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The Goble-Kenealy Discussion— Two Comments

EDWARD T. FAGAN, JR.*

IN MY OPINION, a commentary from the side-lines is in order at this point in the debate currently featured in *THE CATHOLIC LAWYER* between Professor Goble and Father Kenealy.

My first comment reflects my surprise that Father Kenealy, presumably familiar with the viewpoints of Suarez, would depart from them by asserting, "some [derivative principles of the natural law] do not share at all in the certainty, universality and immutability of the fundamental principles."¹

Admittedly, this position gives some logic to Professor Goble's rejoinder: "Is it immutable or does it change? If it changes, then are not the boundaries of the rule itself shifted by these variations in time, place or situation?"²

The sound answer to Professor Goble's question is found in Suarez.³ Change may be recognized as either intrinsic (formal), such as when a father ceases to be a father if he himself dies, or extrinsic (material), as when a father ceases to be such due to the death of a son. All principles and precepts of the natural law are immutable, according to Suarez, because they can never suffer formal change. They are liable to change only in the second manner, that is, to change through changing subject matter. Consequently, there are no real exceptions to the

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¹ Kenealy, *Whose Natural Law?*, 1 *CATHOLIC LAWYER* 259, 262 (Oct. 1955).

² Goble, *The Dilemma of the Natural Law*, 2 *CATHOLIC LAWYER* 226, 231 (July 1956).

³ As pointed out by another Jesuit, David C. Bayne, S.J., in his excellent article, *The Natural Law For Lawyers—A Primer*, 5 *DEPAUL L. REV.* 159, 186 (1956).

primary, secondary and derivative principles and precepts of the natural law. What may properly be called apparent, but not real, exceptions exist when a material change has occurred in the circumstances to which a principle is normally applicable. Indeed, herein lies the flexibility of the natural law, rather than its error.

My second comment is that Professor Goble's posed "dilemma of the natural law," seems to be based upon his and Father Kenealy's failure to define terms.

Professor Goble has stated:

The universality and immutability of principles of law can either be determined by objective evidence or they cannot. If they can be so determined, the whole body of natural law becomes a system of empirical law. If they cannot be so determined, then objective evidence cannot be used to show the validity of one system over another claiming the same attributes.⁴

Father Kenealy has stated:

The natural law is founded upon the existence of an objective moral order and the knowability of objective truth. Quite consistently, and necessarily, it makes *objective evidence* the criterion of that truth.⁵

⁴ Goble, *supra* note 2, at 232.

⁵ Kenealy, *supra* note 1, at 264.

Obviously both men are not in agreement as to the use and meaning of the term "objective evidence." The metaphysician, as exemplified by Father Kenealy, thinks that the distinctions between form and matter, act and potency, and being and essence arise out of the world of experience and have it as their locus. The only way to know about being is to abstract from what we experience. By "experience" is meant what we sense. The rational faculties operate on this sense data, and abstract essence. These abstractions, since they are predicated upon sense data may properly be called "objective evidence." The understanding so gained of things in their very being is the basis of knowledge of natural law principles.

On the other hand, I presume that Professor Goble would think of "experience" as involving sense data arranged by reason in such a way as to enable prediction concerning them. In consequence, he would rule out the fact that knowledge as to the being of things can be attained by means other than faith and would content himself with conclusions made upon observable premises which he would call "objective evidence."