

## Jurisprudence (3rd Ed.)(Book Review)

G. R. Ellegaard

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

---

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [selbyc@stjohns.edu](mailto:selbyc@stjohns.edu).

JURISPRUDENCE. Third Edition. By Francis P. LeBuffe, S.J., Ph.D., and James V. Hayes, LL.B. New York: Fordham University Press, 1938, pp. v, 273.

It would appear to many that the law school's primary function is the training of future lawyers in the technique of the practice of law. Students presumably seek entrance into the legal profession as a means of gaining a livelihood whatever else may be their purposes. To the extent, therefore, that the law school has equipped its graduates to meet successfully the economic competition offered by other members of the bar, the law school may be said to be performing its function. Hence the emphasis placed by curricula upon "practical" subjects, and the relegation of "cultural" studies to the elective or graduate courses.

Yet the acquisition of an adequate legal education is not a mere matter of learning legal rules divorced from the fundamental principles underlying law and morals, nor the application of rules of law to the facts of cases with no thought of the purpose or function of the law to promote the welfare of man and society. The accomplished attorney is more than a skillful practitioner before the bar. He is society's physician, burdened with the duty to preserve and promote the moral social order. His education must include an understanding of the nature of man, his relation to the state, its government, and the society of which it is comprised; and he must be appreciative of the role he and his instrument, the law, play in the betterment of man. To this end the law itself, its origin, nature and function must be the object of his analysis and study, and that is the province of Jurisprudence.

Recent developments<sup>1</sup> in the field of legal education indicate an increasing recognition of the need for required study of the Science of Jurisprudence as a regular part of the law school training, and make timely a consideration of the work of Father LeBuffe and his collaborator, Mr. Hayes, in the revised third edition of the volume entitled "Jurisprudence".

Though devoted to an exposition of the scholastic concept of Jurisprudence, as the authors say: "The philosophy is not Catholic; and it is not Catholic precisely because it is philosophy,"<sup>2</sup> and furthermore, though it is a "philosophy traditional in the Catholic Church" it should, since it is a philosophy, be of particular interest to all who explore in the "domain of reason".

Here is presented, in outline form, the scholastic thesis of the Natural Law which is "first in order of thought and superior in way of authority and ultimate as the source of all obligation".<sup>3</sup> Included is a selected list of readings on Natural Law, many quotations from authorities in support of and in criticism of the doctrine, and an irrefutable array of "proof" for the existence of the Natural Law. Against the currently propagated totalitarian concepts of the

---

<sup>1</sup> The report of the Dean of the Law School of Columbia University for the academic year ending June 30, 1938, announces the introduction of a third-year short course in Jurisprudence to be required of all candidates for the degree of LL.B. The catalogue of Harvard College School of Law lists a course in Jurisprudence as required for third-year students beginning in the academic year 1940-1941.

<sup>2</sup> JURISPRUDENCE, Preface at p. v.

<sup>3</sup> *Id.* at 34.

state and law wherein and whereby man exists only for the benefit of the state and the state is an end in itself, unhampered by principles of justice and morals, the Natural Law stands in flat contradiction. The incompatibility of scholastic Jurisprudence with the ideologies of Nazism, Fascism, and Communism is emphasized by the inclusion of an entire chapter devoted to an analysis and critique of the totalitarian theories of law.

In addition the authors have outlined and evaluated the more prominent American Schools of Jurisprudence, called by them the Sociological, the Economic Determinist, and the Realist Schools. In this connection a helpful collection of citations to the writings of their foremost exponents is furnished.

As no treatise on Jurisprudence would be complete without a topic devoted to the origin and nature of the state, the authors have given space to an investigation into the social nature of man which tends to the establishment of the civil society. As God is the source of law, so the authority of the state stems from the Creator. However, as the authors carefully point out, "this derivation of authority from God supposes no positive intervention of God to found the state"<sup>4</sup> but follows as a "natural resultant" from the God-given nature of man, *viz.*, his social inclinations. Society is established by the consent of its members fulfilling their inherent social proclivities. Thus God wills society by creating in man a socially tending nature. The state and its authority "being naturally required for the proper perfection of human nature" has therefore Divine sanction.

The chapters on Rights and Duties deal with natural rights as well as with the rights that flow from positive civil law. The treatment is traditional, and where the terminology employed is not "modern", lengthy explanations of terms used throughout are given as an aid to comprehension.

A detailed bibliography of books, documents, and reviews, plus a table of cases cited afford excellent comparative references.

As a concise presentation of the scholastic interpretation of Jurisprudence drawn from the lecture notes of Father LeBuffe this book is admirably suited for use in a law school course in Jurisprudence.

G. R. ELLEGAARD.\*

---

<sup>4</sup> *Id.* at 253.

\* Instructor in Law, St. John's University School of Law.