

The Catholic Lawyer

Volume 12
Number 2 *Volume 12, Spring 1966, Number 2*

Article 8

November 2016

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Recommended Citation

Miriam T. Rooney (1966) "Natural Law Actualities," *The Catholic Lawyer*. Vol. 12 : No. 2 , Article 8.
Available at: <https://scholarship.law.stjohns.edu/tcl/vol12/iss2/8>

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NATURAL LAW ACTUALITIES

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A RECENT ARTICLE in the *Catholic Lawyer*¹ devotes its opening paragraph to an elaboration of the statement: "Two concepts are characteristic and basic in natural law jurisprudence." Throughout the article reference is made to "concepts" as if they were essential for convincing expositions of the natural law "school." This article, of course, is not unique in this respect. Rather, it is only the latest expression of the theme. Thirty-five years ago, C. G. Haines published a much-quoted book entitled *The Revival of Natural Law Concepts*, which, in its very title, discloses the irreconcilable conflict between concepts and actualities.

Numerous defenders of natural law theories have for some centuries based their arguments upon conceptualistic premises and borrowed the words from one another without apparently questioning their implications. Now and then, challenges have been presented by jurists unconvinced by this line of reasoning, but these have been ignored for the most part, when not rejected preemptorily. Surely, an inquiry as to whether concepts are, in fact, basic in natural law jurisprudence is long past due.

First of all, it would seem obvious that concepts are human things; their content being nothing more nor less than what the human mind has abstracted from its experiences. It is doubtless true that not every mind has had identical sense experiences from which concepts may be derived. Many receive concepts conveyed from teacher to pupil as part of the inherited wisdom of the human race. Such concepts, however, along with all other concepts, have been formulated somewhere, sometime, somehow, by some acutely perceptive mind. It is essential to the learning process to inquire from what perceptions of ear or eye these concepts were derived. It is no less essential to ask what was left out when these abstractions were made.

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¹ Cahill, *Morality in Legal Practice*, 11 CATHOLIC LAW. 184 (1965).

Poets have told us that there are many things in heaven and earth which are not dreamt of in our philosophies. Radio waves must have been going over our heads for ages, but were not trapped by attuned antennae until our own day. The relation of energy to matter has also waited for the current century to be explained in a mathematical formula, and the transmission of human characteristics through cell division or combination is under scrutiny now in depths never before attempted. Concepts derived from observations or perceptions such as these must surely vary in content, if not in complexity, from those accepted earlier. Does modern natural law jurisprudence, it may properly be asked, take such variations in the content of its concepts into account?

There are some who, when confronted with new manifestations of scientific truth which are in effect revolutionary, and, which may appear disruptive of philosophical premises theretofore thought to be firmly established, seem to neglect a reformulation of their premises. They abandon, in fact, if not in profession, the philosophical method itself—with its task of satisfying human reason—and, instead, they turn to revelation, but without noting the steps necessarily taken in preparation for such a leap.

The transition from scientific truths to that aspect of truth which is in the human judgment, and from immutable truths to absolute truth, presents a tortuous path, where many have become confused, and have been led unwittingly into fallacies. If the foundations could be clarified on this, perhaps a univocal usage of the term "natural law" might hopefully be reached. Since revelation itself must ultimately rely

on the appeal to reason to become known, its proper function in natural law theory is one of verification of the truth that is in the human judgment, rather than as an alternative for the laborious reexamination of basic premises.

The fact is that the human mind, in its efforts to ascertain truth, is measured by its conformity to nature. In other words, all things measure mind. And truth, or knowledge of nature, is achieved only according to the mind of the knower. That is to say that by the nature of human beings they are not omniscient; their capacity for perception is only partial, because of the natural limitations of their senses; the aspect of truth they can glimpse is far from the wholeness of the universe in time and space; and man, unable to see life steadily and to see it whole, cannot be the measure of all things.

It is the existent universe which is the most important feature in human life. The learning process by which man becomes increasingly aware of the relation of his life to the rest of existence is not only fascinating in itself but it has importance, hitherto largely unexpressed, for the comprehension of the natural law. In the natural order, the child, even before it is born, becomes conditioned to such elementary sensations as warmth and nourishment. When it is born, it gives testimony of life by a cry, as the ancient legal test for inheritance recorded. As it grows, it is aware not only of heat and cold, of hunger and nourishment, but also of light and shade, of its ability to reach and to kick, and eventually of persons other than itself. It acquires power to listen, to comprehend communications from others, to concentrate; it realizes self-motivation

and assumes self-responsibility in its advancement on the road to maturity. But the grasp of otherness outside itself is always conditioned by the acuteness of its perceptions.

Those who attempt to teach can do no more than point out things worth noticing, so that the student may make them his own. For each step in the learning process, the most impressive fact is that the person is already predisposed by previous experience to reach out and grasp what is near at hand. That for which he is unprepared by previous experience eludes him unless or until brought to his attention by someone a bit more experienced. Even a simple statement is rarely grasped at first hearing, but becomes familiar by each repetition: "Once I've said it; twice I've said it; three times I've said it; it's true!" we are told by snark psychology in "Alice in Wonderland." As in the case of radio waves, the existent may be quite within a student's grasp, but entirely beyond his degree of awareness. The principle of apperception, or the being prepared to see the obvious, is such a vital part of the development process that even the Gospel narrative mentions it: "I have yet many things to tell you, but you cannot bear [*i.e.*, are not yet prepared to receive] them now."

The principle spoken of as apperception by modern psychologists of education, especially Herbart and Pestalozzi in Germany, and William James and Edward Pace in the United States, is not only important for educators, but valuable for lawyers as well, particularly in presenting argument to both judges and jurors. It is of special significance for those jurists who are struggling with the meaning of immut-

able truth.

The most immutable truth (if that is not an unacceptable redundancy) is the fact of the existence of the universe into which each person is born. The partial truths which are discovered through scientific methods of investigation, or the insights into the harmony of the universal order which are glimpsed by artists, are, at the very most, but aspects noted in time and space of universal truth or existence. Without touching upon theology or revelation, as such, it is manifest that the universe around us must have been designed, or created, if you will, by some Person with an intellect infinitely greater or more complex than any within our earthly experience. Whether we call this Person, God, or the Supreme Architect of the Universe, or by any other similar name, the vitality of the universe, which is the only thing that really matters, is obviously derived from, or kept alive by, Him. When our intellects grasp an aspect of this existent fact, and Factor, we perceive truth. When our emotions impel us toward a bit more fullness of life, we recognize it as good. In both situations, being and truth, and, being and good, are interchangeable, but knowable to us, for learning purposes, only under particular aspects. A falling short of our mind in conformity with the universe as it actually exists amounts to error, and we must try again. A falling short of our choices in the enrichment of life, is not only misapprehension, but also evil, and we must retrace our steps and start over, to fill up the deficiency. In both cases the measure of our achievement is nothing more nor less than the universe as it actually exists. And the Judge who measures our acts is in

His Person identical with the true, the beautiful, and the good, in the fullness of existence. This is no mere concept, nor attribution, of our limited minds. This is the basic fact of life. It is verifiable by Holy Writ, where God the Creator defines Himself in the very terms of being and existence, when He says, "I am Who am." We reduce this consummate fact at our peril when we make our minds and our concepts the measure.

Although being surrounds us, and we participate in it, it is nevertheless so vast a fact that it is very difficult to comprehend. Aspects catch our eye in succession, as a child is taken by each new toy. Reality somehow eludes our consciousness most of the time. When it does confront us, we are often so ill-prepared to receive it that we are distraught in our confusion. The courage it takes even to attempt to look upon life steadily and to make an effort to see it whole is heroic. It is here that the natural law jurists could help. By preparing each of us to widen our grasp of reality and the facts of life, they could have guided us toward expanded content as the basis of our judgments, and to an infinity of alternatives suggested by nature, as the ground upon which our choices can be made. Instead they have presented us all too frequently with nothing more than warmed-over human conceptions of a *mare clausum* era, quite inadequate to open our eyes to the actually existent and continually unfolding universe which the Creator has created.

One prevailing error that modern jurists stumble over, which is not attributable to the natural law "school" as such, but which could be clarified by them, if they substitute actualities for concepts, is the

Kantian separation of will and idea. When Immanuel Kant ascribed the function of the intellect to the speculative reason, and the function of the will to the practical reason, he assigned law to the latter category. Some defenders of the natural law, already preconditioned by the voluntarism of Scotus or Suarez in contrast with the intellectualism of Aquinas, accepted the classification of law as a concern of the will, minimized the task of intellect in ascertaining facts upon which choices are made, and left judgment out of account. By failing to relate human judgment to universal truth by explaining its function of limited participation in ascertaining one aspect of existent reality, the natural law theorists have permitted current interest in decision-making to struggle alone with arbitrariness, and have left the task of judgment unattended.

Another insistent difficulty, attributable to Kantian influence, concerns justice. Through Del Vecchio's reading of the "golden rule" in connection with the categorical imperative of Immanuel Kant, a view of justice has recently developed that emphasizes the word "others" in the precept, to do unto others as you would be done by. In the Del Vecchio view, this gives rise to a claim. In other words, justice, it is inferred, arises from the claim one person has upon another to obtain his due. This emphasis on others provides a sociological slant to the notion of justice; the suggestion of a claim is thought to be essentially juristic; the suggestion that justice to me depends upon my asking or claiming my due introduces a subjective rather than an objective standard. This view is not only novel and at variance with the traditional definition—the render-

ing to each his due, or his own—but it also leaves out of account the actualities of existence which the ancient definition of Ulpian contained. Far from being a claim, or a concept, justice is nothing more nor less than the apportioning to each person of whatever he actually needs to attain the fullness of life, whether he is aware of his need and claims it, or not. The emphasis should not be on the apportioning but upon what is due. It is upon this very definition of justice that a jurisprudence of concepts and a jurisprudence of actualities go off in opposite directions.

A valid “school” of natural law jurisprudence cannot have it both ways. To be a true guide to the natural law—the law of nature—it must by its very terms affirm a universal existent order, created by a Person who explains Himself in terms of being—“I am Who am”—and Who has situated human beings within that universe with limited, not omniscient, powers of comprehending its order. To attempt to identify this universal existent order with any humanly derived concepts about it is to deny the very universality and the existence that some natural law writers presume to defend.

Is such a limited view of human conceptual powers in fact a retreat to skepticism that the human mind can never know any truth? Not at all. It simply means that human concepts must be subject to continual revision in order to conform to newly recognized truths.

A corollary of the distinction which must be made between actualities and concepts in the exposition of natural law

principles is that a similar distinction has to be made between truths, and universal, absolute, or immutable truth. There is no doubt that universal, absolute, and immutable truth exists, and that it is identical in the Supreme Being with the good and the beautiful. The differing terms used to denote the Supreme Being represent attempts to describe the learning process and to emphasize that human knowledge is limited to aspects, or glimpses, and is unable to grasp the wholeness of reality with the omniscience of the Creator. To misconceive these terms so as to ascribe immutability to any particular aspect is to invert the order of existence in such a way as to ascribe to the creature the capacity of the Creator. Man has enough problems as it is for his burdened spirit to encompass. To claim for his humanly derived concepts the immutability which is an attribute of the Supreme Being alone, constitutes a grave fallacy in many writings on the natural law. What is needed by way of a corrective is an historical sense, or an investigatory technique on the evidence, in order to track the formulation of a truth to its human source. Then the thought of continual revision in order to conform more closely to newly discovered or recognized truths would not be revolting but challenging.

Is it too much to hope that the *aggiornamento* of the Vatican Council will spill over onto the jurists and provide a new look for the natural law situation that will present a satisfactory account of the relation between human laws and the law of nature—between concepts and actualities?

