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This is the second of a series of articles on Catholic law schools in America.

THE NOTRE DAME EXPERIMENT[†]

EDWARD F. BARRETT*

CATHOLIC UNIVERSITIES conduct some twenty law schools in the United States. These law schools resemble any other American law school in methods, in curricula, in anxious avoidance of faculty "in-breeding." Why then call them "Catholic"? What precisely, makes a Catholic law school "Catholic"? A clerical regent? The crucifix in the class room? The Communion breakfast? The portrait of St. Thomas More in the library? The course in "Legal Ethics" bolstered with borrowings from Moral Theology? The seminar in "Jurisprudence"? "Secular" law schools also hang paintings of Lord Chancellor More, provide chaplains for the students' religious needs and offer courses in "Jurisprudence" eclectic enough to satisfy the fastidious.

A "Catholic" law school is *Catholic* when its Catholic name and symbols truly mean that the philosophy of Catholicism is the soul of the entire curriculum and not merely of one isolated course. Otherwise it is but a convenience maintained by a Catholic university for the benefit of Catholic students who might just as well go elsewhere to study law.

Not entombed like an academic corpse, but alive in the living body of Catholic philosophy there is indeed a philosophy of law as "catholic" as it is "Catholic," for it rests upon the tremendously simple universal that God made all men. The word "God" is a Jurisprudence in itself.¹

[†]Adapted from the "*Catholic Law School and the Natural Law—The Notre Dame Experiment*," 56 HOMILETIC AND PASTORAL REVIEW 904 (1956) in collaboration with Dean Joseph O'Meara.

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¹"The word 'God' is a Theology in itself, indivisibly one, inexhaustibly various, from the vastness and simplicity of its meaning. Admit a God, and you introduce among the subjects of your knowledge, a fact encompassing, closing in upon, absorbing, every other fact conceivable. How can we investigate any part of any order of Knowledge, and stop short of that which enters into every order? All true principles run over with it, all phenomena converge to it; it is truly the First and the Last." Newman, *Idea of a University*, in A NEWMAN TREASURY 46 (Harrold ed. 1943).

Such a jurisprudence is no more narrowly or invidiously "theological"² than the American Declaration of Independence which also affirms as "self-evident" that all men were created by God and are therefore "endowed by their Creator with certain unalienable rights." The American people "told the world" in their first public paper that they were building a new nation dedicated to this ancient "catholic" philosophy of law. It is today the singular privilege of the "Catholic" law school to defend and to develop that philosophy long since dismissed from the secular law school and thus from the serious thinking of the jurists and lawyers they have produced. The "Catholic" law school fully accepting this privilege cannot help but be at once Catholic and American. Yet, writing only a few years ago, Rev. David C. Bayne, S.J., remarked:

... by and large, both bench and bar have been kept in woeful ignorance of the teachings of the scholastic philosophy on the Natural Law or of the practical applications of Natural Law philosophy to the everyday problems of court and law office. . . . Where the cause of this should be placed

² Nervousness about the "theological" or "ecclesiastical" implications of Natural Law doctrine is nothing new today. Two hundred and fifty years ago, Thomasius said "*Ne falcem hic immittamus in campum venerandae Theologiae*," *Inst. Iur. Div.*, lib. 1, c.1, s.163. Similar fears appear in modern writers on the philosophy of law. Cf. Howe, *The Positivism of Mr. Justice Holmes*, 64 HARV. L. REV. 529, 530-531: "[The criticism of Holmes by the Jesuit scholars Lucey and Ford] is so firmly grounded in the Catholic philosophy of law that were I to attempt to meet it directly I should find myself quickly engaged in a theological controversy beyond my competence to discuss. . . . [They] take a position which it was almost inevitable that members of the Jesuit Order would take: Holmes not only proclaimed himself a skeptic in matters of religion and denounced man's relentless

is difficult to say. The twenty-odd Catholic law schools of the country have not expended a major effort in the espousal of the Natural Law doctrine. Their journals have been relatively silent on the subject. Catholic judges and lawyers cannot be blamed, for many of them have received little or no specific Natural Law training. In the end the circle becomes vicious. It is simply a question of how to break it.³

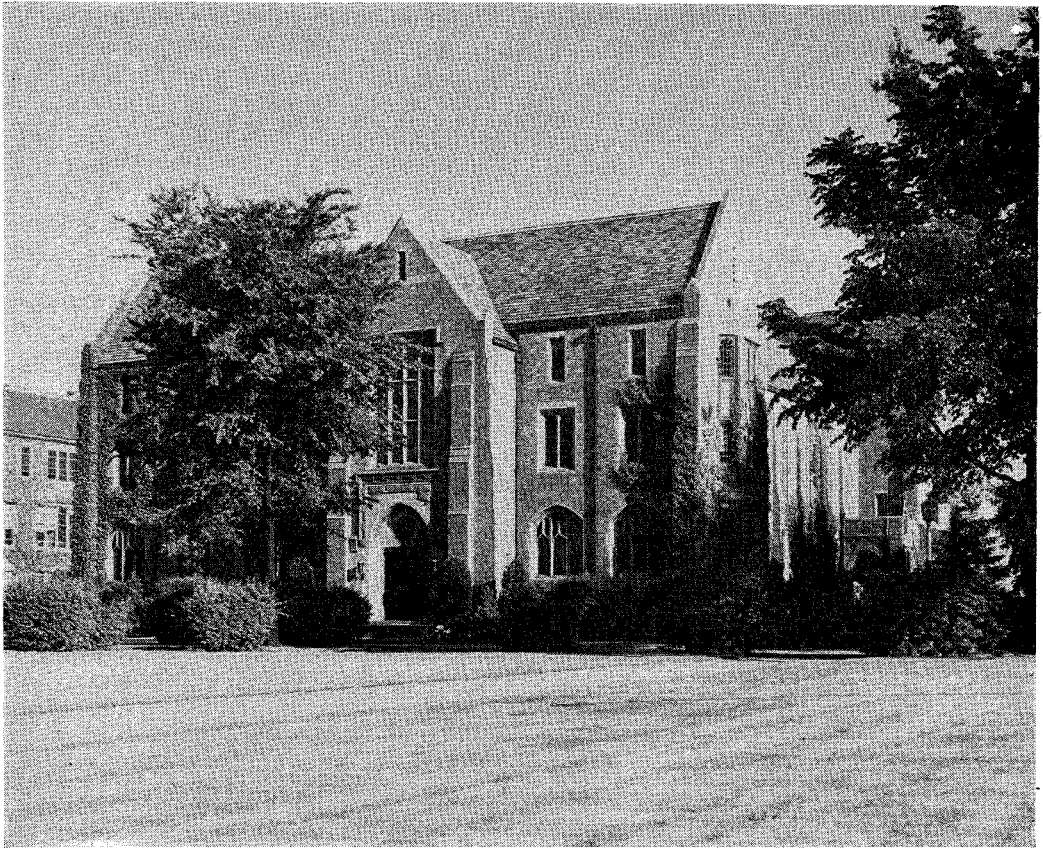
Secularized vs. "Spiritualized" Jurisprudence

The Notre Dame Law School was established in 1869. There have been five deans including the present incumbent. The first dean was Colonel William James Hoynes. He was followed by Dean Francis J. Vurpillat, Dean Thomas Konop, Dean Clarence E. Manion, and Dean Joseph O'Meara.

Like its sister "Catholic" law schools, the Notre Dame Law School, since its beginning, has, of course, offered instruction in the traditional Natural Law philosophy of law, and has remained faithful to this original "American Jurisprudence" through the decades which saw it displaced in the secular law schools, by Positivism, Prag-

effort to give human values a more than human significance, but he denied the existence of that law of nature upon which the Catholic philosophy of law is based. It would have required no special insight to predict, twenty years ago, that Jesuit teachers of law would find Holmes' skepticism philosophically untenable." Cf. Gerhart, *The Doctrine of Natural Law*, 26 N.Y.U.L. REV. 76 (1951). Mr. Gerhart apparently sees in the revival of Natural Law doctrines an attempt to advance "ecclesiastical authoritarianism." Thus he says "any attempts by casuistical logic and equivocation to impose ecclesiastical authoritarianism on the state by means of the doctrine of natural law will be opposed by democratic common law lawyers. . . ." Gerhart, *supra* at 119.

³ 82 AMERICA 433 (1950).



Notre Dame Law School

matism, Materialism and Relativism. We have no statistics to show how deeply the content or the teaching of the "positive law" courses was affected, nor how intimately the actual practice of law by the "Catholic" law school graduate was influenced, by the "Natural Law" course (an hour a week for a term) in his undergraduate days. How much of the seed fell even in the first sowing upon barren rock? How much upon good soil, only to be crushed out later, long before the hoped-for harvest? How many "Catholic" law school graduates in 1927, for example, had enough "talent for the jugular" to cut through at once to the fallacious "inarticulate premise" of Justice

Holmes' defense of compulsory sterilization (less than ten years before Hitler): "the principle that sustains compulsory vaccination is broad enough to cover the cutting of the Fallopian tubes?"⁴ How many were content, like Justice Butler, to "dissent without opinion?"⁵ How many more, charmed by the word-witchery of Holmes, silently acquiesced? All teaching is an act of faith. Its success is not measured by statistics.

In 1890, von Jhering confessed that he probably would not have written his

⁴ *Buck v. Bell*, 274 U. S. 200, 207 (1927).

⁵ *Ibid.*

master-work *Der Zweck im Recht*, had he known the philosophy of Aquinas: "the basic ideas I occupied myself with are to be found in that gigantic thinker in perfect clearness and in most pregnant formulations."⁶ How many American von Jherings have since had the same confession to make?⁷ Who is to blame? Has an American "Catholic" law school, sixty years after von Jhering, produced an English text of the *Treatise on Law* with an up-to-date commentary relevant to the problems raised by twentieth-century legal philosophers, showing how, for example, the "bed rock" juristic question of St. Thomas: "Whether law is something pertaining to reason?" and the *responsa* of the Angelic Doctor have a disquieting pertinence to the difficulties in which, say, the modern American "realist" school of jurisprudence finds itself?⁸ Has a similar service been performed for Suarez' *De Legibus ac de Deo Legislatore*? Who then is to blame if the non-Catholic judge, lawyer or law professor still talks of "Roman Catholic" Natural Law,⁹ or believes that Scholastic Jurisprudence is but a vassal of Scholastic Theology, presumably concerned with the number of *lawyers* who can "dance on the point of a pin?" A "Catholic" law school forfeits its honored title when it fails to combat ignorance of the very philosophy of law which is its distinguishing inheritance. Perhaps it is not yet "too late," but merely "too early" for us to hope to bring down by the sound of

our trumpets the "wall of separation" presently raised between secularized and "spiritualized" jurisprudence. We can, at least, "leap over the wall."

Reasons For The Notre Dame Experiment

These considerations were behind the establishment of the Natural Law Institute at the Notre Dame Law School in 1947. The immediate occasion, however, carries its own instructive lessons. In 1942, Dear Roscoe Pound of Harvard Law School lectured at Notre Dame.¹⁰ Pound noted the current "revival of what was called juridical idealism, . . . and as it soon came to be called, a revival of Natural Law."¹¹ Shortly after these lectures the Law School instituted a program of readings in the "Great Books" of the legal profession along the lines suggested by Dr. Mortimer Adler. Rev. John J. Cavanaugh, C.S.C., then President of the University, Dr. Clarence Manion, then Dean of the Notre Dame Law School, and Hon. Roger J. Kiley, alumnus of the School and Judge of the Appellate Court of Illinois, conducted the program. One of the "Great Books" discussed, was, of course, St. Thomas' *Treatise on Law*, "the finest system of the philosophy of law ever traced by a Christian hand," as Frederic Ozanam called it long ago.¹² Many of the students were graduates of Catholic colleges and thus came to the law school with the usual "grounding" in Scholastic Philosophy. It was discovered, however, that most, if not all, had previously seen St. Thomas

⁶ 2 VON JHERING, *DER ZWECK IM RECHT* 162 (2d ed. 1886), as quoted in GRABMANN, *THOMAS AQUINAS, HIS PERSONALITY AND THOUGHT* 162 (Michel transl. 1928).

⁷ FRANK, *LAW AND THE MODERN MIND* xviii (1949).

⁸ FRANK, *COURTS ON TRIAL* (1949).

⁹ *Id.* at 364.

¹⁰ Pound, *The Revival of Natural Law*, 17 *NOTRE DAME LAW*. 287 (1942).

¹¹ *Ibid.*

¹² OZANAM, *DANTE AND CATHOLIC PHILOSOPHY* 471-472 n. (Pychowska transl. 1896).

through the "smoked glasses" of secondary texts and pre-digested lecture notes. To meet (unaided by "footnotes") and to grapple with the text of St. Thomas himself was a new and refreshing experience which became more stimulating when questions like the following were provoked: "What has this thirteenth-century philosophy to offer me in dealing with the application of the 'due process' clause of the Fourteenth Amendment?" "Does it lead us to the discredited [*sic*] view that the only business of the judge is to 'find' and not to 'make' the law?" "Does not this philosophy of law, with its insistence upon 'absolutes' [*sic*] lead to blind defense of the 'status quo'?" "How does this philosophy of law fit into the common law judicial technique of '*stare decisis*'?" Even if some of these law student questions (and the writer has heard them in course) served more to show what the Natural Law doctrine *was not*, there was an increasing awareness that the ancient teaching had a living pertinence to present day problems of jurisprudence.

In the course of these discussions it was suggested that the Law School conduct a public "symposium" (Plato in modern dress), inviting lawyers and judges to join with law students in an intensive examination of the meaning of the Natural Law doctrine and its specific applications to the day-to-day work of bench and bar. True, there had elsewhere been similar "symposia." Unfortunately, these had often amounted to little more than bringing Natural Law out of moth balls for a day or two and then carefully replacing it "on the shelf for next time." Notre Dame hoped for a gathering in which there would not be simply a pious chorus of "Amens" one

day, and next day a faithful forgetting of the piety of the day before. Above all, Notre Dame hoped to drive deeper into the whole law school curriculum the Natural Law doctrine, making students in an American law school completely conscious of their noble inheritance as they had been generations ago.¹³

The First Natural Law Institute

The Notre Dame Alumni Club of New York City underwrote the expenses of the first session of the new Natural Law Institute (as it was called) which convened in the Law School, December 12 and 13, 1947. Most Reverend John F. O'Hara, C.S.C., Archbishop of Philadelphia, then Bishop of Buffalo, and former President of the University, was Honorary Chairman. Over six hundred judges, lawyers and law students from all sections of the United States were in attendance. The lecturers presented a general or panoramic view of Natural Law doctrines. Archbishop O'Hara most pointedly expressed the long-range objective of the Institute: "Some one must challenge the false philosophies that have taken hold of our law schools and our courts. If we let it go longer, there will be no liberty to defend."¹⁴

In his Foreword to the first published volume of the Institute's *Proceedings* (1948), Fr. Cavanaugh said:

The Natural Law is not an ideal; it is a reality. It is not a product of men's minds; it is a product of God's will. It is as real and as binding as the statutes in the U. S. Code. It is not a mere ideal towards

¹³ Wilkin, *Status of Natural Law in American Jurisprudence*, II PROCEEDINGS OF THE NATURAL LAW INSTITUTE 126 (1949) (hereinafter cited as PROCEEDINGS).

¹⁴ *Invocation*, I PROCEEDINGS (1947).

which all statutes and court decisions and systems should tend. The actuality is that any statute or court decision or system of law which does not conform to Natural Law simply has no valid binding force; it is inherently vitiated. It lacks an element required for essential validity.¹⁵

Having thrown down such a challenge to so many of the current philosophies of law, which, whatever differences a refined semanticism can discern among them, seem at least agreed on this—that “there are no absolutes” since “all concepts are relative,”¹⁶ Notre Dame could not but continue the work begun in the first session of the Natural Law Institute. That work was to go on not merely in two-day annual “round tables,” but in the day-to-day program of the Law School itself. Thus, while the Law School was formulating plans for the 1948 sessions, the enthusiasm of the 1947 sessions led to student organization of a series of “debates” in which, for the first time (to the writer’s knowledge) the students of an American law school publicly and formally debated the conformity or non-conformity with Natural Law principles of what seemed at first pretty much like “indifferent” rules (as the philosophers say) of the “positive law.” Natural Law doctrine shook off the academic dust of centuries in a student debate on whether Natural Law principles were violated by a “seller’s covenant not to compete” in a contract for the sale of a going business and its “good will.” The judges of these debates, philosophers and theologians as well as law professors, were required to write detailed opinions on the merits of the case.

¹⁵ I *id.* at 1.

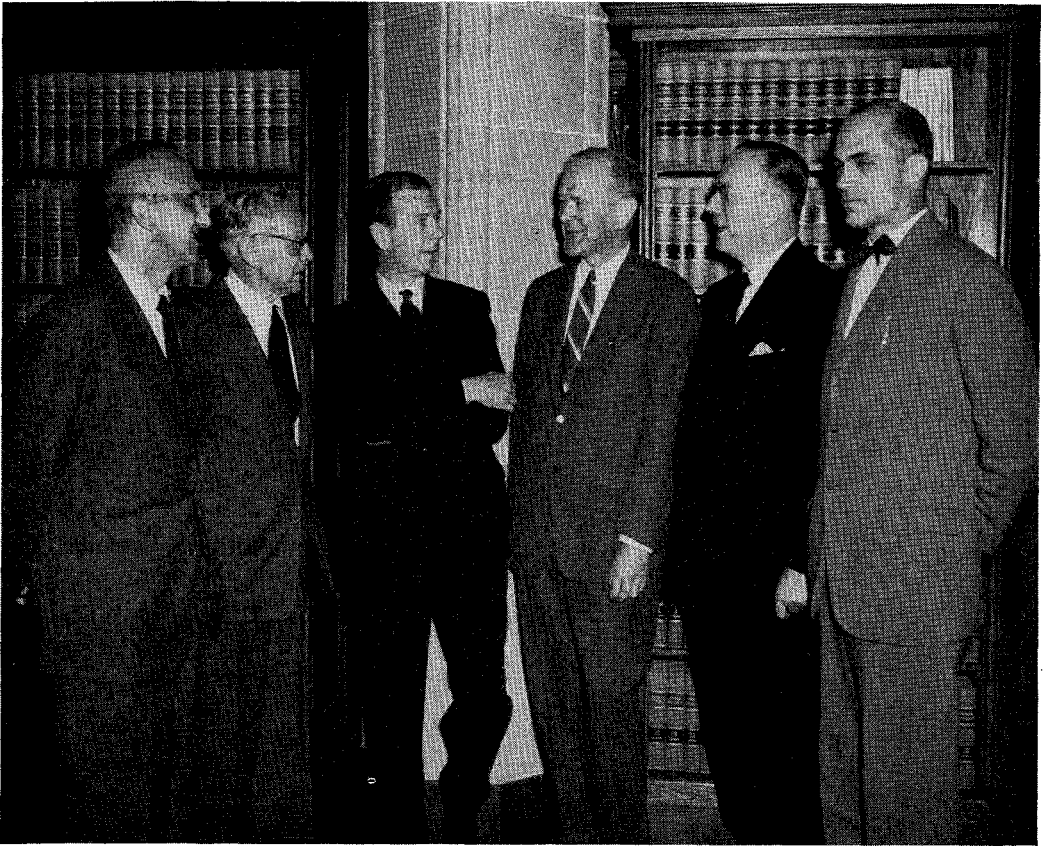
¹⁶ United States v. Dennis, 341 U. S. 495, 508 (1950).

The 1948 Institute

The 1948 sessions of the Institute traced the history of Natural Law doctrines from Greek and Roman days. The term “Natural Law” had been used in varying contexts for centuries by hundreds of jurists. Would careful study of the history of its usage reveal a central or common core of meaning distinguishing the *substance* from the *accidents*? Almost as a pledge of confidence in the answer, Mr. Alvin A. Gould, a gentleman of the Jewish faith, businessman and philanthropist of Cincinnati, Ohio, widely known for his benefactions to charity and to scientific research, generously assumed the expenses of the 1948 sessions. Five papers were read, two by Protestant scholars, two by Catholics and one by a Jew. The Institute convened December 10 and 11, under the presidency of Most Reverend Paul C. Schulte, D.D., Archbishop of Indianapolis. The speakers were Dr. Maurice Le Bel of Laval University, Quebec; Dr. Ernst Levy of the University of Washington Law School; Dr. Gordon H. Gerould of Princeton; Dr. Heinrich Rommen, and Judge Robert N. Wilkin of the United States District Court for Northern Ohio, who discussed a modern, non-Catholic judge’s answer to the complaint that Natural Law philosophy is “too vague,” “too theological,” “too remote” (“too Catholic?”) to be of use to the judge in his daily work.

The 1949 Institute

The 1949 sessions of the Institute were concerned with the influence of Natural Law doctrines upon each of the four great bodies of Positive Law: Common Law, American Constitutional Law, International Law and Canon Law. Mr. Gould



Some of the Associate Editors of the NATURAL LAW FORUM: Anton Hermann Chroust, Heinrich A. Rommen, A. P. d'Entrevies, Lon L. Fuller, Myres S. McDougal, George A. Constable.

was again the gracious sponsor. From England came Richard O'Sullivan, K.C., Bencher of the Middle Temple where the heart of the Common Law as a systematized branch of study began to beat centuries ago. Mr. O'Sullivan re-emphasized with a wealth of illustration that the "deepest foundations and latent principles" of the Common Law are "laid in the philosophy of Christian jurisprudence and Natural Law."¹⁷ Prof. Edward S. Corwin of Princeton, Dr. Stephan Kuttner of the Catholic University and General Carlos P.

Romulo, then President of the United Nations General Assembly, were the speakers.

New Awareness To Old Norms

At the conclusion of the 1949 session, Mr. Gould announced the establishment of the Gould Natural Law Library in the Law School with an initial collection of books and materials on Natural Law to serve as the basis of what it was hoped might become one of the most comprehensive libraries of its kind in the United States. The various lecturers who had previously appeared on the Institute's programs collaborated in the selection of the

¹⁷ O'Sullivan, *The Natural Law and the Common Law*, III PROCEEDINGS 30 (1950).

titles for the initial collection and the list appears in the appendix to the third volume of the Institute's *Proceedings* (1949).¹⁸

It was evident that the Institute had achieved a measure of success in bringing nationwide attention to the long-neglected claims of Natural Law doctrine as an adequate philosophy of law for the American lawyer and judge. The Institute's annual published volumes of its *Proceedings* were favorably received.

The 1950 Institute

Public encouragement required the Institute to choose with care a central theme for the 1950 sessions. During the year the Korean War and the continuing "cold" war between the West and Communism served to sharpen discussion of those "rights" we had always confidently called "fundamental" characteristics of "liberty." The 1950 sessions concentrated on the Natural Law philosophy of law and its relation to these "fundamental" rights. Again, as if to drive home the "catholicism" of Natural Law doctrine, a majority of the lecturers were non-Catholics.

The opening lecture by Mr. George E. Sokolsky, author and journalist on "The Source of Human Rights,"¹⁹ reaffirmed the answer of the Declaration of Independence: "Nature's law and Nature's God, the Natural Law: Natural, because it is the rule of the cosmos, eternal and constant; Law, because it is the total history of man, the application of all human experience, everywhere and at all times; God's Law, because it was revealed by Him to man

as a guide to life to all men on whatever level of development."²⁰ Hon. Thomas J. Brogan, former Chief Justice of New Jersey, speaking on "The Natural Law and the Right to Liberty,"²¹ contrasted the "false liberalism of the nineteenth century which had lost its soul—a failure degenerating into a humanitarianism unrestrained by anything" and the "true human liberty arising from the Natural Law concepts of man as God's creature," thus "possessing a human dignity and inviolability which postulate human freedom."²² The able Chief Judge of the United States Court of Appeals for the Fifth Circuit, Hon. Joseph C. Hutcheson, Jr., stalwart "Scotch-Irish Presbyterian" as he called himself, vindicated "the Natural Law right to acquire and own private property" in his vigorous paper, "The Natural Law and the Right to Property."²³

Dr. Felix Morley, former President of Haverford College, considered "The Natural Law and the Right to Freedom of Expression":²⁴

If man receives certain rights direct from God, it would seem that the right of self-expression is basic among them. Man is a social being, distinguished from the lower animals not merely by his thumb but more especially by the relative facility with which he can communicate his thoughts to his fellows. . . . The indifferent, the apathetic and the agnostic constitute a more real threat to America than those who openly attack its institutions. It is the absence of faith in our own creed, rather than the presence of emissaries of the Kremlin, that is

¹⁸ III *id.* at 131-137.

¹⁹ IV *id.* at 7-21 (1951).

²⁰ IV *id.* at 21.

²¹ IV *id.* at 24-42.

²² IV *id.* at 39.

²³ IV *id.* at 45-73.

²⁴ IV *id.* at 77-100.

the danger. . . . No constitutional guarantees will serve to save the Freedom of Expression for all Americans unless we also demonstrate belief in God.^{24a}

The Jesuit scholar, Rev. John C. Ford, Professor of Moral Theology at Weston College, and formerly Professor of Law at Boston College Law School, summed up his paper on "The Natural Law and the Right to Pursue Happiness":²⁵

The Declaration of Independence as it stands, in expressing the right of man to pursue happiness, states a Natural Law right entirely in accord with scholastic theory. For it does not assert an absolute right which all men have to the actual achievement of happiness in this life, but rather records the self-evident proposition that the right to such happiness here below is part of man's very nature. . . . Let us thank God, then, that our right to pursue happiness as human beings, clothed with the dignity that belongs to every human being is protected by the fundamental law of our beloved land. . . .^{25a}

Scriptum In Cordibus

The 1950 sessions also saw the dedication by Mr. Gould, of the official seal of the Natural Law Institute. The seal was designed by Prof. Francis Hanley of the University's Department of Fine Arts, with the advice of Rev. Robert Sweeney, C.S.C., Executive Vice President. Cast in bronze, the seal now appears on the wall of the main entrance to the Law School. Its striking symbolism suggests the wide sweep of Natural Law doctrine. The foundation of Natural Law itself, its "final cause," the Eternal Law of God is recalled by the Greek *Alpha*

^{24a} IV *id.* at 100.

²⁵ IV *id.* at 103-144.

^{25a} IV *id.* at 142, 143, 144.

and *Omega*. The legend "*scriptum in cordibus*" from St. Paul's sublime Epistle to the Romans brings to mind St. Thomas' succinct definition of Natural Law as "the participation of man through his reason in the Eternal Law." The tables of the Ten Commandments superimposed represent the Mosaic formulation, through Divine Revelation, of the principles of Natural Law. The Greek *Chi Rho* reminds the Christian that through our Savior, Jesus Christ, Second Person of the Blessed Trinity, man's knowledge of his rights and duties has been perfected. Beneath the main seal an apron contains the words of Sir William Blackstone, glory of the Common Law:

This law of nature, being coeval with mankind and dictated by God Himself, is, of course, superior in obligation to any other. It is binding over all the globe in all countries and at all times; no human laws are of any validity if contrary to this; and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original.²⁶

The 1951 Institute

Almost two thousand years ago, St. Paul in a single sentence wrote the most inspired summation of Natural Law's basic postulates:

For when the Gentiles who by nature have not the Law, fulfill the requirements of the Law, these, though they have not the Law are a Law unto themselves, showing as they do the demands of the Law to be written on their hearts; and an approving conscience beareth them out, amid the debate of thoughts that accuse or defend.²⁷

Does the literature of the non-Christian,

²⁶ 1 BLACKSTONE, COMMENTARIES 43.

²⁷ Rom. ii, 14-15.

particularly the non-Western, world bear out *in fact* what St. Paul has said? The 1951 sessions of the Institute met this pragmatic challenge by inviting five distinguished non-Christian scholars representing the thought of the Jewish, Moslem, Buddhist, Chinese and Hindu civilizations to report the evidence of Natural Law doctrine in their respective religious, literary and philosophical traditions. Mr. Gould again was the sponsor. Most Reverend J. Francis A. McIntyre, Archbishop of Los Angeles, now His Eminence Cardinal McIntyre, presided over this unprecedented inquiry into the universality of Natural Law doctrine. Here was "academic freedom" in its purest manifestation—freedom to express in complete sincerity what conscience dictates.

Cardinal McIntyre opened the sessions with an address on the consequences of the "flight of current jurisprudence" from "fixed and fundamental principles," and referred to the "nihilistic" jurisprudence which results from a denial of Natural Law.²⁸ His Eminence "ventured to foresee in the presentation of the doctrines and beliefs of the ancient civilizations here represented a continuity, an adherence and a devotion to a code of life that is fixed and permanent and stable."

Natural Law In The Jewish Tradition

Of course, it was not to be expected that the peculiar terminology in which Oriental intuition verbally expresses itself would sound wholly familiar to Western ears accustomed to the presentation of Natural Law doctrine in the language of Scholasti-

cism (or in language borrowed, at times without acknowledgment, from Scholasticism). But good will bridges the "gap" between "East" and "West" (this present century is revealing at long last how "accidental" the "gap" is after all). The careful auditor of the 1951 sessions could find an abiding harmony in all the lectures—the apparent universal tendency, the "catholic" urge to seek some criterion or norm of human conduct or of human law, independent of the rules men make and unmake for other men, an *absolute* not the work of mortal minds. In what "East" and "West" thus alike seek is their unity. Rabbi Solomon Freehof, eminent Hebrew scholar, spoke for the "Natural Law in the Jewish Tradition":

The sources of true social order are always the same in a sprawling modern metropolis as in a tiny medieval ghetto. Police power is, of course, essential. Yet never quite sufficient. If a large percentage of the citizens decided to be violent, as has happened repeatedly, the police power is helpless. The true source of order still comes from within. *It is conscience which makes citizens of us all.*

The scattered Jewish communities maintained law and order because law was accepted as coming to them from "nature and nature's God". . . . Thus it was generally obeyed in pride and in love. With the Jewish people, the Divine Natural Law meant order and meant culture. To the extent that it meant order it meant self-control through conscience. To the extent that it meant wide-spread culture it achieved a democratic control over the abuses of power. These principles apply to all legal systems in all times. If men believe that the law is essentially natural and God-given, then with even a minimum of police power, order will reign. If men understand the legal foundations of their own government, they are the intelligent citizenry against which no

²⁸ V PROCEEDINGS 7-12 (1952).

tyranny can prevail. This is the experience and the universal meaning of Divine Natural Law in Jewish history. It was small in scope, but it applies *ubique et omnibus*, everywhere for everybody.²⁹

Natural Law In The Hindu Tradition

The same theme appeared strikingly again in the paper on "The Natural Law in the Hindu Tradition,"³⁰ read by Prof. M. S. Sundaram, attaché of the Indian Embassy at Washington:

My father who was a profound scholar of the Hindu scriptures made a not totally vain attempt throughout my teenage to instil into me the greatness and the glory of the Hindu tradition and philosophy, having been himself an austere follower of the scriptures. He and millions like him did not know anything about the modern concepts of law or how laws of men were administered by fellow men. His contemporaries and several of his ancestors before him never had any occasion to go inside a court of law. . . . But their ignorance of man-made law did not in the least detract from their fundamental knowledge of the highest law—the law of God or the Eternal Law or the Natural Law. They accepted unquestioningly the authority of *the Law—God-given Law*, because they were convinced that no power on earth can supersede the Divine Law. . . . There are millions of Hindus today and there have been many millions before them whose only knowledge of the law concerned Natural Law.³¹

Natural Law In The Moslem Tradition

Dr. Khalifa Abdul Hakim of the Institute of Islamic Culture, Lahore, Pakistan, discussing "The Natural Law in the Moslem Tradition,"³² referred to the

"broad principles of Natural Law enunciated in the Qur-an":

Islam, without being pantheistic in any extreme and untenable sense had put forth the concept of God as imminent in all nature through His power, will, wisdom and love. God's primary revelation is His entire creation which comprises all Nature.

Nature is not simply a background or theatre for the tragedy or comedy of man; due to the unity of the Creator, everything in Nature serves the whole and is served by the whole. . . . Nature's laws are God's thoughts thinking themselves in orbits and tides. *As there are signs of God's power and wisdom and beauty in all nature outside man, so are these signs inscribed in the hearts of all men.*

Most Moslems believe that Islam has a mission and that mission consists in overcoming racial and national exploitation, and advancing towards universal liberty, universal equality, universal justice. These are the constituents of Natural Law and the values that entire humanity is destined to realize. *In God these universal, unchanging principles originate and toward God they lead mankind. In the words of the Qur-an: "Inna Lillahi Wa Inna Illahi Rajeu"—"To Him we belong and to Him we return."*³³

Natural Law In The Buddhist And Chinese Tradition

Dr. Daisetz T. Suzuki, Japanese scholar and authority on Buddhism, in his paper "The Natural Law in the Buddhist Tradition,"³⁴ found no exact counterpart of the Thomistic statement of Natural Law as the "participation of man through his reason in the Eternal Law." Still, he could say, in the name of Buddhism, that "man has a certain innate feeling, which makes him refrain from committing deeds of violence.

²⁹ *V id.* at 22, 26.

³⁰ *V id.* at 69-88.

³¹ *V id.* at 69-70.

³² *V id.* at 29-65.

³³ *V id.* at 35, 65.

³⁴ *V id.* at 91-115.

The innate feeling is rooted in human nature, equally shared by all sentient beings who live in group life."³⁵

The former Ambassador of China to the United States, Dr. Hu Shih, found in Chinese thought for more than two thousand years the concept of a supreme law which was superior to all human law. Expressions of the concept might differ in detail, but "ancient China's experience confirmed and verified an historical thesis, namely that the concept or concepts of Natural Law or Natural Right have always played the historical role of a fighting weapon in mankind's struggle against the injustices and the tyranny of unlimited human authority."³⁶

Evaluations

Mr. Sokolsky, summing up the 1951 sessions of the Institute, spoke "as a newspaper reporter" of this "most unusual Notre Dame story."³⁷ Here at Notre Dame's Catholic Law School, with a Catholic Archbishop presiding over an Institute sponsored by a Jew, we had been privileged to hear a Moslem, a Confucian, a Jew, a Hindu and a Buddhist bear such witness to the universality of the Natural Law concept as their respective traditions afforded. They had expressed "the hopes and the aspirations of more than a billion of the world's inhabitants" and their words "would appear in a volume under the imprimatur of Notre Dame which is dedicated to her whom Catholics accept as the Mother of God."³⁸ They had shown that

in the fundamentals of the Natural Law concept, in spite of verbal differences in terminology, "We are all brothers under the fatherhood of God."³⁹

Natural Law Forum

In order that the Institute could function effectively on a year-round rather than a once-a-year basis, it was decided to publish a journal of natural law studies, namely, the NATURAL LAW FORUM, instead of continuing the practice of holding annual convocations. The first issue is now available.

The planning for the FORUM proceeded upon the faith that natural law can help solve some of our problems. This, of course, implies that natural law can be made to serve practical ends in the legal order. It implies, also, that our interest is not exclusively or even primarily historical or theoretical. The editors have no interest, moreover, in the meat-cleaver approach to natural law, which consists of assuming the rectitude of one's own position and concentrating on the decapitation of all who disagree. Much more apt to be fruitful, it is believed, is the course recommended by Msgr. Romano Guardini:

We must start from scratch and think every problem through from its very premises to its last implications. We must never rest with what we have achieved, we must never rely lazily on a given "truth". . . .

While it is, no doubt, an oversimplification, it may serve to clarify the approach of the editors to say that they believe natural law can be made to serve practical ends in the legal order for the simple reason that it is a source of the right questions and one who knows the right question is already well

³⁵ *V id.* at 92-93.

³⁶ Hu Shih, *The Natural Law in the Chinese Tradition*, V PROCEEDINGS 119-153, at 153 (1952).

³⁷ Sokolsky, *Summation: The Universality of the Natural Law Concept*, *V id.* at 157-159.

³⁸ *V id.* at 158.

³⁹ *V id.* at 159.

advanced toward the right answer. This is extremely important. "How?" is the job of the jurist, the legislator, the political scientist. And that job requires them endlessly to search out, assay and interpret facts, and to explore their interrelationships. But what facts are relevant? According to what standard are facts to be evaluated? What guide is to be used in seeking to interpret them? In these perplexities they regard natural law as a source of inspiration and guidance. For in natural law, they believe, can be discovered an indication of where we ought to be going, and this raises the right question: What is the best way to get there?

The editors are interested in exploring, with all the resources of scholarship and modern science, the full extent of the contribution natural law can make to the solution of today's problems. At the same time, they do not expect detailed answers to specific questions. Too often "the natural law" has been dragooned by partisans to fight in their wars. That is a danger they are very conscious of and mean to avoid. Illumination of problems—that is what they expect from natural law, rather than a blueprint of detailed solutions.

It is the purpose of the FORUM to promote a serious and scholarly investigation of natural law in all its aspects; and, to that end, it will encourage the widest search for universal standards relevant to the solution of contemporary problems. This, of course, reflects the hope, so well expressed by Fr. Hesburgh, President of Notre Dame, that natural law may provide that "common ground where we can begin to draw all men, everywhere, together in a unity that reflects what is

common to human beings as human beings."

In addition to scholarly articles, notes and book reviews, the FORUM will feature reports from all over the world concerning natural law developments, thus making Notre Dame the world-wide center of information about natural law.

Natural law jurisprudence is always confronted by two opposite dangers. On the one hand, the principles set forth may be so abstract as to lack meaningful content, offering no adequate basis for determinate applications of any kind. On the other hand, they may be identified with judgments of positive law defensible only for special groups living under special conditions. The editors hope to steer a course between these hazards.

The FORUM will not be identified with any particular school or doctrine of natural law; nor will it rule out contributions which are basically opposed to the whole conception. It is interested in promoting a serious and scholarly investigation of natural law in all its aspects, not in defending any established point of view. The editors will welcome any article in the area of philosophy, of social or behavioral science, or of jurisprudence, which leads to a more adequate understanding and evaluation of natural law, whatever its point of view may be; and they hope to publish relevant contributions from a maximum variety of sources. In this way the purpose of the FORUM is to avoid the bias of any particular institutional orientation or political outlook, and thus to encourage the widest search for universal standards relevant to the solution of contemporary problems.

The FORUM is published by a distin-

guished editorial board.† The editor is Prof. Antonio de Luna, Notre Dame Law School and University of Madrid, Spain.

To this challenging task the Notre Dame Law School invites not only her sister "Catholic" law schools, but all law schools, all judges, lawyers, men of good will of all races, creeds and colors. For to us all the natural law belongs. It is our birthright as children of God. It is our inheritance as Americans, for upon it the Republic was founded.

†Associate Editors

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Professor Leo Strauss, The University of Chicago

THE CATHOLIC LAWYER welcomes the advent of the NATURAL LAW FORUM, the first issue of which appeared in August, 1956.

As the successor of the Natural Law Institute of the University of Notre Dame this scholarly periodical may be expected to encourage the publication of well-documented articles by advocates of natural law jurisprudence.

Its editors indicate that the "FORUM will not be identified with any particular school or doctrine of natural law." Truth should be sought wherever and by whatever method it can be found and therefore we welcome the wide experience and diverse background of the associate editors of the FORUM, a number of whom are not Catholics.

We are confident, however, that the editors will point out the writer's philosophical position in connection with the publication of any article based on a philosophy or jurisprudence which excludes metaphysical methods of inquiry or which excludes any data drawn from the complete nature of man.