

Editorial Comment

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Editorial Comment

Doubt arises today, as one observes the courses of American action in the world, whether we as a nation hold any basic truths as determinative of our purposes and directive of our policies. A new situation seems to have come to pass. History attests that the Founding Fathers — practical men, all of them — were well aware of the uses of doctrine. Today there is evidence that we have no use for doctrine — or perhaps even no doctrine to use. This is the position taken by John Courtney Murray, S.J. in his current thought-provoking and challenging book “We Hold These Truths.”

A year ago, when Father Murray’s tract was first published, Father Joseph T. Tinnelly, C.M., the founding editor of *The Catholic Lawyer*, proposed to me that the book be used as the basis for a series of articles in *The Catholic Lawyer*. This series would endeavor to clarify thinking in the essential areas wherein a public philosophy of law would lie. He further envisaged that as a result of the series, a dialogue could be developed between Catholics and non-Catholics alike, aimed at a consensus on truths commonly held by all Americans.

As a necessary preliminary to this series of articles, the article which appears on the immediately following pages sketches in some detail the essential thought in Father Murray’s book. Written by Father Tinnelly, its further purpose is to promote interest in the book; to stimulate thought; to encourage argument; and to encourage further research and publication in this broad area of thought.

A companion article by Father Tinnelly in a forthcoming issue of *The Catholic Lawyer* will attempt to sketch the problems, the hypotheses, and the questions which demand and merit attention in the framing of a public philosophy of law. Thereafter it is hoped that further articles by experts in law, history, philosophy, theology, sociology and other areas of specialization will discuss these matters in great detail. No attempt will be made to follow a rigid logical or pedagogical order. The

articles will be presented as the interest of scholars, the demands of the times or other circumstances may dictate.

By undertaking this project of re-establishing and restating an American philosophy of law, *The Catholic Lawyer* is following its basic policy, which was originally stated in the first issue. The average attorney is a leader in his community. His opinion is respected, his advice valued, not only in purely professional problems but in a wide variety of subjects having some relation, however tenuous, to law. In consequence, no matter how sound his general and professional education may have been, he still feels the need to widen and deepen his knowledge and experience. The success of the Practising Law Institute, of graduate and post-admission courses in various law schools, and of institutes in taxation, insurance, labor law and other subjects under the auspices of bar associations, gives evidence of this wide-felt need.

The Catholic attorney has all the professional obligations of his non-Catholic colleagues. Indeed his conscience may be sharpened by the fact that his confessor will require him to make restitution for any harm which his culpable ignorance or lack of diligence may have caused a client.

But the Catholic attorney has an additional burden. Not only must he keep abreast of legal and secular matters but he must often submit to questioning by clients, friends or chance acquaintances on matters of canon law, theology, morals, philosophy or church history which he is ill-equipped to discuss. Although he may have little specialized knowledge of the things of his religion, his opinion on Catholic matters is often given a weight and importance which he would be the first to disclaim.

The religious education of the average Catholic attorney is not nearly so extensive as his legal training and hardly equips him with the knowledge and skill necessary for any independent research in matters with serious moral and religious implications. Yet an opinion will be expected of him which he cannot form unaided — and help in this field is difficult to obtain.

If the problem is a moral one he may turn to a Catholic priest for an explanation of the moral principles involved. But the difficulty may lie in the application of these principles to an intricate question of law. If the solution depends upon a knowledge of procedure, for instance, it may be extremely difficult for the attorney to explain the problem to a priest untrained in the common law. During recent years a few priests have studied law with the intention of integrating that science with ethics, moral theology, and the other sacred sciences, but the number of such priests is still small.

Should the lawyer look for help in manuals of canon law, theology or ethics, he will encounter a number of serious difficulties:

1. Most textbooks in these subjects are written for priests or for the instruction of laymen generally. Only rarely do they address themselves to the problems of lawyers.

2. Many of the better treatises are written in Latin.

3. Books written in English generally discuss justice, contracts, property, sales and torts, from the point of view and in the terminology of Roman and Civil Law.

4. The jurisprudence of the Canon Law is widely variant from the common law and frequently requires explanation by a skilled canonist.

Many graduates of Catholic law schools have come to look to the faculties of those schools for help in individual cases. Such assistance is also available to non-graduates, Catholic and non-Catholic alike, but in practice the applications for help are relatively few. Moreover, a practice may have become so common that an attorney may even fail to question the morality of it, much less seek assistance.

Consequently, The Catholic Lawyer serves as a forum in which lawyers may join with canon lawyers, theologians, moralists, historians, physicians, psychiatrists and other experts in matters of interest to Catholics or to the Catholic Church where the solution to a legal problem depends upon specialized knowledge in other fields. The restatement of an American philosophy of law is just such a subject which falls primarily within the above stated scope.

Already many of the matters essential to an American philosophy of law are being discussed in periodicals, seminars, classes and other vehicles for the exchange of ideas among men of all walks of life, of all faiths or of no faith. Notice will be taken of these arguments, comments will be invited and further discussion of them encouraged.

The colloquium which we plan will go far afield from the text of Father Murray's essays but one may be sure that "We Hold These Truths" will long remain an indispensable guide to the search for an American philosophy of law.

A handwritten signature in black ink, reading "Edward Tegen". The signature is fluid and cursive, with a long horizontal line extending to the right from the end of the name.

EDITOR