are no exception to this rule. Not only have they varied in different ages, but in no age have they been entirely uniform in all countries. But it will be sufficient to state here the general outline of the papal judiciary with sufficient particularity to indicate the relation of the Church courts to those of the civil powers and to one another.

Ecclesiastical courts of general jurisdiction belong to the diocese of every bishop. But it would be almost as impossible for the bishop personally to hear and determine all cases arising in his dominions as for the executive head of a civil government to preside over all courts, or even the superior courts, in his country. Consequently the judicial prerogatives of the bishop are delegated to subordinate functionaries of his see. His archdeacon in past centuries was usually clothed with power to hear and determine litigation, the bishop reserving to himself both original and appellate cognizance of cases of special importance. But this system gave rise to such rivalries and strife between the bishop and the archdeacon that the system gave place to judges, or "officials," appointed by the bishop and removable at his will as the archdeacon was not.

The contiguous dioceses of several bishops compose a province over which a metropolitan, or archbishop, presides, enjoying appellate and supervisory prerogatives which in our day have ceased to be much more than a primacy of

rank. But the archbishop formerly maintained a more elaborate judiciary with both original and appellate jurisdiction.

Above all other tribunals, both civil and ecclesiastical, stands the Pope as the supreme tribunal of last resort for all the litigation of the world. From his decisions there is no appeal. Under the canon law the Pope sits in judgment on all civil powers. Appeals from their highest tribunals go directly to him. But no appeal lies from his decisions, and only God is permitted to judge him. Any attempt to appeal from the judgment of the Pope incurs the severest ecclesiastical penalties.

The famous bull *Unam Sanctam* of Pope Boniface VIII, which has been reaffirmed by the ablest of later Pontiffs, and is accepted by standard Roman canonists as *de fide* and therefore infallible, settles that point in this clear declaration of law:

"And if the earthly power deviate; from the right path, it is judged by the spiritual power; but if minor spiritual power deviate from the right path, the lower in rank is judged by the superior; but if the supreme power, the Papacy, deviate, it can be judged not by man, but by God alone."—*History of the Christian Church*, Schaff, Volume V, Part II, page 25.

Rev. Sebastian B. Smith, D. D., states the law in these words:

"In whatsoever things, whether essentially or by accident, the spiritual end —that is, the end of the Church—is necessarily involved, in those things, THOUGH THEY BE TEMPORAL, the Church may by right exert its power, and the civil state ought to yield."—*Elements of Ecclesiastical Law*, Volume I, pages 253-4."

No principle of canon law is better established and none has been asserted and enforced with more vigor and persistency than the doctrine of the jurisdictional independence, and supremacy of the Pope in both civil and ecclesiastical matters. The *Codex Juris Canonici*, enacted by the Holy See and now binding on every Roman Catholic in the world, is replete with that doctrine from end to end.

The foregoing quotation from Dr. Smith, published with the *Imprimatur* of three reigning prelates of Rome, including the late Cardinal McCloskey of New York, indicates the virtually boundless scope claimed by the canon law for the jurisdiction of ecclesiastical courts. It is declared that in all matters, whether spiritual or temporal, which affect the Church, ecclesiastical authority is supreme and the civil tribunals are subordinate.

The ceaseless and universal strife between civil and ecclesiastical authority in all Roman Catholic lands seeking to maintain government by the people is due fundamentally to that pernicious doctrine. The assertion that supreme jurisdiction is vested in the Pope, in whose election the people have absolutely no voice, can never be reconciled with the principle of popular sovereignty.

Under the papal doctrine as stated there is virtually no limit to the matters over which ecclesiastical courts have claimed jurisdiction. That jurisdiction is both civil and criminal. Prominent among the civil causes which it embraces are marriage, divorce, wills and administration. Jurisdiction of marriage is claimed on the theory that matrimony is one of the seven sacraments and is therefore related to activities of the Church.

Wills and administration are embraced on the ground that they relate to death and the future life over which the Roman clergy assumes to exercise special prerogatives. The customary presence of a priest in the death chamber when wills were usually made and the consequent testamentary benefits which often accrued to him or his ecclesiastical superiors gave both incentive and plausibility to exclusive jurisdiction of wills and administration which the church courts claimed and exercised till recent years.

Canon 1553 of the *Codex Juris Canonici* reaffirms the doctrine of jurisdiction as stated by Dr. Smith in the foregoing quotation and adds the claim of exclusive jurisdiction of all matters in which prelates, priests or members of religious orders are concerned. As translated by Woywod it reads as follows:

"The Church by her own exclusive right judges:
1. The cases which refer to spiritual matters, or to temporal matters annexed to spiritual;
2. The violation of ecclesiastical laws and all matters in which sin may be committed, in as far as the definition of guilt and the infliction of ecclesiastical punishment for the sins is concerned;
3. All cases of persons who enjoy the privilege of the ecclesiastical forum, in accordance with Canons 120. 614 and 680."

Canons mentioned in the last clause of the preceding quotation specify prelates, priests and members of religious orders as entitled to the privilege of ecclesiastical forum. Any person, whether a private citizen or public official, who causes compulsory process to issue requiring a; cardinal, archbishop, bishop or abbot to attend civil court in any capacity incurs ecclesiastical punishment under the, canon law.

The Official Catholic Directory published annually by the hierarchy lists matrimonial courts as part of the equipment attached to the thrones of Roman prelates in American cities. It thus appears that such prelates continue to judge as to the validity of marriages entered into by American citizens and that they maintain ecclesiastical courts to adjudicate such matters under the law of Rome. But the criminal jurisdiction of ecclesiastical tribunals is fraught with peculiar interest and startling assumptions. The one outstanding crime in contemplation of canon law is heresy. Under all systems of justice, treason is a grave felony, and the papal authorities have uniformly regarded heresy as a species of treason. That crime is grounded in resistance or disloyalty to government. Heresy is such

resistance to the authority of the papal government which claims divine authority and suzerainty over all other governments. Since heresy is resistance to that government, it is at once deemed the blackest of all sins and the most atrocious of crimes.

Consequently it has always incurred torture and death in the most excruciating forms in lands where Rome is permitted to inflict such punishments. Savonarola, Jerome of Prague and John Hus are conspicuous among the millions of exalted and saintly Christians whom the Papacy has tortured and burned for heresy. On page 90 of *Elements of Ecclesiastical Law*, Volume I, Dr. Sebastian B. Smith states the canon law governing the right of the Church to inflict the death penalty in these words:

"Has the Church power to inflict the penalty of death? Card. Tarquini thus answers: 1. Inferior ecclesiastics are forbidden, though only by ecclesiastical law, to exercise this power directly; 2. It is certain that the Pope and ecumenical councils have this power at least mediately—that is, they can, if the necessity of the Church demands, require a Catholic ruler to impose this penalty; 3. THAT THEY CANNOT DIRECTLY EXERCISE THIS POWER CANNOT BE PROVED."

Such is the canon law as stated by one of the most distinguished of modern Roman Catholic canonists and published with *Imprimatur* of a cardinal and two other archbishops of the hierarchy of Rome. From and after the time of Innocent III early in the thirteenth century the right of "Denunciation" was added to the criminal procedure of ecclesiastical courts. That terrible engine of injustice simply provided that anyone might secretly file information against an alleged heretic, and the judges offered every inducement to such secret complaints pursuant to the duty laid upon the courts to seek offenders in every possible manner. The accused was not permitted to know who were his accusers nor the nature of the accusation.

The annals of injustice, terrorism and oppression afford no parallel to that revolting procedure which led quickly to the awful scourge of the Inquisition, by which the Papacy sought to exterminate heresy from the earth. Under its operation the accused were locked in dungeons and subjected to torture in every form that diabolical ingenuity could invent to extort confession in addition to the unspeakable methods of secret inquisitorial information. A conservative account of the Inquisition in Spain appears in Prescott's *Ferdinand and Isabella*, Volume I, page 230 and following.

But the growth of Protestantism and democracy in the last four centuries limits and restrains the criminal vengeance formerly dispensed with fiendish cruelty by the See of Rome. Unless new papal alliances can reestablish the political supremacy of the Pope, the Inquisition will probably never again be able to afflict mankind.

V

CONDEMNS GOVERNMENT BY THE PEOPLE

THE Canon law denounces and condemns most emphatically the basic American doctrine that Governments derive their just powers from the consent of the governed. The whole idea of popular sovereignty is outlawed *in toto* by ex cathedra declarations of the ablest popes in modern times.

The outstanding achievement of the modern world is the evolution of the people. Two and a half centuries were required after the Reformation delivered its mighty broadside against the absolutism of the dark papal centuries to push the ecclesiastical emancipation of the world sufficiently to start the movement for civil emancipation.

Vindication of religious rights of the people led inevitably to vindication of civil rights. Liberty of conscience brought liberty of government. Both have been purchased at the price of blood and treasure in war and carnage extending through more than four hundred years.

The Thirty Years' War, the American and French Revolutions and the recent World War stand out conspicuously among the devastating struggles that finally freed the world from the despotism of emperors and kings and partially shattered the despotism of popes and sultans.

At the beginning of the American Revolution the Declaration of Independence sounded the keynote of modern civilization in the ringing avowal that "all men are created equal; and endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness; and that to secure these rights, Governments are instituted among men, DERIVING THEIR JUST POWERS FROM THE CONSENT OF THE GOVERNED."

When the smoke of battle had cleared away and the colonies had won independence, delegates commissioned by the people assembled in Philadelphia and wrote the Constitution of the United States. That the immortal document sprang from the sovereignty of the people appears from its preamble, which says:

"WE, THE PEOPLE OF THE UNITED STATES, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

Scarcely had the requisite number of states ratified our Constitution to make it operative when "Representatives of the French people," inspired by that great document, in their National Assembly uttered the famous Declaration of the Rights of Man and of the Citizen, in 1789. That declaration breathes the spirit of our own Declaration of Independence but sets forth civil and religious rights more specifically and in greater detail. Its third clause reads as follows:

"The source of all sovereignty is essentially in the nation; nobody, no individual can exercise authority that does not proceed from it in plain terms."—*History of French Public Law*, Brissaud, page 543."

The state papers so produced in the last quarter of the eighteenth century in connection with the birth of the American and French republics ushered in a new epoch in the march of liberty. Their declaration that civil authority is vested exclusively in the people has thrilled and transformed every highly civilized nation. It has swept from Europe and the New World nearly every vestige of autocratic power except that of the Pope.

It has spread over the islands of the sea and is now leavening the people and institutions of China and Japan. It has changed fundamentally the spirit and trend of history. Henceforth the annals of the world will record the aspirations, purposes and activities of the people rather than the wars and intrigue of popes, emperors and kings.

But the canon law of the Papacy traverses and contradicts every principle of the doctrine which so blesses mankind with liberty and justice. Papal influence has repeatedly overturned those principles in France and in so doing has again and again drenched the soil of that impulsive nation with blood. Roman hatred of popular sovereignty was voiced by Pope Leo XIII in his encyclical letter *Immortale Dei* of November 1, 1885, in these bitter words:

"The sovereignty of the people, however, and this without any deference to God, is held to reside in the multitude; which is doubtless a doctrine exceedingly well calculated to flatter and to inflame many passions, but which lacks all reasonable proof, and all power of insuring public safety and preserving public order. Indeed from the prevalence of this teaching, things have come to such a pass that many hold as an axiom of civil jurisprudence that seditions may be rightfully fostered. For the opinion prevails that princes are nothing more than delegates chosen to carry out the will of the people; whence it necessarily follows that all things are as changeable as the will of the people, so that risk of public disturbance is ever hanging over our heads."—*Great Encyclical Letters*, page 123."

Contrast the foregoing declaration from the supreme legislative authority of the Pontifical throne with Lincoln's immortal epigram of "government of the people, by the, people, for the people." Measure it by the doctrine of the Declaration of Independence that it is the duty of the people to alter or abolish any government

that becomes destructive of human rights. Contrast it with the preamble of our Federal Constitution. Compare it with the ringing French Declaration of the Rights of Man.

But Leo XIII has stated in the foregoing utterance the essence of the canon law of human rights. That is the root and kernel of all papal legislation touching the subject. In language equally strong and unequivocal Pope Pius IX, immediate predecessor of Leo XIII declared in his allocution *Maxima Quidem* of June 9, 1862, that the State is not the source of civil rights and he reiterated briefly the same declaration in Clause 39 of his *Syllabus of Errors* of December 8, 1864. — *Dogmatic Canons and Decrees*, published in 1912 with *Imprimatur* of the late Cardinal Farley, page 197.

In his encyclical *Humanum Genus* of April 20, 1884, against Freemasons, Pope Leo XIII stated the climax of his anathema against that craft in his charge that they "lay down the doctrine that all men have the same right, and are in every respect of equal and like condition; that each one is naturally free; that no one has the right to command another; that it is an act of violence to require men to obey any authority other than that which is obtained from themselves."—Great Encyclical Letters, page 96.

The prelates then enthroned in the United States assembled in the Third Plenary Council of Baltimore a few mouths after Leo XIII issued the foregoing encyclical and they reiterated much of its substance in a pastoral letter signed by the late James Gibbons, afterwards a cardinal, who presided as special representative of the Pope for that purpose in order to give the council's proceedings the authority of canon law. But their denunciation of Masonry designed for American consumption prudently and cunningly omitted the specific indictment last quoted from the Pope.

As previously stated in this treatise, the papal government itself vests absolutely no authority in the people. Only the Pope is clothed with original authority and power. All other prelates and functionaries derive their status and prerogatives solely from him; and in his election the people have no voice. The Pope creates the cardinals and the cardinals elect the Pope.

So are two opposite and rival systems of civil government now striving for mastery of the world. The one is incarnate in the Pope; the other in the great democracies of Western Europe and America. The one advocates government by alleged divine right; the other, by consent of the governed. The one is essentially despotic and oppressive; the other liberal and beneficent. The one keeps the people ignorant and destitute to facilitate their plunder and exploitation; the other favors public education, freedom of thought and expression and enlightened public opinion.

VI

RELATIONS OF CHURCH AND STATE

PREVIOUS chapters have touched incidentally on the doctrine of the canon law concerning the relations of Church and State. But the importance of the subject, and the industry with which propagandists of Rome ply the public with misrepresentations touching it, require fuller and more specific statement of the law of the Pontifical throne on that vital question.

On very few subjects has the papal autocracy handed down clearer or more emphatic declarations of the law. Both the imperial constitutions of the Popes and the commentaries of eminent modern canonists declare that the civil authority is inferior to the ecclesiastical and completely subject to its supervision and control.
There is, however, an element of deception studiously injected into the papal legislation that should be exposed and removed before stating the law as given by the highest Roman Catholic authorities. The deception consists in calling all law enacted by the Pontifical throne "divine law," as though it were handed down by Deity as the decalogue was given to Moses on Mount Sinai.

That deceptive attitude, in which the Papacy purloins the whole question, arises easily from the more fundamental and equally gratuitous assumption that the Pope is the sole earthly representative and mouthpiece of God. Pope Leo XIII stated this latter blasphemous assumption in these laconic words:

"We hold upon this earth the place of God Almighty."—Great Encyclical Letters, page 304.

It must therefore be kept in mind that when Popes or minor prelates or canonists of Rome mention the "divine law," either in legislative acts or in comments thereon, they mean the law as declared by the Pope assuming to speak with divine authority. Of course, those who question his authority so to speak are uniformly denounced as bigots and heretics. With the foregoing brief preliminary explanation in view, attention will now be directed to a clear declaration by the same Pope defining the assumed power of the Church to set aside laws enacted by the State. On that subject he has uttered these words:

"But if the laws of the State are manifestly at variance with the divine law, containing enactments hurtful to the Church, or conveying injunctions adverse to the duties imposed by religion, *or if they violate in the person of the Supreme Pontiff' the authority of Jesus Christ, then, truly, to resist becomes a positive duty, to obey, a crime—Great Encyclical Letters of Leo XIII*, page 185."

Emphasis in the foregoing is inserted. But that legislative declaration by the ablest of modern popes makes it a crime to resist the "supreme Pontiff," who

assumes "the authority of Jesus Christ." That deceptive but rank and pernicious treason pervades the canon law from end to end. Its binding force on every prelate, priest and member of the Church of Rome is absolute. Though unconscious of the withering fact, two hundred millions of well-meaning but deluded Roman Catholic laymen are held in the iron grip of that fatal doctrine of canon law.

The deadliest internal menace to the American nation is the teaching of that revolting treason to children and youth in the alien schools and colleges of Rome. That it is so taught appears unmistakably from a *Manual of Christian Doctrine* published in 1902. (See Chapter VII of the present work.)

The same doctrine is reiterated again and again on many pages of the Great Encyclical Letters of Leo XIII and in the ex-cathedra declarations of law by virtually every autocrat in the long line of Roman pontiffs. But the assumption that ecclesiastical courts administer law paramount to that of civil government is set forth *in extenso* by Sebastian B. Smith in his great work in three volumes on Elements of Ecclesiastical Law, published in 1887 with the *Imprimatur* of three Roman archbishops, including the late Cardinal McCloskey, of New York.

It is therein asserted that the tribunals of Rome enjoy identically the same prerogatives in relation to civil authority that superior courts uniformly have in their dealings with inferior courts, by virtue whereof they can prohibit the lower courts from exceeding the limits of their authorized jurisdiction. Dr. Smith states the canon law to that effect with such clearness as to justify quoting him here at some length:

"In whatsoever things, whether essentially or by accident, the spiritual end—that is, the end of the Church is necessarily involved, in those things, though they be temporal, the Church may of right exert its power, and the civil state ought to yield. In this proposition is contained the full explanation of the indirect spiritual power of the Church over the State. The proposition is proved: 1. FROM REASON.—Either the Church has an indirect power over the State, or the State has an indirect power over the Church. There is no alternative. For, as experience teaches, conflicts may arise between Church and State.

"Now, in any question as to the competence of the two powers, either there must be some judge to decide what does and what does not fall within their respective spheres, or they are delivered over to perpetual doubt and to perpetual conflict. But who can define what is or is not within the jurisdiction of the Church in faith and morals, except a judge who knows what the sphere of faith and morals contains and how far it extends?

"It is clear that the civil power cannot define how far the circumference of faith and morals extends. To do this it must know the whole deposit of explicit and implicit faith. Therefore the Church alone can fix the limits of its jurisdiction; and if the Church can fix the limits of its own jurisdiction, it can fix the limits of all other jurisdiction—at least, so as to warn it off its own domain.

"Hence the Church is supreme in matters of religion and conscience she knows the limits of her own jurisdiction, and, therefore, also the limits of the competence of the civil power. Again, if it be said that the State is altogether independent of the Church, it would follow that the State would also be independent of the law of God in things temporal, for the divine law must be promulgated by the Church. It is unmeaning to say that princes have no superior but the law of God; for a law is no superior without an authority to judge and apply it."

Dr. Smith then offers proof of his proposition FROM AUTHORITY. To that end; he cites the famous bull *Unam Sanctam* of Pope Boniface VIII, which he declares to be unmistakably authoritative and therefore infallible, and he quotes particularly; the final clause in that document in these words:

"And this we declare, affirm, *define*, and pronounce, that it is necessary for the salvation of every human creature that he should be subject to the Roman Pontiff. "

Dr. Smith then continues in part in these words:

"From what has been said we infer: 1. The authority of princes and the allegiance of subjects in the civil state of nature ARE of DIVINE ORDINANCE; and, therefore, so long as princes and their laws are in conformity with the law of God the Church has no jurisdiction against them nor over them. 2. If princes and their laws deviate from the law of God, THE CHURCH HAS AUTHORITY FROM GOD TO JUDGE OF THAT DEVIATION AND TO OBLIGE TO ITS CORRECTION."—VOL. I, pages 253 *et seq*."

Emphasis is again inserted. Observe that the Pope alone assumes power to judge whether or not the State has deviated from the law of God and therefore exceeded its jurisdiction. Whenever he judges that such deviation has taken place, he arrogates to himself power to compel the State to correct its alleged deviation. Even a tyro in the law will recognize that papal assumption as precisely identical with the authority of a superior court, by its writ of prohibition, to restrain an inferior court within jurisdictional limits which the superior tribunal adjudges the law to prescribe for the tribunal of inferior rank.

So does the canon law place the papal government in authority to sit in judgment on every civil power and restrain all such powers within jurisdictional limits to which the Papacy adjudges them confined by the superior law which it assumes to administer. To no other autocrat since time began have such prerogatives of despotism been arrogated.

VII

CONDEMNS PUBLIC SCHOOLS.

THE canon law voices in positive and emphatic terms the hostility of the papal hierarchy to public schools in all lands. Thirty sections or canons of the *Codex Juris Canonici* are required to state the attitude of the Church of Rome towards public education.

But those canons, like much of the official utterances and propaganda of the papal government, are couched in language deliberately intended to confuse and mislead the general public as to some vital matters. The manner in which the canons are administered by the hierarchy as well as authorized comments by eminent Roman Catholic canonists, however renders the meaning clear.
Canon 1373 says:

"Section 1. In every elementary school the children must, according to their ages, be instructed in Christian doctrine.
"Section 2. Youths who attend the secondary or higher schools should be given fuller instruction in Christian doctrine, and the local Ordinaries should see to it that this instruction is given by zealous and learned priests."

Nothing could be more misleading to the unskilled reader than the foregoing canon. It was manifestly so designed. Taken in the sense which appears from a casual reading, it would meet the approval of Christian parents and citizens in general. Few indeed would make serious objection to the teaching of Christian morality to children and youth. But such is far from the meaning of the law under consideration.

Any suggestion that the Bible be read or studied in school instantly calls forth emphatic and determined objection from every Roman prelate and priest. Indeed, it is they who have been chiefly active in barring the Holy Scriptures from public schools. Virtually the sole objection to Bible reading in school comes from the hierarchy of Rome and is expressed in its diocesan press.

The true meaning of the foregoing canon is that the doctrines and superstitions of the Church of Rome, including the political doctrine that the Pope is the overlord of all civil governments, shall be taught to the exclusion of all other religious views in every school to which Roman Catholic children and youth are admitted. It is a veiled restatement of the mediaeval doctrine that all religious truth has been monopolized by the Papacy and all other doctrine must be silenced.

The Council of Trent bound every Roman Catholic in the world to substitute for the Holy Scriptures the doctrines of Rome purporting to be based on them. That bond is stated in the following profession of faith which all Roman Catholics are required to make:

"I also admit the Holy Scriptures, ACCORDING TO THAT SENSE WHICH OUR HOLY MOTHER CHURCH HAS HELD AND DOES HOLD, to whom it belongs to judge of the true sense and interpretation of the Scriptures; neither will I ever take and interpret them otherwise than according to the unanimous consent of the Fathers." —*Dogmatic Canons and Decrees*, published with *Imprimatur* of the late Cardinal Farley in 1912, page 176."

In harmony with that doctrine it will be observed that section 2 of Canon 1373 under consideration provides that the Ordinary or Bishop shall see that all religious instruction in School IS GIVEN BY A ZEALOUS AND LEARNED PRIEST. That is the crux of the whole matter. The Roman demand is that religious instruction shall be given in all schools but only by priests and nuns of the Church of Rome and that the doctrines of that Church shall alone be given.

To that end Canon 1399, forbids Roman Catholics, whether children or adults, to have or read original texts or ancient Roman Catholic versions of the Sacred Scriptures if published by non-Roman Catholics, and that canon, together with Canon 1385, forbids Roman Catholics to publish the Holy Scriptures at all without express previous approval of the Papacy or its local enthroned prelate reigning over the territory wherein the publication is planned.

So are all texts, and versions of the Bible and all teaching based thereon rigidly excluded by canon law from Roman Catholic children and adults unless given to them by those expressly authorized thereto by the hierarchy of Rome. No Roman Catholic publisher is permitted to produce such texts or versions and no Roman Catholic is permitted to have or read them when produced by non-Roman Catholics.

The requirement of Canon 1373 and the noisy demand of Roman propagandists for religious instruction in primary and secondary schools is that priests of Rome shall teach in them the religious and political doctrines of popery. Though carefully veiled, that is the issue which confronts the American nation. On that issue Latin America followed Spain, Portugal and other Roman Catholic lands four hundred years ago in accepting the Roman Catholic demand. The result is before the world.

The papal demand and the method of its enforcement in Latin America will be found embodied in existing treaties between the Sovereign Pontiff and the governments of South American countries. Such a treaty made with the government of Colombia December 3, 1887, contains this instructive provision:

"In the universities, colleges, schools and other educational centers, the public education and instruction shall be organized and directed in conformity with the doctrines and moral teachings of the Catholic religion. Religious instruction shall be obligatory in such institutions, and the religious exercises prescribed by the

Catholic religion shall be observed in them.—"*British and Foreign State Papers*, published by the British government, Volume 79, pages 818-825."

The character of the teaching so demanded is exemplified in a *Manual of Christian Doctrine*. The book was published in 1902 with *Imprimatur* of the then Roman archbishop of Philadelphia and has run to about sixty editions. On page 132 is this teaching which the hierarchy deems religious:

"What right has the Pope in virtue of his supremacy?
"The right to annul those laws or acts of government that would injure the salvation of souls or attack the natural rights of citizens."

On page 133 this is taught:

"May the State separate itself from the Church?
"No because it may not withdraw from the supreme rule of Christ."

Against such alleged religious instruction given by priests of Rome, may a kind Providence protect us. But papal condemnation of public schools is more pointedly expressed in Canon 1374 of the Codex, which reads as follows:

"Catholic children shall not attend non Catholic, indifferent schools that are mixed, that is to say, schools open to Catholics and non Catholics alike. The Bishop of the diocese only has the right, in harmony with the instructions of the Holy See, to decide under what circumstances, and with what safeguards to prevent loss of faith, it may be tolerated that Catholic children go to such schools."

Leading Roman Catholic authorities explain that the expression "may be tolerated" implies that such toleration is a departure from the canon law and is granted under special circumstances in the discretion of the enthroned bishop and the Sovereign Pontiff. The instruction of the Holy See mentioned regarding the circumstances under which toleration may be granted embodied this provision:

"Generally speaking, such cause will exist it there is no Catholic school in the place, or if the one that is there cannot be considered suitable to the conditions and circumstances of the pupils. Parents who neglect to give this necessary Christian training and instruction to their children, or who permit them to go to schools in which the ruin of their souls is inevitable, or, finally, who send them to the public schools without sufficient cause and without taking the necessary precautions to render the danger of perversion remote, and do so while there is a good and well-equipped Catholic school in the place, and while they have the means to send them elsewhere to he educated; such parents, if obstinate, can not he absolved, as is evident from the moral teaching of the

Church."*Commentary on Canon Law*, Augustine, published 1921, with *Imprimatur* of Archbishop Glennon, Volume 6, pages 415, 416."

A standard Roman Catholic text book on *The Growth and Development of the Catholic School System in United States*, by Rev. J. A. Burns, President of Holy Cross College, Washington, D. C., published in 1912 with Imprimatur of the late Cardinal Farley, further evinces the hostility of the hierarchy and the canon law to public schools in this frank declaration which appears on page 223:

"We deny, of course, as Catholics, the right of the civil government to educate, for education is a function of the spiritual society, as much so as preaching and the administration of the sacraments; but we do not deny to the state the right to establish and maintain public schools. The state, if it chooses, may even endow religion or pay the ministers of religion for their support; * * * It may found and endow schools and pay the teachers, but it can not dictate or interfere with the education or discipline of the schools."

Such is the condemnation of public schools by the canon law. Papal hostility to such schools is deep-seated and fundamental. It is embodied in the statute law of the Papacy. It alone is responsible for determined Roman Catholic opposition to legislation designed to make attendance at public schools compulsory. It explains the bitter antipathy and resistance of the hierarchy to all measures designed to strengthen and enrich public education.

To deny the right of Roman Catholics bound by the canon law to teach in schools which that law so condemns is not bigotry. It is simple truth and even handed justice. The canon law and the public school can not coexist in peace.
In August and September each year the three hundred periodicals published in this country by authority of the enthroned hierarchy of Rome admonish their readers, in thousands of columns of thunderous editorials, of the duty imposed by canon law to keep their children out of the public schools. The admonition is effective in placing more than two millions of Roman Catholic children in the parochial schools established here by orders of the Pontifical throne.

Latin America has attended such parochial schools for four hundred years. In consequence illiteracy is nearly universal in those lands and immorality has filled them with mongrel populations that rival in number the white and aboriginal races.

VIII

CANON LAW OF MARRIAGE

IN the long and acrimonious rivalry between civil and ecclesiastical tribunals during the Middle Ages, canonists boldly laid claim to exclusive jurisdiction of Church courts in a large part of the litigation then current. There were two principal grounds on which that exclusive jurisdiction was claimed: (1) The character of the parties and (2) the presence of some ecclesiastical element in the issues.

On the first ground mentioned it was contended, and the contention was generally conceded, that no priest, nor member of a religious order, could be required to appear in a civil court. Of all matters, whether civil or criminal, to which a religious or priest was a party, ecclesiastical courts asserted exclusive jurisdiction because the relation of such priests to the papal government was such as to preclude civil courts from entertaining any control over them.

The strategy of a monopoly on marriage was so obvious as to move the Roman Church to assert exclusive jurisdiction on the second ground—that it was an ecclesiastical matter.

On that ground the canon law listed marriage as one of the seven sacraments and therefore within ecclesiastical jurisdiction exclusively so far as the requisites, form and validity of the contract and status are concerned. Being declared a sacrament, it lay wholly within the realm of Church functions. So did the Council of Trent in its twenty-fourth session, November 11, 1563, utter this solemn canon:

"If any one saith that matrimony is not truly and properly one of the seven sacraments of the evangelical law, a sacrament instituted by Christ the Lord; but that it has been invented by men in the Church; and that it does not confer grace; let him be anathema."—*Dogmatic Canons and Decrees*, page 161."

But clerical fees for solemnizing marriages were so extortionate and bore so heavily upon those required too pay them, that, together with other still more intolerable demands of the officiating clergy in the exercise of their monopoly, that they drove vast numbers of young people to enter privately into the marital relation without clerical intervention.

As a cure for this leakage in the parish revenues, the Council of Trent in the eighteenth and last year of its protracted sessions enacted the *Tamesti* decree providing that marriages of baptized persons are invalid unless solemnized before a priest.

But France and other lands made objection to the enforcement of the decree within their borders and its operation was therefore in some degree limited to lands wherein it encountered less resistance. In 1907 it was re promulgated by Pope Pius X as the *Ne Temere* decree and placed in operation as widely as possible. Finally it was incorporated into the new *Codex Juris Canonici* as Canon

1094 and thus made binding on all Roman Catholics in the world from and after May 19, 1918. As given in the Codex it is translated by Woywod thus:

"Those marriages only are valid which are contracted either before the pastor or the Ordinary of the place, or a priest delegated by either, and at least two witnesses, in conformity, however, with the rules laid down in the following Canons, and saving for the exceptions mentioned below in Canons 1098 and 1099."

The canons referred to and which follow that quoted relate to the manner of delegating the requisite power to another priest than the pastor or Ordinary. Canon 1098 provides that if none of the priests mentioned can be had the parties may contract marriage before two witnesses without the presence of any clergyman at all, and Canon 1099 defines who are considered as coming within the provisions of the law as stated.

In its final form the law under consideration contains some modifications from its original form and Canon 1099 seems to exempt from its operation those marriages to which neither party is a Roman Catholic.

It is under the law as now embodied in Canon 1094 that Roman priests are so accustomed to break up families living happily in lawful wedlock by diligently beguiling the Roman Catholic husband or wife into the belief that the marriage, though perfectly valid under the law of the land, is void under the canon law and the parties to it are living in adultery and their children are illegitimate. No Roman Catholic so married is admitted to communion in the Church of Rome.

It is chiefly in cases designated in canon law as mixed marriages that such clerical wickedness is practiced. In addition to the requirement that such marriages shall be solemnized in conformity to Canon 1094 the parties are required to get a special dispensation from the local Ordinary, or enthroned bishop permitting the wedding ceremony to take place.

As further demonstrating the iron grip of the Roman hierarchy on the domestic life of all Roman Catholics, the Protestant party to such a marriage is required to enter into a solemn obligation to permit all children that may be born of the union to be reared in the Roman faith. In divorce proceedings at Urbana, Ohio, in April, 1922, it was shown in court that the Protestant husband in such a marriage had been required to sign the following declaration in writing in relation to that point:

"I, the undersigned, not a member of the Catholic Church, wishing to contract marriage with Celia Tarpy, a member of the Catholic Church, propose to do so with the understanding that the marriage bond thus contracted is indissoluble except by death; and I promise, on my word of honor, that she shall be permitted the free exercise of her religion according to her belief; and that all children of either sex born of this marriage shall be baptized and educated in the faith

according to the teachings of the Roman Catholic Church.
"I furthermore promise that no other marriage ceremony than that of the Catholic priest shall take place.
(Signed) "BENJAMIN E. SEIBERT. "In the presence of Father F. T. Moran, of Cleveland."

The foregoing provisions of canon law are by no means mere formalities. They are rigidly enforced by courts of the papal government in full operation constantly for that purpose. *The Official Catholic Directory*, published annually by P. J. Kennedy and Sons, printers to the Holy Apostolic See in New York, lists as part of the administrative machinery attached to the thrones of Roman prelates Matrimonial Courts. Some of them are designated in Latin as *Curiae pro Causis Matrimonalibus*, the English equivalent of which is Courts for Matrimonial Causes. No other autocrat or government in Europe or elsewhere abroad is permitted thus to maintain courts for the enforcement of its vast system of alien law on American citizens.

Those courts are not mere ornaments and they are not confined to the United States. They are found in every part of the world and their work is every where pernicious and deadly. The following proceeding in the Legislative Assembly of New South Wales, Australia, reported in *The Argus* of that city, on Friday, October 6, 1922, shows the domestic havoc which the system here portrayed is working in that land:

SYDNEY, Wednesday.—Mr. Arkins asked the Minister for Justice (Mr. Ley), in the New South Wales Legislative Assembly today, whether he was in a position to make a statement on the "Shergold" case.
Mr. Ley said: Robert Patrick Shergold married Ada Margaret Lawler at Newcastle on January 6, 1919, Whilst so married he did, on February 17, 1920, at Singleton, marry Eileen Mary Urquhart, his first wife then being alive. On March 7, 1921, Shergold was charged with bigamy, and, having pleaded guilty, was sentenced to 12 months' imprisonment. His sentence was suspended under the provisions of section 558 of the Crimes Act relating to first offenders. Shergold and Miss Urquhart were both of the Roman Catholic faith, and Shergold's wife was a Protestant. After discovering that he was married, Miss Urquhart refused to live with Shergold. Representations made to me and confirmed by investigation show that pressure was brought to bear upon Miss Urquhart to return and live with the bigamist Shergold.
With a view to persuading her to rejoin him, the matter was submitted to the Roman Catholic bishop of the diocese in which the parties lived, and subsequently the following letter was written to Miss Urquhart, in which she was addressed as Mrs. Eileen Shergold:
"Dear Madam: After fully considering all the documentary evidence placed before him and all the circumstances of the case, the bishop has come to the conclusion that your marriage at Singleton with Robert Shergold is a valid and good marriage in the eyes of the Church, and as yourself and your husband Robert

Shergold, are now willing to live together, his lordship directs me to inform you that you may do so.
"Yours faithfully, "B. Mackeirnan"
There were cries of "Shame!"

In the preface to his work on *Rome and the Newest Fashions in Religion*, the late William E. Gladstone, of England, related a still more flagrant case of the ruin of a family and the outrageous wrongs inflicted on a faithful wife and mother of a large family of adult children by a judgment direct from Rome which permitted her faithless husband to marry a Roman Catholic paramour while lawfully married to the wife mentioned.

IX

SUPPRESSION OF BOOKS

NO legal policy of the Papacy is more characteristically reactionary and pernicious than its system of censorship and prohibition of books and periodicals. From the time when the Emperor Constantine gave the hierarchy power to enforce its doctrines by the sanctions of penal law the policy of forcible suppression began to be ruthlessly applied to writings disapproved by dominant ecclesiastical authority.

When the Council of Nicaea in the year 325 condemned the views and literary works of Arius, an Alexandrian priest, the Emperor, who presided in great pomp over the council, yielded imperial sanction to the banishment of the condemned priest and the destruction of his books. When the downfall of the Western Empire in the fifth century and the separation of the Eastern and Western Churches in the eleventh century enabled the Pope to assume ecclesiastical supremacy in the West, censorship and prohibition were applied with still more rigor and severity.

Abelard, Wyclif' and John Huss are conspicuous as exalted and heroic Christian saints who were personally condemned and their writings burned by papal authority. Dante, the great Florentine epic poet, admittedly one of the most gifted literary geniuses of all time, was subjected to like fate, though the hierarchy of Rome in 1922 at the six-hundreth anniversary of his birth extolled him as a consistent and exemplary Roman Catholic.

On July 15, 1520, Pope Leo X directed against Luther his famous bull *Exsurge Domime* (Rise, Lord), wherein the great reformer was denounced as a "wild beast" and he and his books were ordered to be burned as John Hus, Jerome of

Prague and Savonarola had been. But the dawn of light was already breaking on the benighted world and the work of Luther was not so easily crushed by arbitrary power as that of the previous reformers.

Consequently the Council of Trent was assembled in the final effort to annihilate the reformatory movement or at least to mitigate its force and consequences. That council near the close of its protracted sessions restated with intensified vigor the law for suppressing reformatory writings which could not be refuted. The legislation so enacted is known in the literature of canon law as *Index Tridentinus* (the Index of Trent).

That index condemned all works of non-Roman Catholics, all books except the ancient classics deemed by the hierarchy to be immoral and all Latin translations of the New Testament made by non-Roman Catholics; limited privilege was given for reading the Bible in the vernacular by special hierarchical permission in each case; the rule of Leo X was reaffirmed forbidding publication of books without previous censorship and approval of the hierarchy; and adequate penalties were prescribed for violation of the index.

The Tridentine Index remained virtually unchanged for more than three centuries till abrogated by Leo XIII in his Pontifical statute known as *Officiorum Munerum* of January 25, 1897. That statute appears in the *Great Encyclical Letters of Leo XIII* at pages 407 and following. It stood as the papal law of prohibition and censorship till the *Codex Juris Canonici* came into force in 1918 by the statute of Benedict XV known as *Providentissima*.

The invention of printing in the fifteenth century so increased the production of books as to quicken the papal incentive for suppression as voiced in the Council of Trent and in the statutes of Leo XIII and in Title 23 of the new *Codex Juris Canonici*.

The papal law of suppression operates in two distinct forms. It authorizes examination of a book before publication with a view to deciding whether or not it may be published. This is technically called *Cansura praevia*. Or it may condemn a book already published. Such prohibition is called *Censure repressive*. The former procedure is censorship in the strict sense, while the latter is prohibition.

Censorship as enforced by the hierarchy does not permit any Roman Catholic publisher to place a book on the market until it has been subjected to the local Ordinary, inspected by his censor of books and its publication authorized by his *Imprimatur* duly subscribed by him. Of course both censorship and prohibition by a local Ordinary are subject to review on appeal to Rome. On such appeal they come before the Congregation of the Holy Office, of which the Pope is himself prefect.

Prohibition is necessarily more comprehensive in scope than censorship. The latter applies primarily to authors and publishers, while the former is binding on the whole membership of the Church of Rome. Innocent VIII, Alexander VI and Leo X enacted laws requiring all printers as well as authors to submit all books to the hierarchy for censorship before daring to print them—*Commentary on Canon Law*. Augustine, Volume, 6, page 430.

Canon 1384 of the *Codex Juris Canonici* extends the whole law of prohibition and censorship to daily papers, periodicals and other publications in general. So does the hierarchy endeavor by its statute law to exclude from Roman Catholics every kind of literature that could possibly tend to liberalize their intelligence or free them from the mental slavery that has so benighted all papal lands. That policy made it impossible for the hierarchy, when challenged, to meet the writer in exhaustive public debate in writing. Canon 1385 of the Codex reads in part as follows:

"Without previous ecclesiastical approval even laymen are not allowed to publish:
"1. The books of Holy Scripture, or annotations and commentaries of the same.
"2. Books treating of Sacred Scripture, theology, Church history, canon law, natural theology, ethics, and other sciences concerning religion and morals."

Canon 1391 says:

"Translations of the Holy Scriptures in the vernacular languages may not be published unless they are either approved by the Holy See, or they are published under the supervision of the bishop, with annotations chiefly taken from the holy Fathers of the Church and learned Catholic writers."

Under the chapter on Prohibition of Books, canon 1398 provides:

"The prohibition of books has this effect that the forbidden book may not without permission be published, read, retained, sold, nor translated into another language, nor made known to others in any way."

Canon 1399, in its first clause, reads thus:

" By the very law are forbidden:
"Editions of the original text, or of ancient Catholic versions, of the Sacred Scriptures, also of the Oriental Church, published by non-Catholics; likewise any translation in any language made or published by them."

The succeeding twelve clauses of that canon prohibit in detail all books and publications treating of moral or religious questions if written or published by non-Roman Catholics or by priests or members of the Church of Rome without hierarchical approval.
In all the foregoing quotations of the *Codex Juris Canonici*, the translation of

Woywod published with the *Imprimatur* of the late Cardinal Farley of New York is used.

With shackles so heavy does the papal law enslave the Roman Catholic mind and exclude it from contact with the progressive scholarship of the modern world. No wonder that illiteracy is all but universal in papal lands and their people make no substantial contributions to science and invention and industrial progress.

X

CANON LAW OF PROPERTY

NO sooner did the Emperor Constantine early in the fourth century lift the Church into partnership with the State than vast wealth began to accumulate in ecclesiastical hands. The Emperor himself lavished on the hierarchy and clergy rich endowments of both movable and immovable property. His lay subjects emulated the example of their prince in filling the Church coffers to overflowing.

As the imperial authority disappeared from the West and permitted the Roman bishops to assume the chief prerogatives of the departed emperors, growing streams of revenue flowed into the papal coffers from every part of the western world. Exigencies of the turbulent medieval centuries forced many western princes into vassalage to the Papacy and many lesser prelates of the Church into like political servitude to the princes. Both relations added fabulous landed domains to the riches of the hierarchy.

The doctrine of purgatory, the practice of consecrating cemeteries and other properties, the usurped jurisdiction of ecclesiastical courts, including that of the Sovereign Pontiff as the tribunal of last resort, fees for the confessional, and tithes, taxes, donations and testamentary favors of the faithful in every land rendered the papal government by far the richest institution in the world.

Pretending to have been founded by Him who had nowhere to lay His head and to derive its illicit powers through Peter, who had neither silver nor gold, the Roman See acquired title to half of the soil in England and a larger portion in some continental lands, while its revenues surpassed those of the mightiest imperial and royal princes.

The accumulation and handling of resources so enormous called for elaborate statutory enactments and customary law. The spirit of that law was simplified more and more in the light of progressive experience and growing absolutism of the hierarchy and the Supreme Pontiff. One outstanding policy pervaded and shaped the entire legislative and judicial program—the policy of vesting all lands

and chattels in the hierarchy with supreme and ultimate custody and control in the Roman Pontiff.

That policy has never been modified nor relaxed. The present canon law of property is the result of its perfection during more than twelve papal centuries. In addition to many canons scattered through the new *Codex Juris Canonici* vesting in the hierarchy the wealth of all monastic and "religious" orders and congregations and all property and equipment of the chartered institutions of Rome in every land, fifty-seven canons, numbered 1495 to 1551, inclusive, are devoted exclusively to that purpose. They comprise all of Part Six of the Third Book of the Codex.

At the very threshold of the group of canons or statutes mentioned stands the fundamental doctrine of the papal law of property in flagrant defiance of the law of every country on earth. Canon 1495 makes this declaration of the papal law:

"Sec. 1. The Catholic Church and the Apostolic See have the inherent right, FREELY AND INDEPENDENTLY OF ANY CIVIL POWER, to acquire, retain, and administer temporal goods for the pursuit of their own ends.
"Sec. 2. Individual churches and other corporations established as such by ecclesiastical authority are also endowed with the right of acquiring, retaining, and administering their own property, according to Canon Law."

The English text here given is the translation made with hierarchical authority by Rev. P. Charles Augustine in his *Commentary on Canon Law*. Emphasis in the first section is inserted.

The words emphasized differentiate the property rights claimed by the Roman hierarchy under canon law from all other property rights whatever. The difference is fundamental.

Others than the hierarchy of Rome acknowledge the sovereign State as the source of law and of property rights under the law. As the public domain, for instance, is parceled out to individual owners their titles are all subject to the paramount right of the State. That paramount right is evidenced by the power of the State to take over private properties under the law of eminent domain, the right to exact payment of taxes, and the right to recover the property by escheat on failure of legal heirs or under other conditions of law.

So are all titles, even those in fee simple, subordinate to the supreme dominion of the civil power. But the Roman claim set forth in the canon law is that ecclesiastical authorities hold title independently of the civil power and that their rights are equal or superior to those of the State. Consequently the canon law denies the right of civil government to tax ecclesiastical properties or to exercise any dominion over them.

This issue of law is coextensive with the Roman Catholic Church and is everywhere a source of embarrassment and strife. In papal countries ecclesiastical properties are exempted from taxation under the claim of absolute right, while in Protestant lands a like exemption is sought and usually granted as a favor of the civil power.

Wherever it is possible the papal government stipulates with the civil powers in treaties or concordats for complete exemption of Church property from taxation in harmony with the doctrine of the canons. The whole question of taxation of Church properties is of Roman Catholic origin and has arisen out of the papal contention as stated in Canon 1495. The question is whether ultimate dominion of the soil is in the Pope or the civil government. The issue is far deeper than the surface. Taxation is but a minor aspect of it. It is fundamentally one of sovereignty.

Pursuant to the policy of vesting title to all ecclesiastical property exclusively in the hierarchy, the Third Plenary Council of Baltimore, in 1884-1885, by authority of Pope Leo XIII, enacted a statute containing triple provision for completely effecting that purpose in the United States.

Proceedings of that Council are known as *Concilli Plenarii Baltimorensis III, Acta et Decreta*, and can be obtained only in Latin as copyrighted by the late Cardinal Gibbons in 1886. In Title IX, Head II, sections 267-8 of the *Acta et Decreta* the statutory provisions mentioned are found on page 153. *The Catholic Encyclopedia*, Volume XII, at page 473, gives the following free translation of the provision into English:

"(1) The bishop himself be constituted a corporation sole for possessing and administering the goods of the whole diocese, or
"(2) That the bishop hold the goods in trust in the name of the diocese; or
"(3) That the bishop hold and administer the church property in his own name (in fee simple) by an absolute and full legal title. In the last case, the bishop is to remember that, though before the civil law he is the absolute owner, yet by the sacred canons he is only procurator."

In the same connection the *Encyclopedia* states that in 1911 and at other times since the Third Plenary Council the prelates have made some slight formal modifications of the law as enacted then. It concludes the statement with this quotation from a magazine article by Dr. P. A. Bart:

"The Church through the sacred Congregation of Propaganda, whose decision and decree were approved by the Pope, has declared that the corporation system which recognizes the rights of the hierarchy is preferable to the fee simple tenure by the bishops as individuals before the civil law."

Space prohibits further elucidation here of the canons mentioned. But monopoly of all property rights in the hands of the enthroned hierarchy alone is the fixed policy of all property legislation of Rome.

XI

STATUS OF THE CLERGY

CONFORMING to the outline of Roman Law adopted by Tribonian and his associates in the Corpus Juris Civilis, the new Codex Juris Canonici divides the whole body of Canon Law into the Law of Persons, the Law of Things, the Law of Actions, and the law of Offenses and Penalties.

Under the law of persons the new Code embraces the Clergy, the Religious, and the Laity. The relative importance which the Papacy attributes to each of the respective groups of persons named appears from the amount of legislation devoted to each. On that basis they rank as follows:

To the Clergy.....	379 canons
To the Religious.....	195 canons
To the Laity.....	44 canons

Though the laity in the Roman Church outnumbers both the other groups combined by a ratio probably of several hundred to one, it appears from the foregoing that only about seven per cent of canonical legislation has been enacted for the laity. The term "religious" as used in the canon law and in the writings of Roman propagandists has a technical meaning peculiar to such literature and unknown elsewhere. Clause 7 of Canon 488 of the Code defines it as including "those who have taken vows in any religious community."

It includes all men and women living under either solemn or simple vows in the manifold orders and congregations so active in the Roman Church. The regular clergy are embraced in the scope of the term as so defined. Much of the legislation devoted to the religious pertains, therefore, to the regular clergy and brings the total number of canons which create and define the rights of the clergy up to more than ten times the number enacted for the laity.

So has the clergy, though unknown to the New Testament as a distinct and privileged class, usurped virtually all rights under the canon law and become substantially identical with the Roman Catholic Church as a legal entity. The distinction between clergy and laity appeared early in Church history, and the

mighty and continuous medieval struggles between the civil and ecclesiastical powers for supremacy helped to bring the clergy into well defined relief as the embodiment of every ecclesiastical ambition and prerogative.

About the dawn of the sixth century the ceremony of tonsure came into general use as the distinguishing badge and requisite of the clerical state. That ceremony for bringing a candidate into the order of the clergy by shearing his hair continues to our day. Canon 108 of the Code makes this provision:

"Those who have been assigned to the Divine ministry by the first tonsure are called clerics."

Growth of monasticism during the Dark Ages and its wide prevalence in succeeding centuries brought about the distinction between Regular and Secular clergy. In the former class were all clerics living in religious institutions and subject to their *regulae*, or rules; while in the latter were those living in the world independently of such orders or institutions.

Out of the regular clergy and rising above the rest of its membership are a number of superiors composing a powerful hierarchy distinct from that which rules the secular clergy, except that both culminate in the See of Rome with the Sovereign Pontiff as supreme autocrat. Among the regular prelates or hierarchy the Code enumerates the Abbot Primate, the Abbot President of a monastic congregation or an independent monastery, and the Superior General and Superior Provincial and their vicars.

The hierarchy of the secular clergy also culminates in the Papacy as the supreme autocratic authority ruling the whole Roman Catholic world and assuming to stand as the sole earthly representative of Almighty God. Treating the Roman Church as the one perfect artificial person, or "Society," in harmony with the Code, an able Roman Catholic canonist gives the following definitive statement touching the joint status and relations of the Sovereign Pontiff and the Church of Rome:

"The Church forms a juridical person only in conjunction with the Roman Pontiff, because without him it would lack one of its essential constituents. The Supreme Pontiff (Apostolic See) would form a moral person even if the entire body of the faithful would cease to exist—an unlikely hypothesis, which is here stated merely to illustrate the necessity of a supreme head. Without exaggeration we may say that the Pope is a corporation solely by virtue of his sovereignty, like the King under English law. For this reason the Pope is said to have all laws in venue, i. e., he combines the whole legislative as well as judiciary and coercive power in his own person—"*Commentary on Canon*

Law, Augustine, Volume II, page 7."

Below the Sovereign Pontiff in the clergy are
the several cardinals, the *Curia Romana*, or papal court, with its vast and intricate organization of congregations, tribunals and offices, the legates and nuncios representing the pontifical throne as envoys to the civil governments, patriarchs, primates, metropolitans and suffrage bishops, numbering many hundreds enthroned in every part of the world and all deriving their authority solely from the sovereign will of the papal autocrat.

Canon 109 of the Code expressly declares that those elevated to the hierarchy are chosen not by the consent of the people or of the civil authority, but derive their prerogatives solely from their ordination; that the Sovereign Pontiff holds supreme power by virtue of his canonical election and his acceptance; and that prelates of all other grades hold their jurisdiction by delegation from him.

Commentators on the new Code have prudently refrained from translating that canon because of its direct and emphatic denunciation of the American idea embodied in the Declaration of Independence that governments derive their just power from the consent of the governed. But the spirit and purpose of the canon sufficiently appears from the following explanatory comment by a leading Roman Catholic authority:

"This canon, the first clause of which is taken from the dogmatic canons of the Council of Trent, is directed against certain innovations which cropped out throughout the history of the Church, but were introduced especially by the so-called reformers of the sixteenth century. The CONSENT OF THE PEOPLE was the favorite cry of Arnold of Brescia and his followers in the twelfth century. It was repeated by Wiclif and Hus, Calvin and Zwingli. Against these the Council of Trent declared it as an article of faith that the people have no voice in the choice of ministers. The CONSENT OF THE CIVIL POWER was favored by Luther, and partly also by Zwingli at the Council of Zurich. Both demands are excluded by the very organization of the Church and its nature as a *societas inaequalis*."—*Commentary on Canon Law*, Augustine, Volume II, page 47."

Under claim that it is a perfect society divinely constituted and deriving all its prerogatives from God through the Pope, the Roman hierarchy prohibits any effort to subject any prelate or priest to the jurisdiction of civil courts. That prohibition is expressed in Canon 120, which Woywod translates into English in part in these words:

"All cases against clerics, both civil and criminal, must be brought into the ecclesiastical court, unless for some countries other provisions have been made.

"Cardinals, Legates of the Holy See, bishops, even the titular ones, abbots and prelates *nullius*, the supreme heads of religious bodies approved by Rome, the major officials of the Roman Curia in reference to business belonging to their office, can not be sued in the secular courts without permission of the Holy See. All others, clerics and religious, who enjoy the privilege of the forum, can not be sued in a civil court without permission of the Ordinary of the place where the case is to be tried. The Ordinary, however, should not refuse such permission, if the suitor be a lay person, especially after his attempts to effect an agreement have failed."

Thousands of prelates, a quarter of a million priests and scores of thousands of "religious" of the papal government encircle the earth, and vast numbers of them enjoy the rights of citizenship in nearly every country. Such rights are totally incompatible with the exemption from civil authority which the canon law accords to them.

Though bound by paramount ties to the Pontifical throne, and subject to canon law which they regard as divinely enacted and which sets aside the whole doctrine of popular sovereignty, they enjoy protection and the ballot under the very law from which they claim absolute exemption.

A hundred enthroned prelates, about twenty five thousand priests and more than two hundred religious orders of men and women, with a vast aggregate membership, are in the United States. More than half of them have foreign names. But they are accorded the rights of citizenship. Hundreds of thousands of them are employed as teachers in the public schools which their law condemns. Many hold public office of great responsibility and power. This condition merits the serious concern of all good citizens.