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## Editorial Comment

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## Editorial Comment

Four years ago *The Catholic Lawyer* opened its pages to a continuing colloquium among experts in law, history, philosophy and theology as a means of clarifying thought in the essential areas wherein a public philosophy of law must lie. It was hopefully envisaged that as a result of the exchange of such ideas, a dialogue might be established between Catholics and non-Catholics alike, aimed at a consensus on truths commonly held by the American people.

In line with this undertaking, the current issue of *The Catholic Lawyer* highlights a new aspect of the colloquium—a detailed examination, for the first time, of the non-Thomist natural law theories of one of the foremost non-Catholic legal philosophers of our times—Lon Luvois Fuller. Professor Fuller, in the opinion of many scholars, would be an ideal participant in any cooperative venture between the “integrative Jurisprude” and the Thomist for the more effective elaboration of natural law theory and its possible application as an American philosophy of law.

As a preliminary to the publication of this examination, which was undertaken by Father Charles Palms, C.S.P., it was felt that added value would accrue to it if Professor Fuller were granted an opportunity to criticize it prior to publication and to make his comments known to our readers. Accordingly, galleys of the article were sent to him for his opinion.

Professor Fuller expressed his pleasure with the article, and lauded its veracity. He did suggest, however, a single change in emphasis—he would put more stress on the distinction between the internal and the external morality of the law. According to Professor Fuller:

Many overlook this point in my exchange with Hart, and say simply that I took the view that a legal system can be so ‘bad’ that it is not law at all. But in my exchange with Hart I took the more cautious approach of saying that parts of Nazi law were so badly conceived and administered, measured by the standard of the law’s internal morality, that they could be said not to be law at all. All this without reference to the nefarious objectives at which this Nazi ‘law’ was aimed.

Apropos of the foregoing observations it can be said that Professor Fuller proposes human purpose as the mediating principle which tests the morality of all human conduct and which tests the law itself as a product of that conduct. He asserts that law is tested by those principles of social order which will enable men to attain a satisfactory life in common. He conceives that the one central aim common to all the schools of natural law is the discovery of those principles. All theories of natural law, he says, accept the possibility of "discovery" of the purposes for which men act in social concert.

However, to explain the relation of law and morals in terms of a mediating principle seems, to Father William Cahill, writing in a past issue of *The Catholic Lawyer*,<sup>1</sup> an undue concession to the positivistic position. Such an explanation seems to accept as its point of departure the positivistic view that the legal order and the moral order do not have the same foundation, and, in this light, the mediating principle appears to be less than fundamental.

The Thomistic philosophy of law and morals postulates a common foundation for both orders. The orders are then differentiated—rather than mediated—by principles derived from the concept of rational coercibility.

Both law and morals are orders of conduct. The conduct to be ordered is conduct which can be performed consciously and voluntarily, and thus, the order to be imposed upon such conduct and the norms of that order must be rational. Though non-rational concomitants can aid the effectiveness of conduct consciously determined, no norm can have basic effectiveness in ordering such conduct unless the norm rationally erects rational purposes to guide human choice.

Professor Fuller's phrase "purposes for which men act" seems to limit the area of reality in which reason can discover purposes for human conduct. The area he contemplates seems to be that which includes only the purposes to which the men of a given community have given positive, *de facto* recognition. This looks to Father Cahill like an exchange of legal positivism for moral positivism.

For a Thomistic Aristotelian, the area into which reason pushes its search for purposes to be imposed by law has a dimension beyond that which Professor Fuller describes. Reason can, and does, discover such purposes by recognizing that some purposes are proposed to man by the constitution of his nature. Reason perceives that unless a man adopts these purposes, he cannot be fully a man. The ultimate reach of reason's voyage of discovery into nature achieves the recognition of God as nature's intelligent Creator. Here reason grasps the conclusion

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<sup>1</sup> Cahill, *One Phase of the New Debate on the Iniquitous Law*, 5 CATHOLIC LAW. 119 (1959).

that the purposes which nature, through reason, tells man to make his own in order to be a perfect man are, in fact, the purposes of God. Thus it appears that by embracing these purposes man achieves and perfects his personal relation with God, reciprocating God's love for him expressed in the acts by which God creates and conserves him.

Elsewhere in this issue is an enlightening application of natural law principles to the current problems of civil disobedience, particularly with respect to Southern segregation legislation. Originally appearing in the Autumn 1964 issue of the *Kentucky Law Journal*, it is of special interest to those readers of *The Catholic Lawyer* who recall with pleasure the scholarly articles by Professor MacGuigan which have appeared in our past issues. These articles have consistently demonstrated his superior ability to apply Thomistic natural law principles to today's social problems, and to arrive at sound solutions in the practical order.

A handwritten signature in black ink, reading "Edward Tagan". The signature is written in a cursive style with a large, prominent initial "E" and a long horizontal flourish extending to the right.

EDITOR