

The Catholic Lawyer

Volume 2
Number 3 *Volume 2, July 1956, Number 3*

Article 17

April 2016

Fountain of Justice

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Recommended Citation

John B. Gest (2016) "Fountain of Justice," *The Catholic Lawyer*: Vol. 2: No. 3, Article 17.

Available at: <http://scholarship.law.stjohns.edu/tcl/vol2/iss3/17>

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FOUNTAIN OF JUSTICE, by John C. H. Wu. Sheed and Ward, New York, N. Y., 1955.
Pp. 281. \$3.75.†

Reviewed by

JOHN B. GEST*

What is meant by law and how many kinds of law are there? What is natural law, what is human law, what is the essence of law, what is the end of law? What are the relations between the eternal law, the natural law and positive law?

These are questions posed by Dr. John C. H. Wu and discussed in the Prologue of his scholar and very readable book, *Fountain of Justice — A Study in the Natural Law*. In answering these questions, Dr. Wu gives first a synopsis of his own philosophy of law which is Christian and Thomistic.

Dr. Wu is singularly qualified to write in this field. The philosophy of law and comparative law have been special studies for him. When he was a graduate student at Michigan Law School in 1920, being then only twenty-one years old, he wrote

²³ *Id.* at 314.

†Reprinted with permission, "Dr. Wu And The Natural Law," 27 *Pennsylvania Bar Association Quarterly* 338 (1956).

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an article for the *Michigan Law Review*, "Readings from Ancient Chinese Codes and Other Sources of Chinese Law and Legal Ideas." He had heard his professors speak admiringly of Justice Holmes (then eighty) and in 1921 he sent the *Justice* a copy of the *Review*. Holmes was much impressed and from this sprang the correspondence known as the Holmes-Wu letters, and a lasting friendship. (See John C. H. Wu, *Beyond East and West*, 87 *et seq.*). In 1921 Professor Edwin D. Dickinson, now of the University of Pennsylvania Law School, offered young Wu a traveling fellowship in international law under the Carnegie Endowment, which he accepted for studies at the Universities of Paris and Berlin. In 1923 he was a research scholar in jurisprudence at Harvard University under the direction of Dean Roscoe Pound. Returning to China, he became successively, Professor of Law, then Dean of the Comparative Law School, Judge of the Provisional Court of Shanghai and a successful practicing lawyer. As a member of the Leg-

islative Yuan, he played an important part in the drafting of the Constitution of Nationalist China. In 1946 he was appointed Minister Plenipotentiary from China to the Vatican. At present he is Professor of Law at Seton Hall University Law School, South Orange, New Jersey. He has published numerous books and articles on law in Chinese, English, French and German. Members of the Brandeis Society will recall (as mentioned on page 278 of his book) that Dr. Wu spoke at their meeting in Philadelphia in the winter of 1951 on "Justice Holmes and the Natural Law."

After stating the above questions and before answering them, Dr. Wu presents also another fundamental question: "Why should we not confine our study to human law?"—meaning the law that regulates the transactions and relations between men in their social life, defining rights and duties, civil liability and criminal responsibility, and prescribing remedies. "Why should we bring in such things as theology, philosophy, ethics, sociology, economic theories?" He answers that the profession of law is not a mere craft for making a living. He cites with approval Justice Holmes:

The remoter and more general aspects of the law are those which give it universal interest. It is through them that you not only become a great master in your calling, but connect your subject with the universe and catch an echo of the infinite, a glimpse of its unfathomable process, a hint of the universal law.¹

Dr. Wu goes further. He claims "... there is no other way of teaching law except in the grand manner, for the simple reason that one cannot really know the law without taking account of its sources." He be-

lieves that if we delve into the cases we find (quoting one Henry Finch) "the sparks of all the sciences are raked up in the ashes of the law." Neither Dr. Wu nor this reviewer would agree with those who hold that legal magazines should have only articles whose value may ultimately be reflected in the income account.

Among the definitions of law Dr. Wu finds that of St. Thomas Aquinas the most adequate.

It is nothing other than a certain rule of reason for the purpose of the common good, laid down by him who is entrusted with the welfare of the community and promulgated.

He discusses the *eternal law*:—God's Government of all creation according to His Divine Providence for the good of all; and the *natural law*, "a participation in the eternal law by the rational creature," and *human law*, which is derived from natural law both by way of conclusion and by way of determination of certain generalities.

The discussion of the question whether the essence of law is in reason or in will is particularly interesting. Much confusion, it appears, has resulted from failure to distinguish between the speculative reason and the practical reason. The former is the faculty of reason when its object is one of the sciences, including the physical sciences, where effects must follow causes by a necessity of nature. Natural phenomena, for example, are necessary things because, under given conditions, they cannot be other than they are. But as human law concerns the action of beings endowed with free will, contingent matters are concerned and so it comes under the practical reason. Human law has necessity in general principles but not in detailed application, which

¹ WU, FOUNTAIN OF JUSTICE 5 (1955).

involves the evaluation of the end (the common good), and the selection of means to attain it. Its essence, therefore, is reason but the will of the human lawgiver is required for its actual existence and efficacy. For example, while to do justice is a necessary principle of natural law, the determination by the legislator of what is just, according to Aquinas, must differ according to the different conditions of mankind.

Kant and his followers failed in the fundamental distinction between the speculative reason and the practical reason. In their school the latter is reduced to will and sentiment.

The rationalists had claimed for natural law a complete code for regulating conduct down to the smallest details. For them, under a given state of facts, there could be only one natural law answer if the truth were known. They treated law as coming under the speculative reason. On the other hand, the voluntarists, by eliminating reason as the source of law, derived law from the arbitrary will of the lawgiver or of the individual. And so the term "natural law" was appropriated by various schools which failed to appreciate the traditional view of the respective parts of reason and will in the philosophy of law. Law is, as Dr. Wu remarks, "a teleological, not a mechanical science."

Dr. Wu finds that the juridical rationalism of the eighteenth century led to the juridical positivism of the nineteenth, which does not recognize the fundamental moral law as the source of human positive law. Apparently it was mostly the false rationalistic and rigid notion of natural law against which Justice Holmes revolted, but when Holmes "made a wholesale denial of natural law, he fell into Charybdis in shunning

Scylla." Dr. Wu deplored the fact that Justice Holmes never studied St. Thomas and I believe he always felt that the Justice, in his heart, was closer to natural law than his writings would indicate.

Indeed, it would appear that much of the modern attack on natural law has been addressed to the rationalistic or individualistic kind of natural law, and not to the traditional natural law expounded by the author.

Dr. Wu uses the term "personalism" as designating natural law political philosophy because it recognizes the full significance of the human person, "made to the image and likeness of God." It treats individuals as integral moral persons and establishes a hierarchy of natural rights, life, liberty and property. In recognizing both the individual and the social nature of man, and his rights and obligations, it avoids the errors of collectivism on the one hand and individualism on the other.

Under the caption "The Natural Law and Our Common Law," Dr. Wu traces the origin and development of natural law principles in England from the days of King Ethelbert:—through the time of Magna Carta, the age of Bracton, from the Year Books to Thomas More, Christopher St. Germain, Coke, Holt, Mansfield; and in this country, particularly in the writings of the Founding Fathers and in the frequent application by our courts of principles of natural justice. The treatment of the common law is particularly interesting because of the great respect, even enthusiasm, which the distinguished Chinese scholar has for our system. He says that:

Nothing is so fascinating as to follow the fortunes of natural-law philosophy in this country. Its chief glory is its confirmation of

the idea that there is a Law higher than positive laws. In its early days, the American philosophy of the natural law did not separate itself from religion, and it became the rock on which a true democracy was built.²

In a division of the book called "In the School of Christ," the author shows many examples of the incorporation in the common law of principles taught by Christ. He is not speaking of revelation but rather of the teaching which could be within the reach of natural reason. For, as Aquinas says, the natural law is "participation in the eternal law by the rational creature." The author's view is clarified in the following:

The question has often been asked if Christianity is a part of the common law. It depends upon what you mean by Christianity. If you mean a revealed religion, a Faith as defined by the Apostles' Creed, it is not a part of the common law in the sense that you are legally bound to believe in it. Christianity as a Faith comes into the courts, not as a law, but as a fact to be taken judicial notice of, on a par with other facts of common knowledge. On the other hand, if you mean by Christianity the fundamental moral precepts embodied in its teachings, it is part of the common law in the sense that all the universal principles of justice written in the heart of every man are a part thereof. They are not enforced as specific rules of law but are applied as guiding principles whereby laws are made and cases decided.³

In the Epilogue the author summarizes his view of the present situation:

² *Id.* at 130.

³ *Id.* at 215-16.

At present, American jurisprudence is going through a crucial phase of its evolution. There is a visible trend toward the revival of natural-law philosophy, centered on the dignity of the human person. The historical situation which has made this movement not only possible but inevitable has been very ably described by Chief Justice Vanderbilt: "There has been a marked tendency to think of man merely as a cog in the economic machine. Happily, however, this tendency seems to have been checked, in part because of a postwar resurgence of interest in religion which is fostering a militant faith in the worth of the individual and his capacity for good, and in part because of our alarm over the spread of totalitarian government and its effect on the individual." As I survey the judicial decisions of contemporary courts in America, I have grounds for hoping that this resurgence of spiritual idealism is more than a temporary fashion, that it is the beginning of a truly glorious age in the history of jurisprudence.⁴

As stated by the author, the book is not a volume of collected legal papers but it has a unity of its own. He has drawn liberally upon papers and addresses which he has published and delivered on various occasions. Dr. Wu's style is engaging and his writing reflects the vast knowledge he has acquired in extensive reading in the law of many countries. At times his ideas seem to expand beyond the ordinary language of law and philosophy and burst into poetic imagery that is pleasant and illuminating. The book should prove to be a distinct contribution toward the current revival of natural law jurisprudence.

⁴ *Id.* at 191-92.