The Catholic Lawyer

Volume 2
Number 2 *Volume 2, April 1956, Number 2*

Article 8

The Natural Law and Pragmatism

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Since his address on "Natural Law and Pragmatism" before the Natural Law Institute of Notre Dame in 1947, Mr. Palmer has continued to devote much thought to the development of this topic. The present article is a somewhat different approach to the subject.

THE NATURAL LAW AND PRAGMATISM

BEN W. PALMER†

"There are some people—and I am one of them—who think that the most practical and important thing about a man is still his view of the universe. We think that for a landlady considering a lodger it is important to know his income, but still more important to know his philosophy. We think that for a general about to fight an enemy it is important to know the enemy's numbers, but still more important to know the enemy's philosophy. We think the question is not whether the theory of the cosmos affects matters, but whether in the long run anything else affects them."

WITH THESE WORDS from Chesterton's *Heretics,* William James in 1906[1] in Boston opened the famous series of lectures that launched pragmatism on its career of conquest.[2] Here in the home town of his great pragmatic ally, Mr. Justice Holmes, was a revolutionary event, unspectacular, marked by no Boston massacre, by no dramatic dumping of tea in the harbor or shot heard 'round the world, but by a silent, invisible but powerful impetus towards an erosion of the philosophical bases of the natural law.

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1 JAMES, PRAGMATISM 3 (1931).

2 On May 4, 1907, William James wrote to his brother concerning his "little book called PRAGMATISM": "I shouldn't be surprised if ten years hence it should be rated as 'epoch-making,' for of the definitive triumph of that general way of thinking I can entertain no doubt whatever—I believe it to be something quite like the protestant reformation." 2 JAMES, LETTERS 279 (H. James ed. 1920). In a letter of August 4, 1908 to John Dewey, James wrote, "That it is the philosophy of the future, I'll bet my life." *Id.* at 310.

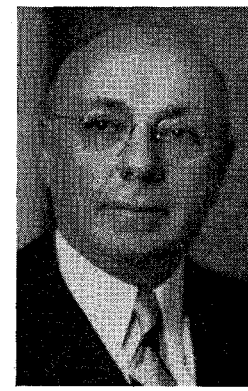
There is, said James,

> a curious fascination in hearing deep things talked about, even though neither we nor the disputants understand them. We get the problematic thrill, we feel the presence of the vastness. Let a controversy begin in a smoking-room anywhere, about free-will or God's omniscience, or good and evil and see how everyone in the place pricks up his ears.[3]

In this year we cannot imagine people pricking up their ears when God's omniscience or free will is mentioned. What is more, as indicating how far we have travelled since 1906 when James spoke these words, who can imagine men of today discussing such subjects either in a smoking-room or elsewhere? Indeed, it seems clear that if today during a lull in the conversation about the health of President Eisenhower, the atom bomb, or one's game of golf, or the Cleveland Browns, the Communists or the Dodgers, one were to say: "Well, fellows, what do you think of God's omniscience?", they would think he was crazy. So, too, I suppose they would if one started to talk about natural law.

And yet natural law is the most natural thing in the world. Indeed in a sense there would be an appeal to natural law if a man were to complain to his wife because she was using his razor to open a can of beans.

For every being, man for example, should act according to the law of its being, that is to say, in accordance with what it really is, or better, in accordance with its primary purpose. If man's purpose is to love God and serve Him in this world and to be happy with Him in the world to come, then he should act accordingly. His conduct should be in harmony with his nature, in furtherance of his "being," in accordance with natural law which is the participation in the eternal law of an ordered universe by man as a rational creature. There is not space here to discuss at any length the philosophical bases of the natural law—God, being, man as a rational, social animal.



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We merely recall to mind the primary principle of the natural law: "Good is to be done; evil is to be avoided," and secondary principles such as those in the second table of the Decalogue and the right to life, liberty and property, the obligation to give every man his due, the principle of justice that runs like a golden thread through the law. And there is the principle that agreements should be kept: the basis not only of the structure of business and of order and of daily life within nations, but the only basis of international law and the only hope for world peace.

Natural law has had a notable history. Having its roots in Greek philosophy, it was developed by Cicero and the Roman jurists who gave law to the western world. It was assimilated to the law of nations and exemplified in canon law. Its sovereignty was generally theoretically and often practically acknowledged by kings and peoples during the medieval centuries. It was the basis of that higher-law doctrine which is fundamental to constitutional liberty. In

[3] JAMES, PRAGMATISM 5 (1931).

the tide of Anglo-American freedom there is John of Salisbury, Bracton, Fortescue, Stephen Langton, the great churchman who led in wresting Magna Carta from the reluctant hand of King John at Runnymede, St. Thomas à Becket, slain at the altar, St. Thomas More, gaily laying his head upon the block rather than to acknowledge the totalitarian pretensions of the sovereign of his day. There is Lord Coke, oracle of the Common Law, itself permeated with natural law, denying the divine right of James I at peril of his life, our revolutionary forefathers who used the natural law as the most powerful weapon of their polemical arsenal in their appeal to the opinion of mankind that preceded the resort to arms and whose doctrine found its flowering in the flaming phrases of Jefferson in the declaration of unalienable rights. But the great culmination of more than twenty centuries of blood and tears by named heroes and unsung anonymous generations in championship of the natural law as a higher law came in the Constitution of the United States, for this was founded on natural law.

For one hundred and fifty years before the revolution this had been the accepted teaching in American colleges and universities. This was the orthodox and general teaching almost until the Civil War. And this was natural since all educational institutions in the pre-revolutionary period and for long afterward were governed and maintained by religious groups. For a long time after the revolution most American college presidents were clergymen and courses in moral philosophy were compulsory. So it was not strange that natural law was accepted by Marshall and Story and Chancellor Kent and practically all of the American bench and bar. It was only after secularism and pragmatism had done their work that the time came when true natural law was unknown to most Americans and all so-called natural law was regarded with contempt and as something no longer worth considering.

And since pragmatism played so vital a part in this erosion of natural law in America we come now to that method, or point of view, or attitude towards life and the cosmos—to this philosophy or pseudo-philosophy or substitute for philosophy.

Though there is pragmatism in ancient Greek philosophy, and there are many varieties of pragmatism, we take, as best illustrative, William James. As he pointed out, the word pragmatism comes from the Greek word meaning "action" from which come our words "practice" and "practical."

James says:

> "A pragmatist turns his back resolutely and once for all upon a lot of inveterate habits dear to professional philosophers. He turns away from abstraction and insufficiency, from verbal solutions, from bad *a priori* reasons, from fixed principles, closed systems, and pretended absolutes and origins. He turns toward concreteness and adequacy ,towards facts, towards action and towards power."[4]

> *Theories thus become instruments.* . . . [Pragmatism] agrees with nominalism . . . in always appealing to particulars; with utilitarianism in emphasizing practical aspects; with positivism in its disdain for verbal solutions, useless questions and metaphysical abstractions."[5]

In the first place it is an attitude or method. It is also a theory of truth.

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[4] *Id.* at 51.

[5] *Id.* at 53.

Ideas become true just insofar as they help us to get into satisfactory relation with other parts of our experience. . . . Any idea upon which we can ride, so to speak; any idea that will carry us prosperously from any one part of our experience to any other part, linking things satisfactorily, working securely, simplifying, saving labor, is true for just so much, true in so far forth, true *instrumentally*.[6]

A new opinion counts as "true" just in proportion as it gratifies the individual's desire to assimilate the novel in his experience to his beliefs in stock. It must both lean on old truth and grasp new fact; and its success . . . in doing this, is a matter for the individual's appreciation. When old truth grows, then, by new truth's addition, it is for subjective reasons.[7]

That new idea is truest which performs most felicitously its function of satisfying our double urgency. It makes itself true, gets itself classed as true, by the way it works. . . . Purely objective truth . . . is nowhere to be found.[8]

[A]n idea is "true" so long as to believe it is profitable to our lives.[9]

Pragmatism is willing to take anything, to follow either logic or the senses. . . . Her only test of probable truth is what works best in the way of leading us.[10]

"The true," to put it very briefly, is only the expedient in the way of our thinking, just as "the right" is only the expedient in the way of our behaving. Expedient in almost any fashion; and expedient in the long run and on the whole, of course; for what meets expediently all the experience in sight won't necessarily meet all farther experiences equally satisfactorily. . . . [W]e have to live today by what truth we can get today and be ready tomorrow to call it falsehood. Ptolemaic astronomy, euclidian space, aristotelian logic, scholastic metaphysics, were expedient for centuries, but human experience has boiled over those limits, and we now call these things only relatively true, or true within those borders of experience. "Absolutely" they are false. . . .[11]

Of course there is much more to James than this, and, of course, one could pause on many of his sentences and point out inconsistencies, illogicalities, differing uses of the same term, vagueness, fallacies and philosophical errors.

The main point is that here is a denial of the idea of truth as the conformity of subjective judgments or ideas to objective reality. What is true today may not be true tomorrow. What is true for you since it is something that works for you and which you find satisfactory is not necessarily true for me. It is all a matter of personal opinion, of individual likes and dislikes.

Here is a denial of absolutes, of universals, of metaphysics. On these the pragmatist turns his back and turns towards adequacy, that is to say towards efficiency, "towards facts, towards action and towards power."[12] Here is the flight from reason; here is the antithesis and enemy of natural law. Here are the Sophists come to life. And here is anti-intellectualism. For James speaks of the "trail of the serpent of rationalism, of intellectualism."[13] "Absolutism . . . [is] remote and vacuous."[14] So he says:

[W]e find men of science preferring to turn their backs on metaphysics as on something

6 *Id.* at 58.

7 *Id.* at 63.

8 *Id.* at 64.

9 *Id.* at 75.

10 *Id.* at 80.

11 *Id.* at 222, 223.

12 *Id.* at 51.

13 *Id.* at 19.

14 *Id.* at 20.

> altogether cloistered and spectral, and practical men shaking philosophy's dust off their feet and following the call of the wild.[15]

Americans were proverbially practical men. And did they shake philosophy's dust off their feet? Did they follow the call of the wild? Did they come to worship action, efficiency and power?

This brings us to the reasons for what James hoped for and called the "conquering destiny" of pragmatism. For it is generally conceded to be the prevailing American philosophy. Why was it congenial to America? What streams of emotion and of thought contributed to its conquests? Of course there were many philosophical influences, some coming from European philosophers. And here one must generalize without finesse or the qualifications that completeness of statement would require if space permitted.

The evolutionary theory of Darwin's *Origin of Species,* published in 1859—the year of John Dewey's birth—had many ramifications and repercussions. It shattered the religious faith of millions who had accepted literally the seven days' account of creation in Genesis as referring to twenty-four hour days. It destroyed their belief in God or caused them to turn to the physical sciences as the god of a newer and better revelation. Applied to society and the struggle for economic existence it stamped with the approval of the evolutionary process any conduct of the individual which worked towards success, regardless of ethics or morality. Action was glorified. Efficiency was stamped with nature's approval (and Nature was spelled with a big "N"). The end justified the means. That was good, that was true, which worked.

This fitted in with laissez faire and the idealization of atomic individualism, the glorification of individual selfishness as producer of the common good. But here was abdication of the social responsibility of man, denial of his social nature and the restraints of natural law flowing therefrom. And for many imbued with evolutionary theories change was the law of life. The past, including traditions embodying age-long experiences of the race, was discredited. The new was presumptively the true. And so principles must be adapted to changed conditions, not conditions to principles. If necessary the principles were to be discarded. Whirl was king. All things flowed. And not until later were men to discover that there was no well of being amidst the wastelands of drifting dunes and shifting sands. Later they were to search for the rock of certainty.

But meantime evolution was allied to the cult of progress. All change was good, since the movement of the species under the iron compulsion of scientific law was necessarily always upward and onward. And to Americans all this seemed confirmed by what they saw about them. Had not man mastered his environment, unlocked nature's deepest secrets, brought heaven down to earth? Was he not making his own Garden of Eden? What need had he of God? Or was not he God himself? Particularly did this anthropocentric humanism appeal to Americans who in single generations saw their environment, material and social, completely change, who saw the conquest of a continent, the transformation of a single agrarian or small-town society into a complex, closely inte-

[15] *Id.* at 23.

grated, swiftly moving civilization of metropolitan millions. For men in one long lifetime or two passed from ox-cart and tallow candle and homespun to airplane and electrons and a gadgeteering civilization produced by assembly-line methods. Why should these millions not believe in the beneficence of change and the inevitability of progress?

Furthermore, evolutionary theories affected philosophy and ethics and law and the social sciences. Anthropologists not only emphasized differences among men rather than their common rationality and universally basic principles of conduct, they played upon changes in men's points of view and opinions and in the institutions that implemented them or gave them expression: interminable change down the generations in cultures and religion. There was the conclusion that religion generally is but a hangover of savage superstitions and taboos. Morals were based on no universal, eternal truths, on no ontological principles. They became merely the mores, the changing customs of the masses, produced by irrational uncontrollable and uncontrolled forces. Thus in 1906, the very year of these James lectures, Sumner's book *Folkways* came out of Boston profoundly to affect the thought and morals of millions of the first half of the twentieth century—of many who never heard his name.

The kinship of Sumner's *Folkways* with pragmatism is apparent from such words as these:

> Men begin with acts, not with thoughts. . . . The ability to distinguish between pleasure and pain is the only psychical power which is to be assumed. Thus ways of doing things were selected, which were expedient.[16]
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> The folkways . . . are not creations of human purpose and wit . . . they are like the instinctive ways of animals, which are developed out of experience. . . .[17]
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> The notion of right is in the folkways. It is not outside of them. . . . In the folkways, whatever is, is right. . . ."Rights" are the rules of mutual give and take in the competition of life which are imposed on comrades in the in-group. . . . Therefore rights can never be "natural" or "God-given," or absolute in any sense. . . . World philosophy, life policy, right, rights, and morality are all products of the folkways.[18]
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> [T]he great mass of any society lives a purely instinctive life just like animals. . . . The masses are the real bearers of the mores of the society. . . . The folkways are their ways.[19] . . . Institutions and laws are produced out of mores.[20]

And a concluding quotation from Sumner's *Folkways* sounds like Mr. Justice Holmes:

> Nothing but might has ever made right. . . . If a thing has been done and is established by force . . . it is right in the only sense we know . . . [M]ight has made all the right which ever has existed or exists now.[21]

And then there was secularism. The pagan Renaissance's centering of the universe on Man rather than God or any absolutes came to fruition when twentieth century man saw, or thought he saw himself master of his environment. The industrial revolution produced the bourgeois mind; some scholars said that the Protestant ethic stimulated the development of

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16 SUMNER, FOLKWAYS 2 (1913).

17 *Id.* at 4.

18 *Id.* at 28, 29.

19 *Id.* at 45, 46.

20 *Id.* at 53.

21 *Id.* at 65, 66.

modern capitalism[22] and with it came the type of person who keeps his religion for Sundays and on the other days of the week concentrates on the pursuit of material gains. The week days are for "moral holidays," as James would say. Worldly goods were signs of God's election; manifest proofs of virtue. In America the environment beckoned towards materialism, placed a premium on practicality, was uncongenial to philosophy or reflection. Everything called for action, efficiency, power: the forest primeval yearning for the axe, the prairie for the plow, the natural resources of a virgin continent. In the mad, competitive race everything called for speed; there was no time for reflection or for theory. The thing to do was to act first and judge afterwards by processes of trial and error.

And as the railroads spanned the continent, towering cities rose above the plain and all the world applauded America's inventive, productive and material progress, the great financier or industrialist replaced poet, prophet, statesman and the man of God as object of the hero worship of the practical minded American people. And the tendency towards materialism was accelerated by the mass appeal of American advertising methods leading millions to believe that each should keep up with the Joneses, that no one should ever admit that there was anything that he could not afford, that only temporal happiness counts and that such happiness is impossible without a plenitude of material possessions—particularly the latest gadget—whether it be color television or an electric pencil sharpener. And of course the secularization of American society resulted from the decay of religious faith. It was not so much that religion had been refuted as that it had come to be abandoned, to be passed by as unimportant because of the progress of skepticism, materialism and indifferentism. It no longer mattered.

Not only in religion but in all fields of thought there was a kind of liberalism that concentrated on tolerance. It didn't matter what you thought provided you had an "open mind." But the tolerance in many cases was only an excuse for indolence. Only too often men faced with controversial questions of great consequence to themselves and to society laid to their souls the flattering unction that they were tolerant when in fact they were only too lazy to come to grips with difficult problems. And so the so-called open mind often became the vacant mind, a veritable cave of the winds without any convictions solid enough to offer resistance to passing moods of public emotion, of fancy or of fashionable thoughts. The net result was a skepticism—one man's opinion was as good as another's — this was sound democratic dogma—and finally it didn't make much difference anyhow. And so you had indifference which made it all the easier to concentrate on the pursuit of wealth and enjoyment of the rich fleshpots of American life.

[22] 20, 21 WEBER, DIE PROTESTANTISCHE ETHIK UND DER GEIST DES KAPITALISMUS IN ARCHIV FUR SOZIALWISSENSCHAFT UND SOZIALPOLITIK (1904-05); WEBER, THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM (Parsons transl. 1930); TAWNEY, RELIGION AND THE RISE OF CAPITALISM (1926); FANFANI, CATHOLICISM, PROTESTANTISM AND CAPITALISM (1936); See TROELTSCH, THE SOCIAL TEACHINGS OF THE CHRISTIAN CHURCHES (1931); For a criticism see STRAUSS, NATURAL RIGHT AND HISTORY 60 n. 22, and 12 ENCYCLOPEDIA OF SOCIAL SCIENCES 574.

Not only was pragmatism strengthened by evolutionary theories and the doctrine of progress—by anthropology, sociology, the secularization of society and indifferentism. Developments in late nineteenth and early twentieth century social and physical sciences prepared the minds of many Americans for the sewing of the seeds flung broadcast by James and his adherents. The newer social sciences, whose students as mid-twentieth century approached ran into the tens of thousands, witnessing the triumphs of the physical sciences, decided to ape their methods. Principally this was in two respects: first, the concentration on inductive facts, on the "is" rather than the "ought." This meant the scrupulous exclusion of ethics, morality and religion from economics, history, sociology and political science. Secondly, there was to be a high degree of specialization. This meant a separation of the social sciences not only from ethics and religion but from each other and from philosophy. This meant progress, but it had two bad effects. First there was a shrinking of men working in the field and of the men they were studying into less than whole men. The professor too often became less than a whole man—and he saw only a small section of the universe; he peered through his miscroscope at the specimen on his slide and saw only the economic man, or the political man, or the social: he never saw a whole man. A second result of overspecialization was that inevitably men were buried under a Vesuvian deluge of the ashes of discrete fact, chaotic, confusing, brought into no pattern of intelligibility by any synthesizing philosophy. And the lack of a common philosophy led these men to speak varying languages: it prevented their agreement on the nature and purpose of man, or of the universe or of the purposes of society and of government and of law. The situation here was similar to that in the world of education. Public educators, not agreed on ultimates, on the nature and purpose of man, were not agreed on the purpose of education and therefore pragmatically concentrated on methods without a unifying philosophy. So the educational world was in a state of confusion.

Not only did the social sciences support pragmatism but so did the physical sciences which became increasingly materialistic. Since only that mattered which could be measured, counted, weighed, treated in terms of statistical averages or acted upon in a test tube, since metaphysics and philosophy were shunned, there was no room for such things as natural law, to say nothing of the supernatural from which it drew much of its strength. Here too, its was only the practical results, the tangible achievements of science manifested in industry and invention that counted. Here too, the great test of truth was workability, efficiency, material results. And when after the end of the nineteenth century science lost its dogmatic faith in itself and confessed its doubts and limitations, when certitude was replaced by probability as the best scientists could offer, men who had turned from God to science as the only rock of certitude in a fluid universe, gave up in despair and said, "There is no truth."

The faith in man as self-sufficient master of his environment and in the inevitability of progress was shattered by the First World War, the disillusionment and cynicism that followed it, by a flood of debunking biographies, by the Great De-

pression, by theories of rationalization and those of the most popular of the newer sciences, psychology, and by the semanticists.

War and depression proved the irrationality of man; best selling books told men that they were creatures who acted blindly on impulse and later invented theories to justify their conduct. Had not James pointed out that a philosopher's temperament "really gives him a stronger bias than any of his more strictly objective premises;"[23] that "[T]emperaments with their cravings and refusals do determine men in their philosophies, and always will."[24] But said James: "Temperament is no conventionally recognized reason, so [the philosopher] urges impersonal reasons only for his conclusions."[25] And so "in our philosophic discussions: the potentest of all our premises is never mentioned."[26] And had not Mr. Justice Holmes said "the business of Philosophy is to show that we are not fools for doing what we want to do?"[27]

Freudian and behavioristic psychologists degraded man to the level of a rat in a maze, explained his conduct not in terms of reason, but of inhibitions, frustrations, suppressed desires, visceral reactions and the stimuli of sex. Semanticists came along like children with the glittering bauble of ideas as old as Aristotle, which they had just discovered and dramatized and carried by exaggeration out of all touch with reality. "Honor," "Ideals," "Justice," "Truth" were mere words, "empty verbalisms," "pernicious abstractions." Logic, philosophy, reason were all discredited. They were all "the bunk." Only concrete facts, action, force had any reality.

If man was degraded by anthropologist, sociologist, psychologist, if his spirituality and rationality were denied, how stood his idea of himself and his world after he had listened to the economic determinists and the Communists? His free will was denied; he and all his institutions—his church, his state, his law—were merely the reflection, the helpless results of the economic process, of society's system of production. Religion was the opiate of the people, the state was evil, constitutions were devices for enslaving the masses to an exploiting bourgeoisie, law merely the expression of fraud and force.

With God denied or ignored, man's reason denied, how could one believe in natural law? And then there was ignorance: ignorance of true scholastic natural law because it was the fashion of the times to equate the medieval centuries — the centuries of Albertus Magnus and St. Thomas Aquinas and of the flowering of Gothic art, to the dark ages. Even recently when intelligent men everywhere have rediscovered the middle ages, you occasionally find a pretended scholar who repeats old cliches and dismisses all scholasticism as concerned only with the number of angels on a needle's point. It makes one think of Sam Johnson's answer to the woman's question how he came to define pastern as the knee of a horse. Said Sam, "Ignorance, madam, pure ignorance."

And there was a great deal of ignorance of the natural law. It had two counterfeit

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23 JAMES, PRAGMATISM 7.

24 *Id.* at 35.

25 *Id.* at 7.

26 *Id.* at 8.

27 1 HOLMES-POLLOCK LETTERS 161 (Howe ed. 1942).

presentments: the purely rationalistic natural law of the Enlightenment, and the nineteenth century laissez faire individualism represented in decisions of the Supreme Court of the United States. As to the first, when many men thought of natural law they conceived it to be a theory to the effect that a complete code of laws could be spun out of the abstract reasoning of a man in a closet, good for any people at any time. This of course ignored two things about the natural law: first, that, as pointed out by Aristotle and St. Thomas, it drew heavily upon the experience of the race; second, it recognized that principles had to be developed in detail by the positive law and that such development imperatively required careful consideration of all the changing contingencies of time and place. No true adherent of scholastic law ever thought that every rule of conduct should be equally applied to the head-hunting savage in the forest and the twentieth-century citizen of Megalopolis in his penthouse enjoying a televised Seventh Symphony of Beethoven.

A second false picture of natural law was that it meant merely a philosophy which would justify the Supreme Court of the United States in attempting to enforce Manchester economics and Spencer's Social Statics and in preserving social injustices of the status quo by striking down all social legislation under the Due Process clause of the Fourteenth Amendment. The pity of it was not that humanitarians were critical of excessive laissez faire and manifest denials of social justice, but that they turned their indignation against the Constitution and what they regarded as natural law. The false pictures prevented them from seeing the true. And they were ignorant of the fact that their own desire for social justice was based upon natural law.

And so, notwithstanding streaks of idealism, we had a predominantly sensate, skeptical, secularized and materialistic culture. In this culture, pragmatism came to its flowering and fruition.

And thus we come to the final question: What were the consequences of pragmatism, particularly as related to the natural law? James was but one of a profoundly influential pragmatic trio: the other two were John Dewey and Mr. Justice Holmes. Both these had a revolutionary effect upon law. Dewey's influence came indirectly but effectively through his domination over nearly all American educational institutions from the kindergarten through the graduate school. Most of the members of the bench and bar passed through these schools and took in pragmatism with their mother's milk. They received little or no training in philosophy, or if they had a few courses in philosophy they often emerged with the conviction that philosophy is a tale "full of sound and fury signifying nothing," the record of differing opinions not to be reconciled, indeed not worth reconciling. If they got a little of philosophy's dust on their feet, they soon shook it off.

As to Dewey, we quote Pegis in his essay entitled "The Challenge of Irrationalism" in the book *Race-Nation-Person.* "Mr. Dewey" says Pegis, "has devoted himself for half a century to making the blue-prints for the complete dissolution of the ideals and principles of traditional Western thought."[28] The true philosopher "must fight the notion that in the beginning

[28] PEGIS, *The Challenge of Irrationalism,* in RACE-NATION-PERSON 73 (1944).

there is method; for from such a notion, in the end, there results only the void."[29] And he points out that Dewey and his followers "cannot be free in their irrationalism unless Plato, Aristotle and St. Thomas stand completely discredited."[30] And so they "consider it to be a part of their aim to eliminate these thinkers in order to survive."[31]

Holmes deserves a book for himself. The implications of his philosophy may be summarized, however inadequately, in a sentence. He had no time for natural law; positive law is divorced from morals; it is not based on logic or reason but on expediency, the felt necessities of the time, considerations of policy, even judicial prejudices; its essence is force, will, command; there is no higher law. Pragmatism in the law meant that both legislator and judge were to be denied the help of that friendly critic, the natural law, that standard outside the law by which to measure both statute and judge-made law. The abandonment of principles for expediency, of the quest for jurisprudential truth, meant confusion in the law. Since the test was workability, men would disagree as to whether a rule had worked. If the rule was merely proposed, men were limited to conjecture and prophecy as to whether the rule would work and how. More than that, since pragmatism has no answer to the question, "Work towards what?" but leaves each individual to envisage his own goals, man, and therefore lawmakers and judges need not agree on goals. So there is working at cross purposes, that lack of unity of purpose essential to order in any field of action or thought. So there is a multiplicity of conflicting statutes, a chaos of confused judicial opinions, a lawlessness within the law itself. To the extent that judges are not reasoning by logical processes from common major premises but freely legislating according to each one's notion of expediency there is a confused babel of judicial voices and an appalling uncertainty in the law. Moreover, there is no stability in judicial decisions when decisions change with changing personnel of the highest courts; newer justices outvote the old. That order, that reasonably definite predictability of the law upon the basis of which men deal with one another and governments deal with men, is diminished or denied. So there is frustrating uncertainty and insecurity of rights. Particularly is this true in the field of constitutional law where there is special need for security in fundamental rights and basic legal assumptions.

If pragmatism destroys natural law as the only possible or enduring basis for international law and for world peace, so is its danger greatest in the field of constitutional law. For so wide is judicial discretion in that field because of the calculatedly vague contours of constitutional phrases that fundamental rights intended to be secured by that great charter of our liberties may be frittered away in successive decisions of the Supreme Court of the United States: rights of the family, of the individual, of the churches. If the justices of that court are pragmatists, if they cease to believe in God, an ordered universe, and man as a rational animal made to the image and likeness of God, if they cease to believe in natural rights, then by a

(Continued on page 176)

29 *Id.* at 93.

30 *Id.* at 87.

31 *Ibid.*