

Law and Philosophy: A Symposium

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LAW AND PHILOSOPHY: A SYMPOSIUM

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Reviewed by

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The contents of this volume comprise the proceedings of the Sixth Annual New York University Institute of Philosophy. Among the thirty-three participants were such figures as John Courtney Murray, S.J., Jerome Hall, Wolfgang Friedman, and H.S. Rommen. The Institute directed its attention to three major topics: Law and Ethics (with emphasis on the question of civil disobedience); Natural Law; and Judicial Reasoning. Papers were delivered by three individuals on each of the foregoing topics, followed by several commentaries of shorter duration. Unfortunately, some of the commentaries are so cryptic that the reader finds himself shifting gears every few pages in an attempt to grasp the point of view of each new commentator.

The major paper on the subject of civil disobedience was delivered by Professor John Rawls of Harvard University. In it he formulated the proposition that "an unjust institution or law cannot be justified by an appeal to a greater new sum of advantages, and that the duty of fair play cannot be analogously overridden. An unjust institution or law or the overriding

of the duty of fair play can be justified only by a greater balance of justice." Father Murray, among others, took issue with Professor Rawls' formulation of both the issue and the answer with respect to civil disobedience, expressing the view that they are really subsumed under the larger question of why man is obliged to obey law in general. Professor Konvitz puts forth a novel theory which implies that punishment of the party participating in civil disobedience may be anticipated, and indeed necessary, to bring home to the public that travesty of justice against which the disobedience is aimed. The consensus was that civil disobedience may be justified in particular cases; however, there was little unanimity on the basis for this conclusion.

The second part of this volume consists largely of comments upon Professor Rommen's paper entitled "In Defense of Natural Law." The materials found in this part are significant for two reasons. Viewed in one light, they reveal a cross-section of current American thought on the nature and content of law, as expounded by philosophy professors at some of the nation's most influential universities. Surprisingly little is entirely new, the views expressed reflecting the influence of legal theories put forth by Western philosophers over the

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past several centuries. In a negative fashion, the symposium is enlightening because it brings home the fact that broad based acceptance of natural law by American thinkers is not close at hand. Running throughout the commentaries upon Professor Rommen's paper is the viewpoint that natural law represents either a closed legal system or a lowest common denominator among legal philosophies which hold forth man's "fulfillment" as the end of law. Professor Friedman, for example, posits that while man seeks enduring standards and certainty in lawmaking, nevertheless, even the Nuremberg judgments may be supported on a purely positivistic basis.

The final section of the work, devoted to Judicial Reasoning, contains contributions from such scholars as Professors Freund, Levi, Wechsler, and Henkin. This material

continues the nationwide discussion touched off by Professor Wechsler's theory of "neutral principles." Interesting questions are raised concerning possible conflict between Professor Wechsler's formulation and the Supreme Court's self-imposed limitation of deciding only the case before it. Professor Levi contributes valuable insights on an important aspect of stare decisis: is it more imperative when the earlier decision interprets a statute rather than a principle of common law.

This book is certainly not to be classed as light reading. It is too eclectic to be of real assistance to a student beginning his inquiry into jurisprudence. It should, however, prove a valuable source for scholars desiring to obtain a cross-section of current views on the subjects of natural law, civil disobedience, and the judicial process.
