

1949

Natural Law Institute Proceedings, 1947, Vol. 1

Alfred L. Scanlan

University of Notre Dame, College of Law

John F. O'Hara C.S.C.

Bishop of Buffalo

John J. Cavanaugh C.S.C.

The University of Notre Dame Australia

Clarence E. Manion

University of Notre Dame, College of Law

Ben W. Palmer

See next page for additional authors

Follow this and additional works at: https://scholarship.law.nd.edu/naturallaw_proceedings



Part of the [Law Commons](#)

Recommended Citation

Scanlan, Alfred L.; O'Hara, John F. C.S.C.; Cavanaugh, John J. C.S.C.; Manion, Clarence E.; Palmer, Ben W.; Adler, Mortimer; McKinnon, Harold R.; and Doheny, W. J. C.S.C., "Natural Law Institute Proceedings, 1947, Vol. 1" (1949). *Natural Law Institute Proceedings*. 1.

https://scholarship.law.nd.edu/naturallaw_proceedings/1

This Book is brought to you for free and open access by the Law School Publications at NDLScholarship. It has been accepted for inclusion in Natural Law Institute Proceedings by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

Authors

Alfred L. Scanlan, John F. O'Hara C.S.C., John J. Cavanaugh C.S.C., Clarence E. Manion, Ben W. Palmer, Mortimer Adler, Harold R. McKinnon, and W. J. Doheny C.S.C.

UNIVERSITY OF NOTRE DAME
NATURAL LAW INSTITUTE
PROCEEDINGS

Volume I

Edited by
Alfred L. Scanlan
Professor of Law

With An Introduction by
Rev. John J. Cavanaugh, C.S.C.
President of the University
of Notre Dame



COLLEGE OF LAW
UNIVERSITY OF NOTRE DAME

COLLEGE OF LAW
UNIVERSITY OF NOTRE DAME
NATURAL LAW INSTITUTE PROCEEDINGS—VOLUME I

Copyright, 1949, by
College of Law, University of Notre Dame
Notre Dame, Indiana

FOREWORD

The following pages contain the lectures delivered at The First Natural Law Institute which convened at the College of Law of the University of Notre Dame on December 12th and 13th, 1947. This meeting was probably the first gathering in modern times by members of the legal profession for the primary purpose of considering the natural law.

Participating in the First Natural Law Institute were Clarence E. Manion, Dean of the College of Law; Reverend William J. Doheny, C.S.C., of the College of Law, former Procurator and Advocate of the Tribunal of the Apostolic Signatura and of the Sacred Roman Rota; Mr. Mortimer Adler, Professor of the Philosophy of Law, University of Chicago; Mr. Harold R. McKinnon, of the San Francisco Bar; and Mr. Ben W. Palmer, of the Minneapolis Bar.

ALFRED L. SCANLAN,
Editor.

INVOCATION

The University of Notre Dame and the College of Law are to be congratulated on this symposium, which is both a religious and a patriotic endeavor. It is religious in that it goes back to God as the Author of Order and Law; it is patriotic in that it seeks to restore the fundamental philosophy of Law upon which the founders of our country rested the rights of our citizens.

There were other philosophies of law in existence when our country came into being, and the founding fathers were well aware of them. In fact, it was to escape from the tyrannies which they engendered that our ancestors sought a home in America. The indictment of tyranny in our Declaration of Independence is based squarely on the recognition of God's Order in the universe, His Divine Providence, and His Justice.

In the course of the many decades since our independence was declared, and since the Constitution was set up to protect our God-given rights against the encroachments of civil government, dry-rot has afflicted our jurisprudence, and some of the alien philosophies which our forefathers fled have found willing protagonists here in America. So much is this the case that the very existence of the Natural Law is challenged, even in the highest courts of the land. What five men think is the will, or even the whim of people, may come to have the force of statute. The "divine right of kings" was not a more pernicious doctrine.

The Notre Dame College of Law has done a great thing for our country by instituting this symposium. Some one must challenge the false philosophy that has taken hold of our schools of law and our courts. If we let it go longer, there will be no liberty for us to defend. I congratulate you and I ask God to bless your deliberations.

✠ MOST REV. JOHN F. O'HARA, C.S.C.
Bishop of Buffalo
Honorary Chairman
First Natural Law Institute Proceedings

CONTENTS

	Page
<i>Foreword</i>	iii
<i>Invocation</i>	
Most Rev. John F. O'Hara, C.S.C.	vii
<i>Introduction</i>	
Rev. John J. Cavanaugh, C.S.C.	1
<i>The Natural Law Philosophy Of Founding Fathers</i>	
Clarence E. Manion	3
<i>The Natural Law and Pragmatism</i>	
Ben W. Palmer	30
<i>The Doctrine Of Natural Law Philosophy</i>	
Mortimer Adler	65
<i>Natural Law And Positive Law</i>	
Harold R. McKinnon	85
<i>The Eternal Law Background of Natural Law</i>	
Rev. William J. Doheny, C.S.C.	104

INTRODUCTION

ON the walls of the court-room of the Supreme Court of Pennsylvania a series of artistic murals represents the several different kinds of law: American law, Roman Law, divine law, natural law.

The natural law is represented by a fanciful scene in which a nebulous figure of some misty period of antiquity pours incense into a golden bowl of burning charcoal, and the smoke curls upward around a marble colonnade, to the obvious approval of a group of heroic-mystic noble-minded onlookers who breathe idyllic contentment.

The text accompanying the mural makes it clear that the natural law is considered merely man's dream of a golden age to come; it is the ideal law that will rule ideal men in perfect harmony. It will never be attained; but forever the hearts and minds of men will strive to achieve that unattainable ideal.

The natural law is no such thing. It is not an ideal; it is a reality. It is not a product of men's minds; it is a product of God's will. It is as real and as binding as the statutes in the U. S. Code. It is not a mere ideal toward which all statutes and court decisions and systems of law should tend. The actuality is that any statute or court decision or system of law which does not conform to natural law simply has no valid binding force; it is inherently vitiated. It lacks an element required for essential validity.

The Natural Law Institute, sponsored by the College of

Law of the University of Notre Dame, is publishing these lectures in an attempt to explain what the natural law is, and to dispel some widespread misconceptions of what natural law is.

It is the purpose of the Natural Law Institute to explain the meaning of the natural law in terms of actual statutes, actual court decisions, and actual legal principles in our American system. The basic philosophy of law underlying these lectures is utterly divergent from the positivism of Justice Holmes and the relativism of Justice Cardozo.

It is here fundamentally postulated that the law is not merely what a court says it is; nor that the principles of law must change with changing times. It is here postulated that the controlling principles of law never change; only the application of those principles to changing circumstances creates variation.

The Natural Law Institute is founded on the belief that unless the unchanging character of basic legal principles is acknowledged by our jurists, the basic legal guarantees of liberty in our Constitution—which are principles of the natural law—will be as changeable as the whim of future judges and legislators.

The meaning of natural law has never been adequately presented to the vast majority of American students of law. This publication represents the beginnings of an attempt to explain the natural law.

REV. JOHN J. CAVANAUGH, C.S.C.,
*President of the University
of Notre Dame.*

THE NATURAL LAW PHILOSOPHY OF FOUNDING FATHERS

IN the early summer of 1933 the Seventy-Third Congress of the United States, in special session, passed what it officially entitled the National Industrial Recovery Act. In both House and Senate majorities favoring the measure were overwhelming. Pursuant to the provisions and directions of this extremely comprehensive statute, industrial processes and procedures throughout the United States were fundamentally readjusted at each and every level of commercial activity. Jobbers, shippers, wholesalers, and retailers vied with each other in their eagerness to come under the broad wings of the Blue Eagle, the adopted symbol of the new industrial order. Under the aegis of the ensuing National Recovery Administration a country-wide organization of speakers brought the virtues of the new legislation directly to the people of every American community. In a remarkably short time practically everybody in the United States was talking in terms of the N.I.R.A., and there was an all but universal popular acceptance of its expressed aims and purposes.

On the 26th day of July, 1934, the five Schecter brothers, all citizens of New York, were indicted for conspiring to violate certain provisions of the new statute. They were subsequently convicted and in 1935 their appeal from this conviction was carried to the Supreme Court of the United States. On April 1, 1935 the Supreme Court

unanimously reversed the conviction and held the involved section of the N.I.R.A. to be in violation of the Constitution of the United States, and, for that reason, invalid.

This decision hit the Blue Eagle in a vital cross section and death followed almost immediately. To the general public the casualty was shocking and to some extent at least, slightly mortifying. For two years we had heralded and supported an institution that in legal contemplation had never existed. In attempting to create and implement the National Recovery Administration two of the six separated and distinct divisions of American Government had exceeded their proper constitutional authority and the legally enforceable result of such excession was exactly nothing. By the formal assertion of their innate and reserved rights as individual persons, five men had nullified an act of Congress together with innumerable acts pursuant thereto by the President of the United States. A great popular desire for N.R.A. was thus thwarted. The same thing had happened many, many times before in the history of the United States, but this time it occurred in a most spectacular manner: an American citizen had successfully asserted an inherent substantive right against his own Government. Having proved their point to its satisfaction, the court, as a matter of course, rebuffed the Government, of which the court itself was an integral part, and directed that the five Schecter brothers go free. The result of this and similar decisions of American courts of last report points up the practical importance of natural law to the citizen of the United

States. Nowhere else in the world of 1935 could individual citizens of any state challenge and set aside an official act of their Government on the theory that such act violated the citizens' reserved personal rights. This is the important distinction upon which the whole body of American legal and political science turns away from the time-honored and so-called orthodox conception of sovereignty. It is the distinction which is constantly missed or mangled by most foreign commentators on American jurisprudence, for the simple reason that this feature of our system is unique and quite definitely homegrown.

At Runnymede the English barons were seeking to limit the tyrannical power of a recreant king who was out of their control and quite beyond their reach. To bridle such a menacing autocratic creature with the terms of the Great Charter made very good sense, but we are now constantly reminded by the realists that times have changed. We are told that "Democracy" in the very nature of things must be an *absolute* democracy and that consequently constitutional limitations imposing checks upon democratic officials are self-contradictory. The realists thus conclude that a constitutional democracy is a contradiction in terms.

Nevertheless, the Schecters, and countless Americans before them, have personally profited by the availability of these same checks on American officialdom. The question therefore arises: Are these available checks—the Constitutions, the Bill of Rights, the separation of governments and the division of their powers—are these ends in themselves or are they merely *means* to ends? Have the

Schecters, and others merely escaped into an ancient petrified forest of antiquated forms and procedures of law, or were the forms and procedures precisely made that way for the purpose of holding and preserving some vital and necessary substance? If our system of constitutional limitations is an end in itself, it is defensible only as a tradition, and the sands of purely traditional values are rapidly running out today. On the contrary, if the letter of these limitations is merely insulation for a well defined concept of man's inherent and imperishable nature, then a knowledge and evaluation of this concept is and must be required of every American judge and all American lawyers whose terrible and continuing responsibility it is to uphold and defend our presently besieged system of American law.

We can answer these significant questions only by a recourse to that unusual generation of men which gave us the words and phrases of the American constitutional system. Many of the men to be consulted were renowned and successful lawyers long before the American constitutional system was formally devised. These men were trained and educated in the common law of England, but most of them were products of the American frontier where the administration of justice, like other things, was largely homemade. For instance, Dean Roscoe Pound tells us that "an English lawyer who came to Boston about 1637 wrote, in 1642, that the colonial tribunals ignored English common law and sought to administer Mosaic law." The Dean goes on to say that:

"Lawyers played a chief part in the contest with the

Stuarts. They found their weapons in the doctrines which had been worked out by the experience of the common law courts in trying official actions by the provisions of the Great Charter. Coke made the cases under the Plantagenets the material for a commentary on Magna Carta, which made (this) treaty between the paramount landlord and his tenants in chief, a legal document defining limitations in the relation of ruler and ruled. What the medieval cases and traditions were to Coke, Coke's Second Institute (Coke's Reports) and the decisions of the common law courts he discusses or that followed him, were to the American lawyers before the Revolution. * * * So steeped were the Eighteenth Century colonial lawyers in Coke's teachings, for Coke's Institutes were the most authoritative law books available to them, and they were dealing with a tradition and not a code, that the controversial literature of the era of the Revolution, if it is to be understood, must be read or interpreted by a common law lawyer. Indeed he must be a common law lawyer of the Nineteenth Century type, brought up to read and reread Coke and Blackstone until he got the whole feeling and atmosphere of those who led resistance to the home government.¹

As Dean Pound points out, Coke's Common Law was an uncodified tradition. It was an immemorial but an inexact process of reasoning from the general to the particular. Coke himself was seldom if ever satisfied to rest on Magna Carta as the bedrock foundation of the institution of English common law. "Common right and rea-

¹ *The Development of Constitutional Guarantees of Liberty*, Roscoe Pound 20 N. D. LAWYER 347, 348 (1945).

son” were invariably used to bolster the Great Charter in important cases. Magna Carta was not *ipso facto* binding but was evidentiary of concepts universally acknowledged and observed both before and since 1215. Coke’s Commentaries and Decisions are replete with his explanations of what these universally acknowledged concepts were. The following quotation from Coke’s notes in Calvin’s case is typical:

“The Law of nature was before any judicial or municipal law (and) is immutable. The law of nature is that which God at the time of creation of the nature of man infused into his heart for his preservation and direction; and this is the eternal law, the moral law, called also the law of nature. And by this law, written with the finger of God in the heart of man, were the people of God a long time governed before the law was written by Moses, who was the first reporter or writer of law in the world. * * * God and nature is one to all and therefore the law of God and nature is one to all. * * * This law of nature which indeed is the eternal law of the creator, infused into the heart of the creature at the time of his creation, was two thousand years before any laws written and before any judicial or municipal laws. And certain it is that before judicial or municipal laws were made, kings did decide cases according to natural equity and were not tied to any rule or formality of law.”²

This is a fair digest of the fundamental principle upon which all our pre-Revolutionary legal education was based. The theistic element of this fundamental law was

² Calvin’s Case, 7 Coke’s Rep. 12(a), 77 Eng. Rep. 392.

certain to be enthusiastically received and developed in and through the American Colonies, because religion of one kind or another had been the motivation for the establishment of each and every one of these colonies. Theology was the subject which the colonists discussed most passionately and it would have been very difficult for the Seventeenth or Eighteenth Century American mind to comprehend a strictly secular system of duties and obligations. The natural law expounded by Coke in the Seventeenth Century, and by Blackstone in the Eighteenth, met colonial specifications perfectly. Blackstone's Commentaries were for the most part a restatement of Coke's principles in less archaic language and immediately after their first publication in 1765 they achieved a wide circulation throughout the American colonies. A special American edition of Blackstone was printed in Philadelphia in 1771. Here are some pertinent excerpts therefrom with which the founding fathers were obviously familiar:

“When the Supreme Being formed the universe and created matter out of nothing, he impressed certain principles upon that matter from which it can never depart and without which it would cease to be. * * * This then, is the general significance of law; a rule of action dictated by some superior being; and in those creatures that have neither the power to think nor to will, such laws must be invariably obeyed, so long as the creature itself subsists, for its existence depends on that obedience. But laws in their more confined sense and in which it is our present business to consider them, denote the rules, not of action in general, but of human action or conduct, that is the

precepts by which man * * * endowed with both reason and free will, is commanded to make use of those faculties in the general regulation of his behavior.

Man considered as a creature, must necessarily be subject to the laws of his creator for he is entirely a dependent being. A state of dependence will inevitably oblige the inferior to take the will of him on whom he depends as the rule of his conduct * * * in all those points wherein his dependence consists. * * * Consequently, since man depends absolutely upon his maker for everything, it is necessary that he should in all points conform to his maker's will. *This will of his maker is called the law of nature.* For as God, when he created matter and endowed it with a principle of mobility, established certain rules for the perpetual direction of that motion, * * * so, when he created man, and endowed him with free will to conduct himself in all parts of life, he laid down certain immutable laws of human nature, whereby that free will is in some degree regulated and restrained, and gave him also the faculty of *reason* to discover the purport of those laws. * * * The Creator is a being not only of infinite power and wisdom but also of infinite goodness, therefore, he has been pleased so to contrive the constitution and form of humanity that we should want no other prompter to inquire after and pursue the rule of right but only our own self love, that universal principle of action. For he has so intimately connected, so inseparably interwoven the laws of eternal justice with the happiness of each individual that (happiness) cannot be attained but by observing the former; and if the former be punctually obeyed it cannot but induce (happiness). In consequence of

which mutual connection of justice and human felicity (God) has not perplexed the law of nature with a multitude of abstracted rules and precepts * * * but has graciously reduced the rule of obedience to this one paternal precept *that man shall pursue his own true and substantial happiness*. This is the foundation of what we call ethics or natural law: for the several articles into which it is branched in our systems amount to no more than demonstrating that this or that action tends to man's happiness and therefore very justly concluding that the performance of it is a part of the law of nature; or, on the other hand, that this or that action is destructive of man's real happiness and therefore that the law of nature forbids it."³

Observe and remember the great commentator's conclusions with reference to the *pursuit of happiness*. That phrase is due to make an official reappearance at the climax of the colonial contest with the mother country. It is significant likewise that Blackstone speaks of the natural law as "branched" into what he calls the English "systems." This could mean nothing except that the natural law was accepted as the inspiration of the common law of England. In another place he says:

"This law of nature being coeval with mankind, and dictated by God himself, is, of course, superior in obligation to any other. It is binding over all the globe in all countries, and at all times; no human laws are of any validity if contrary to this; and such of them as are valid derive all of their force and all of

³ Blackstone's Commentaries (Lewis' Edition) Vol. I, pp. 27-31.

their authority mediately or immediately from this origin.”⁴

It is not difficult to imagine the avidity with which this reasoning was seized upon by the men who were then protesting against what they called illegal and unwarranted encroachments of such Parliamentary measures as the Stamp Act. But Blackstone contained still more comfort for those Americans who were at that time still manfully contending for their ‘immemorial rights’ as English subjects. In one of the chapters of the Commentaries we find that

“natural persons are such as the God of Nature formed us; artificial persons are such as are created by human laws for the purposes of society and government, which are called corporations or bodies politic. * * * By the absolute rights of individuals, we mean those which are shown in their primary and strictest sense, such as would belong to their persons merely in a state of nature and which every man is entitled to enjoy, whether out of society or in it. * * * Hence it follows that the first and primary end of human laws is to maintain (and regulate) these absolute rights of individuals. * * * The absolute rights of man considered as a free agent endowed with discernment to know good from evil, and with power of choosing those measures which appear to him to be most desirable, are usually summed up in one general explanation and denominated the natural liberties of mankind. This natural liberty consists properly in a power of acting as one thinks fit without any restraint or control *unless by the law of nature*, being a right inherent in us by birth and one

⁴ Ibid., p. 31.

of the gifts of God to man at his creation when he endowed him with the faculty of free will.”⁵

Such was the summation of the natural law-common law fusion brought down to the very date of the Stamp Act. It would be difficult to find a better brief for the conclusions of the Declaration of Independence than is contained in these and other materials from the great English commentator himself. But while Blackstone’s version of the natural law-common law relationship was comforting to the Americans, it did not surprise them. It was merely a modern and timely restatement of what they had always understood.

Two years before Blackstone was published young John Adams wrote:

“It has been my amusement for many years past, as far as I have had leisure to examine the systems of all the legislators, ancient and modern, * * * and the result * * * is a settled opinion that liberty, the unalienable, indefeasible rights of man, the honor and dignity of human nature, the grandeur and glory of the public and the universal happiness of individuals, were never so skillfully and successfully consulted as in that most excellent monument of human art, the common law of England.”⁶

But the beautiful idol had acquired a clay foot. Blackstone gives us a peep at it when he says:

“Acts of Parliament that are impossible to be performed are of no validity; and if there arise out of them collaterally any absurd consequences, manifest-

⁵ *Ibid.*, pp. 108, 109.

⁶ Adams’ *Life and Works* (1851), p. 440.

ly contradictory to common reason, they are, with regard to those collateral consequences, void. I lay down the rule with these restrictions: I know it is generally laid down more largely, that acts of Parliament contrary to reason are void. But if the Parliament will positively enact a thing to be done which is unreasonable, I know of no power in the ordinary forms of the Constitution that is vested with the authority to control it.”⁷

The juridical issue of the American Revolution could not be more compactly stated. In *Bonham’s Case*, Coke had said:

“And it appears in our books, that in many cases, the common law will control acts of Parliament, and sometimes adjudge them utterly void; for when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it and adjudge such an action to be void.”⁸

This was in 1610. Coke died in 1634. In his exposition of the natural law-common law relationship, Blackstone appears to agree with his illustrious predecessor in all things except the “power” of Parliament effectively to override both natural law and common law. Blackstone unquestionably agreed that Parliament had no “right” to pass such a law. Something of the utmost importance to English law had obviously happened between the commentaries of Coke and Blackstone respectively. That occurrence was the English Revolution of 1688. Dean Pound says that

⁷ Blackstone, *op. cit. supra* Note 3, Vol. V, p. 79.

⁸ 8 Coke’s Rep. 118(a).

“the Revolution of 1688 made a profound change in the English Constitution. The Seventeenth Century polity as set forth in Coke’s doctrine, was the one we accepted at our Revolution and put into our constitutions. When these instruments declare themselves the ‘supreme law of the land’ they use the language of Magna Carta as interpreted by Coke, namely, that statutes could be scrutinized to look into the basis of their authority and if in conflict with fundamental law they must be disregarded. This doctrine was as much a matter of course to the American lawyer of the early Revolution as the doctrine of the absolute binding force of an act of parliament is to the English lawyer of today. American lawyers were taught to believe in a fundamental law which, after the (American) Revolution they found declared in written constitutions. After 1688 there was no fundamental law superior to Parliament.”⁹

It is most unfortunate that the romantic and psychological sidelights of the American Revolution have lured historians away from the logical and legal aspects of that epochal struggle. Taxes, parliamentary representation and finally the very independence of the United States itself were all incidental to the main and controlling legal issue, namely the enforcement and implementation of a law “superior in obligation to any other * * * coeval with mankind and dictated by God himself.” This controlling issue was made crystal clear by the Declaration of Independence but for some reason modern historians seem reluctant to take the great Declaration at its word. There is a subtle but unmistakable effort to edit this document

⁹ Pound, *op. cit. supra* Note 1, p. 367.

out of our jurisprudential system and to regard its categorical postulates as eccentric extravagances transposed on the spot from a variety of foreign philosophical dreamers in order to make a rallying cry for a rather desperate American cause. The fact is that the Declaration is the best possible condensation of the natural law-common law doctrines as they were developed and expounded in England and America for hundreds of years prior to the American Revolution. By pushing and pursuing the principle of parliamentary absolutism it was England and not America who abandoned the ancient traditions of English liberty. In 1776 the British Government was insisting that "the law of the land" and "the immemorial rights of English subjects" were exclusively and precisely what the British Parliament from time to time declared them to be. This claim for parliamentary absolutism was at variance with all the great traditions of the natural law and common law as recorded through the centuries from Bracton to Blackstone. By abandoning their ingrained concepts of the natural law, the colonists undoubtedly could have made a comfortable settlement of their tax and navigation difficulties with England, but they chose the alternatives so well and so logically declared in the Declaration of Independence.

The inference that the principles of the Declaration were extravagant improvisations is refuted by the testimony of the times. Nearly half a century after the Declaration was adopted one Timothy Pickering wrote to John Adams calling attention to the commonplace character of pronouncements contained in the great document and

manifesting surprise at the acclaim and reverence accorded to it. Adams replied on August 6, 1822. He said:

“As you justly observe, there is not an idea in it but what had been hackneyed in Congress for two years before. Indeed the essence of it is contained in a pamphlet voted and printed by the Town of Boston before the first Congress met, composed by James Otis.”

Pickering made Adams' letter the subject of a speech delivered on the 4th of July in the following year (1823) and Jefferson in turn paid his respects to Pickering in a letter to Madison dated August 30, 1823. After a preliminary correction of Mr. Adams' recollection in certain particulars, Jefferson wrote:

“I drew it (the Declaration) but before I reported it to the Committee (Benjamin Franklin, Roger Sherman, William Livingston, John Adams, Thomas Jefferson), I communicated it separately to Dr. Franklin and Mr. Adams, requesting their corrections, because they were the two members on whose judgments and amendments I wished most to have the benefit before presenting it to the committee: and you have seen the original paper now in my hands with the corrections of Dr. Franklin and Mr. Adams interlined in their own handwritings. Their alterations were two or three only and merely verbal. I then wrote a fair copy, reported it to the committee, and from them unaltered to Congress. This personal communication and consultation with Mr. Adams, he has misremembered into the actions of a subcommittee. Pickering's observations and Mr. Adams' in addition 'that it contained no new ideas, that it is a commonplace compilation, its sentiments hackneyed

in Congress for two or three years before, and its essence contained in Otis' Pamphlet' may all be true. Of that I am not to be the judge. Richard Henry Lee judged it a copy from Locke's Treatise on Government. Otis' Pamphlet I never saw, and whether I had gathered any ideas from reading or reflection I do not know. I know only that I turned to neither book nor pamphlet while writing it. *I did not consider it as any part of my charge to invent new ideas altogether, and to offer no sentiment which had ever been expressed before.* Timothy (Pickering) thinks * * * that the Declaration, as being a libel on the Government of England, composed in times of passion, should now be buried in utter oblivion to spare the feeling of our English friends and Anglo-men fellow citizens. But it is not to wound them that we wish to keep it in mind: but to cherish the *principles* of the instrument in the bosoms of our own citizens; and it is a heavenly comfort to see that these principles are yet so strongly felt as to render a circumstance so trifling as this little lapse of memory of Mr. Adams worthy of being solemnly announced and supported at an anniversary assemblage of the nation on its birthday. In opposition, however, to Mr. Pickering I pray God that these principles may be eternal."¹⁰ (Italics supplied.)

Far from attempting to invent new theories and express them in the Declaration, it was Jefferson's purpose, as he later wrote to Henry Lee, Jr.:

"Not to find out new principles or new arguments never before thought of, not merely to say things which had never been said before; but to place before mankind *the common sense of the subject* in

¹⁰ Writings XV, p. 462.

terms so plain and firm as to command their assent and to justify ourselves in the independent stand we were compelled to take. Neither aiming at originality of principle or sentiment, nor yet copied from any particular previous writing, it was intended to be *an expression of the American mind*. All its authority rests upon the harmonizing sentiments of the day.”¹¹ (Italics supplied.)

The authorship of the Declaration was in Jefferson's own estimation the first of the three highest achievements of his remarkable life. He was chosen for that high honor because of what Adams called Jefferson's "felicity of expression." To the best of his unusual ability he was expected to mirror the prevailing American point of view and, as we have seen, in Jefferson's own judgment he did just that. In a very important sense it is misleading to attribute the philosophy of the Declaration to the writings of John Locke. The latter frequently confuses a point that is vital to the American legal system; a point which all of the influential American Revolutionary writers made with full clarity and force. For instance, Locke says:

“When any number of men have *consented* to make one community or government they are thereby presently incorporated and make one body politic wherein the majority have the right to conclude the rest.”¹²

Locke thus implies that once government is installed by the consent of the governed the rights of individuals and minorities are completely and absolutely subject to its

¹¹ Writings V, p. 343.

¹² Locke, Two Treatises on Government, Bk. II, Secs. 95-101.

directions. This doctrine is inconsistent with the natural law and natural rights philosophy of the Declaration of Independence. It is at variance with the essays, pamphlets and correspondence that circulated so freely in American Revolutionary times and thereafter. This theory was certainly not that of Thomas Jefferson. For instance on June 7, 1816, Jefferson wrote to Francis Gilmer that:

“Our legislators are not sufficiently apprised of the rightful limits of their power; that their true office is to declare and enforce only our natural rights and duties and to take none of them from us. No man has a natural right to commit aggression on the equal rights of another and this is all from which the laws ought to restrain him. * * * When the laws have declared and enforced all this, they have fulfilled their functions and the idea is quite unfounded that on entering into society we give up any natural right.”¹³

And again in his notes on Virginia he declared:

“An elective despotism is not the government we fought for, but one which should not only be founded on free principles, but in which the powers of government should be so divided between the bodies of magistracy as that no one could transcend their legal limits without being effectually checked and restrained by others.”¹⁴

John Adams said that:

“Rulers are no more than attorneys, agents, and trustees for the people,” and he added that if these

¹³ Writings, XV, p. 24.

¹⁴ Ibid., II, p. 224.

betray their trust "the people have to revoke their authority" and substitute other agents, attorneys and trustees.¹⁵

The effective limitation of sovereignty and government by *division, judicial review, and democratic forces*, was thus held to be a necessary corollary to the doctrine of unalienable natural rights. This was indeed, *the* significant contribution that the American Revolution made to the doctrine of natural law. The views expressed in so many different ways by so many of the Founding Fathers during that critical period had all been expressed and explored by others from time immemorial. It was the Founding Fathers of the American Republic however, who first *did* something about it. Their experience with the voice of Coke and Blackstone on the one side and the hands of Parliament on the other, convinced them that Tom Paine was right when he urged that:

"Society is produced by our wants and government by our wickedness; (that) society in every state is a blessing but government in its best state is but a necessary evil; in its worst state an intolerable one; (that) government like dress, is the badge of lost innocence—a mode rendered necessary by the inability of moral virtue to govern the world."¹⁶

Revolutionary America believed that such an evil institution as government would certainly get out of hand unless closely checked from every side. Just as firmly as they believed in natural law and natural rights, therefore, they believe in practical as well as theoretical checks upon

¹⁵ Works, Vol. III, pp. 456, 457.

¹⁶ Common Sense, p. 1.

the possibility of governmental violation of those rights. It was not enough, in the opinion of the Founding Fathers, to belabor sovereignty with sound philosophy. Sovereignty had to be split and checked and degraded to the point where it was obviously a servant of the people's God-given rights. Their constitutional system put together by the Founding Fathers, was devised to keep this governmental servant in its place, and on the job, and its job was "to secure these rights" of man.

There was little or no dissonance in the many widely publicized American views on this point in the last half of the 18th Century. While there was some difference of opinion about the *timing* of the Declaration of Independence, there was no expressed dissent from the principles which it so clearly and unmistakably announced. We have Jefferson's own word that the document was previously and privately approved by John Adams and Benjamin Franklin. When it was submitted to the entire Congress it was furiously and thoroughly debated. Large sections of Jefferson's specifications against the King were lifted out bodily and two significant additions were added upon motion from the floor. These additions are very much in point. At the opening of the second to the last paragraph the Congress inserted the phrase "appealing to the Supreme Judge of the world for the rectitude of our intentions" and in the last sentence of the same paragraph the Congress inserted the words "with a firm reliance on the protection of Divine Providence."

It is thus obvious that the important document was carefully reviewed line by line by each of the signers, all

of whom accepted the laws of Nature and of Nature's God together with the significant "self-evident" truths in their entirety and without the slightest question.

There were many who are certainly in the category of Founding Fathers who were not present in, or members of the Continental Congress when the Declaration was adopted or signed. Washington was occupied with the defense of New York City but we know from innumerable sources that he was enthusiastic about the fact accomplished as well as the philosophy pronounced in the Declaration. Young Alexander Hamilton was also in uniform, but as an undergraduate of King's College, later Columbia, he had already replied to "Westchester Farmers' " criticism of the legality of the Continental Congress:

"Granting your supposition were true, it would be a matter of no real importance. When the first principles of civil society are violated, and the rights of a whole people are invaded, the common forms of municipal law are not to be regarded. Men may then betake themselves to the *law of nature*; and if they but conform their actions to that standard, all cavils against them betray either ignorance or dishonesty. There are some events in society to which human laws cannot extend, but when applied to them lose all their force and efficacy. In short when human laws contradict or discountenance the means which are necessary to preserve the essential rights of any society, they defeat the proper end of all laws and so become null and void. * * * *The sacred rights of mankind are not to be rummaged for among old parchments or musty records. They are written as with a sunbeam, in the whole volume of human na-*

ture, by the hand of Divinity itself and can never be erased or obscured by mortal power.” (Emphasis supplied.)

Hamilton’s refutation incidentally reflects the religious and philosophical nature of American college education in those days. The currency of deeply religious and philosophical approaches to political and legal questions by the college trained leaders of the Revolution, is explained by the fact that from their very beginning all American colleges in existence at the time of the Revolution were closely related to the churches, and every one of them featured courses in theology and moral philosophy.

At the time the Declaration was adopted two distinguished Americans were at work in Virginia drafting the first Constitution of that State. This Constitution began with its famous declaration of rights—from that day to this, a model for all similar sections in the constitutions of every state of the Union. The author of this document was George Mason, but James Madison, later to become known as the “Father of the Constitution of the United States” was responsible for the phraseology of that provision which declared freedom of conscience to be a *natural right* and not merely an object of toleration. The Virginia declaration states that “all men are by nature equally free and independent, and have certain inherent rights of which when they enter into a state of society, they cannot by any compact deprive or divest their posterity, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.” In his long and dis-

tinguished career Madison was never to lose his respect for these natural law principles. George Mason's devotion to the natural law doctrine was well known.

While arguing the case of *Robin v. Hardaway*¹⁷ before the Virginia General Court in 1772 Mason declared:

"Now all acts of legislation apparently contrary to natural rights and justice are in our laws and must be in the nature of things, considered as void. *The laws of nature are the laws of God, whose authority can be superseded by no power on earth.* A legislature must not obstruct our obedience to him from whose punishments they cannot protect us. All human constitutions which contradict His laws we are in conscience bound to disobey. Such have been the adjudication of our courts." (Italics supplied.)

Mason cited both Coke's Report of Bonham's Case and Calvin's Case in support of his argument.

One who looks for the spirit behind the letter of the American Constitutional system will find it embodied clearly in Mason's argument. Knowing at once the source of rights as well as the dangers which threatened them, Mason was well qualified to write a model bill for their protection. It will also be observed from this case that American Colonial courts in pre-revolutionary days were constantly hearing arguments and deciding cases on the natural rights theory projected by Coke as a basic principle of the common law.

Time and space limitations force us to forego reviewing the natural law declarations of such staunch and learned revolutionary patriots as Patrick Henry, Samuel Adams,

¹⁷ 1 Jefferson's Va. Rep., 109.

John Dickinson, the Carrolls, the Pinckneys and many others. Of James Otis who sparked the Revolutionary struggle at its very outset by his courage and eloquence, at least this must be lifted from his pamphlet on the "Rights of the British Colonies":

"To those who lay the foundation of government in force and mere brutal power, it is objected, that their system destroys all distinction between right and wrong; that it overturns all *morality* * * * leads directly to *scepticism* and ends in *atheism*. When a man's will and pleasure is his only rule and guide what safety can there be either *for* him or *against* him, but in the point of a sword?

That the common good of the people is the Supreme law is of the law of nature, and part of that grand charter given to the human race (though too many of them are afraid to assert it) by the only monarch in the Universe Who alone has a clear and indisputable right to absolute power because He is the only one who is omniscient as well as omnipotent."

Finally, there is the great James Wilson of Pennsylvania. Wilson was one of only six men who signed both the Declaration of Independence and the Constitution of the United States. In addition to this distinction he was one of the first group of justices appointed by President Washington to the United States Supreme Court. Because of this unusual continuity of service in the development of American constitutionalism, Wilson's views should provide a good concluding summary of the political philosophy which flowed from the Declaration of Independence into the "Supreme Law of the Land." Wilson was educated in the Universities of Scotland, and

after coming to this country at the age of 23 he read law in the office of John Dickinson in Philadelphia. He was active in the politics of Pennsylvania from the very beginning of his residence there and by the time of his service in the Constitutional Convention he had attained undisputed leadership in the legal profession of America. Wilson's writings and lectures are voluminous.

All of these reveal a consistent devotion to the principles of the "Law of Nature" as it had been understood and developed in the American tradition. In his lecture upon this subject he says

"that our Creator has a supreme right to prescribe a law for our conduct, and that we are under the most perfect obligation to obey that law, are truths established on the clearest and most solid principles. * * * (God) being infinitely and eternally happy in Himself, His goodness alone could move Him to create us, and give us the means of happiness. The same principle that moved His creating moves His governing power. The rule of His government we shall find to be reduced to this one paternal command: let man pursue his own perfection and happiness. What an enrapturing view of the moral government of the universe! Over all, goodness infinite reigns, guided by unerring wisdom and supported by Almighty power. * * * What is the efficient cause of moral obligation—of the eminent distinction between right and wrong? * * * I give it (the question) this answer, the will of God. This is the Supreme Law. * * *"

In compassion to the imperfection of our internal powers our all-gracious Creator, Preserver and Ruler has been pleased to discover and enforce his laws by

a revelation given to us immediately and directly from himself. This revelation is contained in Holy Scriptures. The moral precepts delivered in the sacred oracles form a part of the law of nature, are of the same origin, and of the same obligation operating universally and perpetually. On some important subjects, those in particular which relate to the Deity, to Providence and to a future state, our natural knowledge is greatly improved, refined and exalted by that which is revealed. On these subjects one who has had the advantage of a common education in a Christian country, knows more and with more certainty than was known by the wisest of the ancient philosophers. * * * *The law of nature is universal.* For it is true, not only that all men are equally subject to the command of their Maker, but it is true also that the law of Nature having its foundation in the constitution and state of man, has an essential fitness for all mankind and binds them without distinction. * * * We may infer that the law of nature though immutable in its principles will be progressive in its *operations* and *effects*. In every period of his existence the law, which the divine wisdom has approved for man will not only be fitted to the contemporary degree but will be calculated to produce in future a still higher degree of perfection."¹⁸

As a Supreme Court Justice it was to be expected that one with such a philosophy would see the constitutional limitations of American government not as ends in themselves, but as a means merely for the preservation of man's natural God-given integrity. Questions involving "Reasonable Exercises of the Police Power" and substantive

¹⁸ Wilson, Works, Vol. V, p. 95 *et seq.*

“Due Process of Law” would carry sharp challenges to a man like James Wilson, just as his brilliant and moving lecture on the Law of Nature from which the foregoing quotations are taken, should carry a sharp challenge to every American lawyer today. Fortunately for America, Wilson’s generation was able to distinguish the hedonistic demands for human delights and comforts from the God-given right to pursue one’s “true and substantial happiness.” These are thoroughly reasonable distinctions it is true, but as Wilson acknowledged, for full clarity and consistency in these confusing cases reason needs the assistance of a firm faith in the Divine order of things. The codes of constitutions which proceeded with such orderly precision and logic from the American Revolution was but the crystallization of a creed. From Massachusetts to Georgia and from the Atlantic to the Alleghenies it was the will of God in all places that underlay the supreme law of the land. Unless one understands its vitalizing religious principles our unique form of government laboring with its separations, divisions, checks, balances, vetoes, and judicial reviews seems ever ready to collapse under the onerous weight of its own retarded processes. It is a far cry from the Stamp Act to the Schecter case and it is understandable that the Founding Fathers are having increasing difficulty in making themselves heard today. Meanwhile, and ever more and more precariously, we continue to be the one remaining country on earth where the individual may protect his God-given rights against his own government and everybody else.

Dean Clarence E. Manion

THE NATURAL LAW AND PRAGMATISM*

IN a psychological movie, to agitated quivering strings rising to clamorous brassy crescendo, we see through the eyes of a distraught victim of psychosis the clear facade of a Grecian temple quiver, blur, and then with almost unendurable blast of trumpets and clash of cymbals turn into Gothic cathedral, stream-lined office building, or hovel. Suddenly we see reality.

So it is that many times in the history of civilization crowds casually, inattentively passing by the temple of a great institution or thankfully sheltered within, have been unaware of subtle changes in the institution or the erosion of slow but sure-footed time. Each intent on his own busy traffic of the streets or his personal problems at the shrine of his devotion, has failed to note any of those hairline cracks in foundation or in pillar that are individually impotent but collectively disastrous. No Samson has dramatically braced himself between the pillars and in flagrant warning bellowed forth his intention of destruction. At once the building, to casual eye imperishable, collapses into ruin. Or, more likely, as in a psychotic dream or fevered vision, the beholder, as with eyes new-opened, suddenly realizes that this which he had supposed to be a temple for the unified worship of a single god had gradually become, years ago, an arena of bloody conflict.

This, of course, is but another way of referring to the

familiar time lag in social institutions and ideological structures. More specifically it refers to those subtle, generally unperceived-at-the-time changes in individual thought and emotion which collectively and in retrospect visibly result in a revolutionary change in the dominant philosophy of a people or an age. It is renaissance, reformation, or enlightenment in which the leading actors play their parts more or less consciously, perhaps with some dim adumbration of the end result. But for the supernumerary and acted-upon masses there is no pace perceived.

Ours is the task with humility but with courage, by the grace of God to help give the people the vision without which they perish. That vision must begin with a clear-eyed appraisal and a close scrutiny of the present house of the law. We must test its foundations and scan its supporting pillars. And we must consider the effect of its environment upon the stability of the structure and upon the people seeking shelter within its walls. We must consider the law in its relations to all the thought and feeling of the time.

For isolationism in thought is, of course, impossible. And whether the law be product of reason or emotion or of both in infinitely varying proportions, the pretensions of Austinian jurisprudence to be self-sufficient could not stand in the face of the development of the social sciences in the last one hundred years. And so we go back a century.

Absolute truth existing and approachable by human reason, if not always unerringly attainable, natural law as

the measure of positive law, unalienable rights; these represented the philosophic teaching of American universities and colleges until well into the nineteenth century. These were the convictions of the Founding Fathers. So it was that Hamilton, with the perennial exuberant confidence of youth, wrote that "the sacred rights of mankind . . . written in the whole volume of human nature by the hand of Divinity itself . . . can never be erased or obscured by mortal power." But let us trace the obscurement if not the erasure.

Let us turn to the second administration of Andrew Jackson, the embodiment of the American frontier and see whether a change had not become apparent. For in 1835 de Tocqueville opened the second part of his *Democracy in America* with the words: "I think that in no country in the civilized world is less attention paid to philosophy than in the United States. The Americans have no philosophical school of their own, and they care but little for all the schools into which Europe is divided, the very names of which are scarcely known to them."

Perhaps we may go beyond de Tocqueville's 1835 and take 1859 as the year of beginning. For that year saw the publication of Darwin's *Origin of Species* and saw but did not perceive the birth in far-away Vermont of John Dewey. Of Darwin we shall speak later. Of Dewey today we find such statements as these: "Dewey is the spokesman of our age." (James Harvey Robinson) "He is the most influential thinker of the past three generations." (Sidney Ratner) "He is the most profound and understanding thinker on education that the world has

yet known." (Ernest C. Moore) "In the profoundest sense Dewey is the philosopher of America." (Herbert W. Schneider) "John Dewey is the dominant figure in American philosophy today. A host of disciples look upon him as the great intellectual liberator of our times. . . . It is largely as a result of his analysis that the greater part of traditional philosophy is finally revealed as an elaborate art of self-deception—a quest for an illusory goal."

And finally, to make an end of it, we quote Sidney Hook who begins his book in honor of Dewey: "The philosophy of John Dewey represents a distinctive contribution to the thought of the modern age. He has carried to completion a movement of ideas which marks the final break with the ancient and medieval outlook upon the world. In his doctrine the experimental temper comes to self-consciousness. A new way of life is proposed to realize the promise of our vast material culture. Organized intelligence is to take the place of myth and dogma in improving the common lot and enriching individual experience."

But before we consider the sweep of Dewey's influence and that of pragmatism let us recall the familiar story of the origin and chief points of development of that school of thought. Then we shall attempt to sketch the reasons for its wide reception and profound influence.

The particular philosophy, taught or dominant in school or college among any people at any time, is of course of primary importance. And even the thought of a contemporaneously unknown or long-forgotten scholar,

if seminally potent can be overlooked or ignored only at peril to the common good. For it may germinate and capture the minds of dominant philosophers in the schools. From thence it may sally forth in the hands of philosophers amateur and professional, enthusiastic popularizers and preachers, ecclesiastical and lay, to become the dominant philosophy of a dominant democratic majority in a vast continental democracy of 140,000,000 souls dominating or semi-dominating the modern world.

In 1878 Charles S. Peirce published in *Popular Science Monthly* his then generally unnoticed but now famous article entitled *How to Make Our Ideas Clear*. As a laboratory scientist his purpose was—to use his words—to apply “the fruitful methods of science” to “the barren field of metaphysics.” The a priori method for fixing belief makes a thing true when it is agreeable to reason. But this sort of truth, said Peirce, varies between persons. For what is agreeable to reason is more or less a matter of taste. Parenthetically we may note here what we shall later have occasion to suggest, namely the pragmatist distrust of metaphysics and its generally anti-intellectualist or anti-rational spirit. The method of science, said Peirce, avoids the variance of individual opinion. The heart of his doctrine is in these words: “The action of thought is excited by the irritation of a doubt and ceases when belief is attained; so that the production of belief is the sole function of thought. . . . To develop a meaning we have simply to determine what habit it produces. . . . We come down to what is tangible and practical as the root of every distinction of thought . . . and there is no distinction so

fine as to consist of anything but a possible difference in practice.”

Peirce's doctrine slumbered for twenty years. And then in 1898 came forth its great apostle and champion William James. It was he, of course, who was to elaborate the doctrine into a full-blown theory of truth and give it wide currency by an emotional drive and an ingratiatingly popular style. The drive and style were suggestive of the manner in which Justice Holmes was to win converts to the same cause in the field of law. In 1904 in the first volume of the *Journal of Philosophy, Psychology and Scientific Methods* James said: "Suppose that there are two different philosophical definitions, or propositions, or maxims, or what not, which seem to contradict each other and about which men dispute. If, by assuming the truth of the one, you can foresee no practical consequence, at any time or place, which is different from what you would foresee if you assumed the truth of the other, why then the difference between the two propositions is no real difference—it is only a specious and verbal difference, unworthy of future contention. . . . There can be no difference which does not *make* a difference—no difference in the abstract truth which does not express itself in a difference of concrete fact, and of conduct consequent upon that fact, imposed upon somebody, somehow, somewhere and somewhen.”

In 1907 in his Lowell lectures, referring approvingly to Dewey and to Schiller, James used the now familiar words: that truth “means nothing but this, that ideas (which themselves are but parts of our experience) be-

come true just insofar as they help us to get into satisfactory relation with other parts of our experience. . . . Any idea upon which we can ride, so to speak; any idea that will carry us prosperously from one part of our experience to another part, linking things satisfactorily, working securely, simplifying, saving labor, is true for just so much, true insofar forth, true *instrumentally*. This is the 'instrumental' view of truth . . . the view that truth in our ideas means their power to 'work'. . . . True ideas are those that we can assimilate, validate, corroborate, and verify. False ideas are those that we can not. . . . This function of agreeable leading is what we mean by an idea's verification. You can say of (a truth) either that 'it is useful because it is true', or that 'it is true because it is useful'. Both these phrases mean exactly the same thing, namely that here is an idea that gets fulfilled and can be verified. True is the name for whatever starts the verification process, useful is the name for its completed function in experience. . . . The true, to put it very briefly, is only the expedient in the way of our thinking, just as 'the right' is only the expedient in the way of our behaving. Expedient in almost any fashion; and expedient in the long run and on the whole of course."

John Dewey was the great expositor of pragmatism in America. His writings and those of others of the school are so voluminous, sometimes contradictory and ambiguous, and there are so many brands of pragmatism that it is impossible here to do more than state briefly and without qualification its main characteristics.

There is no absolute truth, no necessary truth. Truth

is not transcendent or eternal but only hypothetical and ambulatory. "There is no general truth except postulated truth resulting from some motivated determination of the will." More accurately speaking, there is no truth but only successive truths, accepted tentatively and provisionally if they give promise of workability at a given time, for a given purpose and in a given environment. They are true so long as they work and no longer. They are constantly put to the test of experience and discarded as false as soon as they cease to work, that is to give satisfaction. Furthermore all truths are empirical; they are made by men and they are products of the will. As James said: "The willing department of our nature . . . dominates both the conceiving department and the feeling department." Truths are instruments used by men to adapt themselves to their environment and to change their environment. And so too logic is identified with functional psychology. Thought is valid if it serves the needs of the organism, satisfactorily controls conduct. It is mere illusion or verbiage to say that thought apart from function may possess intrinsic or formal validity. Formal logic is a farce.

The effect of willing on knowing, the subjectivism involved in "satisfactoriness" as the test of truth, the use of logic as a flexible tool for the achievement of purpose, the succession of variable hypothetical truths, were allied to a general contempt for metaphysics, a distrust of principles in favor of concrete facts, and a marked anti-intellectualism—distrust of reason.

One of the purposes of James in proposing pragma-

tism was to clear the decks of metaphysical problems and though Dewey in recent years may have shown some turn towards metaphysics, he has often expressed his scorn for "general answers supposed to have a universal meaning" such as "dissertations on the Family and dissertations on the sacredness of individual personality." These, he says, "do not assist inquiry. They close it." So, pragmatists in general have ignored or scorned metaphysics. It is true that we must be on guard against being content with unscrutinized abstractions as giving finality of truth or knowledge. But we cannot overlook the fact that for pragmatists generally the phrases "sterile metaphysics", "barren abstractions", "empty verbalisms" and "pernicious abstractions" have become clichés. These are catchwords for them, as R. L. S. would say, to "rap out upon you like an oath and by way of argument." They are to knock you down with a single blow if you are so "naive"—to use their favorite word—as to refer to a generalization or principle. For them these are too often irrelevancies or rationalizations unworthy of the intellectually sophisticated adult.

James inveighed against what he called "perverse abstraction-worship", that absolutism which he said had a certain "sweep and dash about it", but was "remote and vacuous", possessed of "that unreality in all rationalistic systems by which your serious believer in facts is apt to be repelled." "The world to which your philosophy professor introduces you," he said, "is simple, clean, and noble. . . . Its architecture is classic. Principles of reason trace its outlines, logical necessities cement its parts. . . . In

point of fact it is far less an account of this actual world than a clear addition built upon it, a classic sanctuary in which the rationalist fancy may take refuge from the intolerably confused and gothic character which mere facts present. It is no explanation of our concrete universe, it is another thing altogether, a substitute for it, a remedy, a way of escape." So typically pragmatic is the Holmesian phrase of Walter Hamilton: "To my untutored mind philosophy is an omnipresence dwelling with the absolute in the upper stratosphere, eternally occupied with frigid certainty."

Here are further familiar words of James: "A pragmatist turns his back resolutely and once for all upon a lot of inveterate habits dear to professional philosophers. He turns away from abstraction and insufficiency, from verbal solutions, from bad a priori reasons, from fixed principles, closed systems, and pretended absolutes and origins. He turns towards concreteness and adequacy, towards facts, towards action and towards power. . . . It means the open air and possibilities of nature, as against dogma, artificiality and pretense of finality in truth. . . . It agrees with nominalism for instance in always appealing to particulars; with utilitarianism in emphasizing practical results; with positivism in its disdain for verbal solutions, useless questions and metaphysical abstractions."

As Peirce said that what is agreeable to reason is more or less a matter of taste, so James, approaching his famous classification of men into the tender minded and the tough, said that the philosopher's "temperament really gives him a stronger bias than any of his more strictly ob-

jective premises. It loads the evidence for him one way or the other, making for a more sentimental or a more hard-hearted view of the universe, just as this fact or that principle would." In words echoed by Holmes and the legal realists he concludes "the potentist of all our premises is never mentioned." And elsewhere he declared that the history of philosophy largely bears out the saying of an eighteenth century philosopher that reason was given to men chiefly "to enable them to find reasons for what they want to think and do." On this premise Dewey goes on to refer to "that dishonesty, that insincerity characteristic of philosophic discussion." Salutary as warnings may be against concealed prejudice, unconscious bias, emotions or subconscious forces deflecting the needle of truth from its objective goal, surely here is pragmatist attack on reason, distrust of intellectual processes, skepticism of arriving at truth. And it reminds one of the old phrase of Cardinal Newman's about poisoning the wells of controversy.

Difficult as it is to classify the philosophy of a people, hazardous the generalization, one need not be an idolator of Dewey to say that pragmatism during the last half century has come to represent or express dominant American thought. If we may say with de Tocqueville that Americans have no philosophical school of their own we may also agree with him that "it is easy to perceive that almost all the inhabitants of the United States conduct their understanding in the same manner, and govern it by the same rules; that is to say, without ever having taken the trouble to define the rules, they have a philosophical

method common to the whole people." Certainly a common method governs economic and political life, literature, the arts and sciences and secular education in America today. Whether as method, point of view, theory of truth or reality, pragmatism is everywhere. The causes for its ready and wide acceptance are not far to seek. For it was advanced at an opportune time in a favoring environment. Its seeds fell on a congenial soil well plowed and fertilized for their reception.

Reformation, Enlightenment, Cartesianism, positivism, capitalism, the type of European so-called liberalism condemned in the *Syllabus of Errors*, the secularization of modern life and the dominance of the bourgeois mind with its materialism; all these were background and setting for Darwin's evolutionary hypothesis with its revolutionary ramifications in every field of thought and for the dramatic triumphs of the physical sciences during the last one hundred years.

Evolutionary theories, widely popularized, shook the faith of many in revealed truth who had accepted the book of Genesis as a scientific textbook and therefore inclined or led them to skepticism of all absolute truth. Studies of the evolution of ideas and of changes in concepts of truth led to the belief that all truth is transitory. Later the laws of nature were regarded as themselves the product of evolution and hence limited rather than absolute. Thought and therefore truth were regarded as instrumental to adaptation of the organism to its environment and the product of the will as weapons in the struggle for existence. Philosophy was not a purely objective

intellectual product; it was the product of changing folk-ways and the thinker's changing environment. So for Savigny legal principles lacked temporal stability; they changed to give expression to the changing life of the people and the silent pressure of their desires. Institutions evolved; truth evolved. That which was true yesterday might not be true tomorrow. And through it all was a growing distrust of man's reason because of his supposed kinship to the ape. And allied to this was the cult of progress.

The cult of progress appealed to the optimism and the self-confidence of Americans and to those who sought escape from a rigid fatalistic determinism that was purely materialistic. These found in evolution, especially interpreted by John Fiske as leading from the animal to the spiritual, as Henry Adams said, "a safe, conservative, practical, thoroughly common-law deity." And the struggle for existence was admirably adapted to the individualistic laissez-faire capitalism of the last half of the nineteenth century.

But the great idol of the age was modern, predominant-ly materialistic science. Its achievements penetrated every nook and cranny of every man's life, bringing him increased comfort and convenience and release from irksome toil, astonishing him with the coruscating miracles of steam, electricity, the physical and chemical sciences and the visible triumphs of modern engineering skills. He was master of his environment, lord of creation. And the secret of the genie lay in scientific methods: induction, the piling of sensible fact upon fact, the test of thought

by action, practice so startling that it obscured the theory upon which its success was based, the use of successive hypotheses as instruments of scientific progress. This last was a powerful factor in leading men to look upon all truth as tentative and provisional, promptly to be scrapped and replaced by a newer model the moment its practical usefulness was doubted.

Leaders of the newer social sciences looking with envious eyes at the achievements of the physical sciences and hearing the plaudits of the multitudes decided that they would go and do likewise. They concentrated on facts, distrusted theories and abstractions and the a priori; above all they determined to be rigidly objective and therefore to exclude all ethical, moral, and supernatural considerations from their studies. The quantitative approach, in later days the statistical, was favored at the expense of the qualitative. The latter was suspected as too subjective and subject unduly to the personal bias of the investigator. It was believed that somehow understanding and wisdom would emerge if you persevered long enough in laboriously accumulating and classifying vast quantities of carefully verified facts, though classification was sometimes suspect since it might involve those despised or feared things called categories.

So let us scan the social sciences.

Colonial colleges from the founding of Harvard to the revolution were dominated by religious and ethical influences. From the revolution to the civil war courses in moral philosophy were common and required. Paley, author of the most popular text during most of that peri-

od, said "Moral philosophy, morality, Ethics, Casuistry, Natural Law, mean all the same thing: namely, that science which teaches men their duty and the reasons of it." And "political philosophy is, properly speaking, a continuation of moral philosophy; or rather, indeed, a part of it."

The purpose of courses in political theory was ethical and moral philosophy included ethics, politics and economics. Burlamaqui and Vattel were the basis of lectures on the law of nature and of nations. Just before the civil war Francis Lieber's works appeared, the first American treatises on political science. His object was to show how principles of ethics are applied to politics. By 1865, however, old-time texts in moral philosophy had been generally discarded. The newer texts struck an ethical note but it was rather from the standpoint of the individual. One writer indicated a new trend as early as 1841 when he wrote: "Questions as to the best organization and the best form of society . . . are not so much questions of duty as of art. They are the object of the two sciences of politics and political economy, which are quite distinct from ethics." Between 1865 and 1900 political science emerged as a separate discipline. The beginning of the "secular upheaval" may be assigned to 1869 when Charles W. Eliot became president of Harvard. In the latter half of the century moral philosophy became individual ethics. During that period interest in politics shifted from courses in moral philosophy and from classical courses which had not yet become narrowly linguistic to history, particularly courses in constitutional

history. By the late eighties, however, interest in that subject had definitely failed. The shift was now to political, economic and social history. Men were beginning to concentrate on descriptive studies of practical politics, elections, political corruption, administration, and local government, and this was being carried on in separate departments of political science. By the beginning of the century courses in political science were being given to large numbers of college and university students because of increased enrollment and because the subject had been opened to the students down to the freshman year. There was little interest at this time in political theory; courses concentrated on "actual government." As in other social sciences aping the physical sciences the method of approach was empirical, secular, descriptive, analytical; ethics and philosophy were avoided as presumably subjective and "unscientific."

So in 1927 we find a leading political scientist insisting that "it is no more the function of the political scientist to evaluate the good or bad consequences of particular techniques than it is the function of the chemist, qua chemist, to pass ethical judgments upon the use which other men make of chemical knowledge and skill." And in the same year the president of the American Political Science Association in his presidential address said: "Political science, to become a science, should first of all obtain a divorce from the philosophers, the lawyers and the psychologists with whom it has long been in the status of a polygamous companionate marriage to the detriment of its own quest for truth. . . . Our immediate goal, there-

fore, should be to release political science from the old metaphysical and juristic concepts upon which it has traditionally been based. . . . It is to the natural sciences that we may most profitably turn, in this hour of transition, for suggestions as to our postulates and methods. Political science should borrow by analogy from the new physics a determination to get rid of intellectual insincerities concerning the nature of sovereignty, the general will, natural rights, and the freedom of the individual, the consent of the governed, majority rule, home rule, the rule of public opinion, state rights, laissez-faire, checks and balances, the equality of men and nations, and a government of laws not men.”

And today, though not without some challenge, we find such statements as these by leading political scientists: “It is not the function of the scientist to judge between ‘good’ and ‘evil’ in his research operations. It is not up to him to say that political corruption is either good or bad.” And “It is certainly not appropriate in the classroom, particularly at the college level, to discuss political ideologies in terms of ‘better or worse.’” In political science as in other social sciences there are many relativists who contend that there is no scientific method of determining the superiority of one end over another. As Arnold Brecht has put it: “There is according to relativism no scientific method by which to state, in non-relative terms, whether man has a specific dignity that ought always to be respected . . . whether there is a greater value in peace or in war, in charity or selfishness, in the liberation of slaves or the enslavement of the free, in the goals of de-

mocracy or fascism. Most relativists have insisted that value judgments are statements not of what is but what ought to be, and that it is not possible logically to derive a statement of what ought to be from a statement of what is. Some have gone so far as to say that sentences dealing with what ought to be are no statements at all, but merely express emotional preferences, sentiments regarding one's own behavior, or the like."

The shift from ethical or moral emphasis to positivistic description and the development of political science as a separate discipline was paralleled in the field of economics. It too was originally a part of moral philosophy, but by 1825 many colleges were giving courses in "political economy." Towards the end of the century less and less attention was paid to problems of government and much more to problems of private business and later departments of economics were developing into Schools of Business Administration. Though a relation was recognized between economics and political science, psychology and history, there was little to philosophy and none to ethics. For thought was concentrated on the standardized, mythical economic man whose sole motivation was the pursuit of profit in complete isolation from obligation to others or to society at large and without regard to conscience or moral principle. And so far as national economy was concerned the sole problem was how to strengthen the state for its own selfish purposes of imperialism or of power. For the economist like the "scientific" political scientist placed no limits of morality or of natural or higher law upon the sovereign state. And the teacher of economics

like the political scientist used the descriptive method; he excluded any standard but profit or material prosperity; effected by the evolutionary hypothesis and by changes in institutions and in economic practices revealed by the historian he often doubted the existence of any economic laws that were more than tentative assertions of the probable. As Harold G. Moulton of the Brookings Institute puts it: "A phrase—the relativity of economic thought—has been developed to indicate the necessity of an evolutionary body of economic thought paralleling evolutionary changes in the economic system."

Evolutionary theory, particularly the struggle for existence, dominated the thought of teachers of economics generally in the United States during the exploitive period of business expansion that followed the civil war. It was especially congenial to the individualistic entrepreneur. John D. Rockefeller in a Sunday-school address said: "The growth of a large business is merely the survival of the fittest. . . . The American Beauty rose can be produced in the splendor and fragrance which bring cheer to its beholder only by sacrificing the early buds which grow up around it. This is not an evil tendency in business. It is merely the working out of a law of nature and a law of God." Rockefeller was merely expressing a generally-held opinion widely popularized through the immense sales of Herbert Spencer's books which reached their greatest influence about the early eighties. William Graham Sumner with a "wider following than any other teacher in Yale's history," provided his age with a "synthesis of the protestant ethic," of success as the reward of

virtue, the laissez-faire doctrines of classical economics, and a combination of Ricardian principles of inevitability with evolutionary scientific determinism. Rights, according to Sumner were simply evolving folkways, not representative of absolute antecedent principles but merely currently adopted rules of the competitive game.

The close relation between Darwinism and pragmatism was paralleled among economists. It was one of their leaders, Thomas Nixon Carver, who preached the doctrine, in a book *The Religion Worth Having*, that "the naturally selected are the chosen of God," and that the best religion is that which "acts most powerfully as a spur to energy and directs that energy most productively."

It was not strange that sociology, deriving its name and the inspiration for its separate discipline from the founder of positivism should, under Spencer's leadership, consider society in evolutionary biological terms. If the life of society, progress upward and onward, did not depend upon the ruthless struggle of individuals subject only to the jungle law of nature red in tooth and claw, it was the struggle of groups: biological, round-headed, long-headed, supposedly racial. And later, sociology like all the social sciences was profoundly influenced by the development of modern psychology, particularly crowd psychology. But before we come to that let us briefly consider history and anthropology.

In 1834 the first volume of German-trained George Bancroft's *History of the United States* with its prefatory emphasis upon indefatigable research, reliance upon primary sources alone, skeptical insistence upon authenticity,

foreshadowed the era of later nineteenth century American history. In that period, under the influence of German scholarship and imported seminar methods, the panoramic literary histories of Prescott, Motley and Parkman were replaced by a constantly increasing flood of highly specialized, monographic studies where generalizations were scrupulously avoided in preference for detailed specific facts. Anything savoring of a philosophy of history was anathema, and in the interest of objective scientific truth thought and expression were carefully immunized against any contamination by ethical or moral judgments. There were no such things as laws of history, synthesis was rare and even the emotional appeal of a literary style was viewed with suspicion as indicating subjectivity or bias. Aridity proved validity. Cultural histories stressed the constant change in institutions and in concepts. Economic determinism reenforced by the spread of Marxism emphasized the non-rational, self-interest class struggle aspects of the human story. It is not without significance, as Eliot has pointed out, that Beard in his *Economic Interpretation of the Constitution of the United States* quoted Pascal: "The will, the imagination, the disorders of the body, the thousand concealed infirmities of the intelligence conspire to reduce our discovery of justice and truth to a process of haphazard in which we more often miss than hit the mark." So Bryce wrote: "As regards large parts of every public that may be said which the old statesman said to his son in Disraeli's *Contarini Fleming*, 'Few ideas are correct ones, and what are correct no one can ascertain'."

As to anthropology, the study of man as a social being was inevitably revolutionized by the evolutionary hypothesis. The theory that man evolved from the anthropoid ape emphasized his kinship with the animal world from which he had been separated ever since the days of Aristotle as a uniquely rational being. It gave great impetus to the study of animals in both their individual and associated activities: how insects, birds, and mammals build shelters, store food; ants cultivate fungi; apes use sticks and stones as tools; division of labor, property rights asserted by individuals and by animal societies; mutual aid as a factor in evolution; primitive cultures; changes in environment as changing customs and beliefs; ethical systems and religions as products of their age and as developments of primitive myths, superstitions and customs, tribal rituals, fetishes, tabus, animism. Here were flux, interminable change, absence of eternal verities and enduring standards, individual animal instincts and desires and the will of the tribe institutionalized and rationalized. But with the mask snatched off by the "scientific" anthropologist man individually and collectively was inescapably neanderthal or pitted, indeed brother to the ox.

We cannot linger on psychology which became increasingly biological, experimental, materialistic, functional, non-philosophical, behavioristic, Freudian, anti-intellectualist. Just as Darwinism lent itself admirably to facile picturesque popularization, so the new psychology was widely publicized to the masses who soon glibly attributed the conduct of man whether prize-fighter or supreme

court justice, not to principles or reason, but to external stimuli, visceral reactions, complexes, suppressed desires, long-forgotten infantile frustrations. Social psychology, although coming into recognition as a distinct social science in the last decade of the nineteenth century had its roots as far back as Protagoras with his insistence upon public opinion rather than natural law as determining what men consider right. Bagehot's *Physics and Politics* anticipated Tarde, Le Bon and at the turn of the century, E. A. Ross. More and more individual thought was regarded as the product of stimuli arising from social or collective situations; from the pressure of mob emotion, of changing and irrational mass opinions. Graham Wallas's *Human Nature in Politics*, published in 1908 had wide influence with his warning: "Away with the intellectualist fallacy; politics is only in a slight degree the product of conscious reason; it is largely a matter of subconscious processes of habit and instinct, suggestion and imitation. . . . Man, like other animals, lives in an unending stream of sense impressions."

James Harvey Robinson's *The Mind in the Making* appeared in 1921 and had a wide popular appeal. Who can calculate the effects of such statements as these made with all the eclat of modern scientific truth: "Our convictions on important matters are not the result of knowledge or of critical thought. . . . They are whisperings of 'the voice of the herd.' . . . No . . . mind, exempt from bodily processes, animal impulses, savage traditions, infantile impressions, conventional reactions, and traditional knowledge ever existed. . . . The progress of mankind

in the scientific knowledge and regulation of human affairs has remained almost stationary for over two thousand years. . . . And how, indeed, as descendants of an extinct race of primates, with a mind still in the early stages of accumulation, should we be in the way of reaching ultimate truth at any point? . . . I am inclined to rate metaphysics, like smoking, as a highly gratifying indulgence to those who like it, and, as indulgences go, relatively innocent. . . . Plato ascribed the highest form of existence to ideals and abstractions. This was a new and sophisticated republication of savage animism. . . . The modern 'principle' is too often only a new form of the ancient taboo. . . . The reliance on authority is a fundamental primitive trait. . . . We are still animals with not only an animal body, but an animal mind. The sharp distinction between the mind and the body is . . . a very ancient and spontaneous uncritical savage prepossession. . . . Language is not primarily a vehicle of ideas and information, but an emotional outlet, corresponding to various cooings, growlings, snarls, crowings, and brayings."

But perhaps the greatest breach in the wall of human faith in reason was made by the widespread promulgation by Robinson and others of the doctrine of rationalization, derived according to Dewey from the abnormal psychology of the insane. Here as in other instances a valid caution was carried to exaggeration inconsistent with truth. Said Robinson: "Most of our so-called reasoning consists in finding arguments for going on believing as we already do. . . . The 'real' reasons for our beliefs are concealed from ourselves as well as from others. . . .

We unconsciously absorb them from our environment. . . . Our 'good' reasons are at bottom the result of personal preference or prejudice. Rationalizing is the self-exculpation which occurs when we feel ourselves or our group accused of misapprehension or error. And now the astonishing and perturbing suspicion emerges that perhaps almost all that has passed for social science, political economy, politics and ethics in the past may be brushed aside by future generations as mainly rationalizing. John Dewey has already reached this conclusion as to philosophy. So the social sciences have continued even to our own day to be rationalizations of uncritically accepted beliefs and customs." Falling in the backwash of cynicism that followed World War I, contributing to and coinciding with a wave of debunking biographies and an era of critical realism, often utter and gutter, in literature and the arts and on the stage, a revolt against standards and a reversion to the unintelligible, animalistic yawp of the primitive and the jungle; this too furthered the attack on reason.

The philosophy of the schools was also influenced by modern psychology, anthropology, history, particularly cultural history, comparative political science and comparative ethics. Without depreciating the hard thinking and sincerity of teachers of secular philosophy in general, I content myself with adopting the phrase that philosophy courses are often a species of kaleidoscopic entertainment leading only to confusion. Indeed in one great American university the announced purpose of a textbook in modern philosophy was to leave the reader or student

in a state of profound confusion. As Father G. Stuart Hogan has said: "In modern secular education, philosophy, if taught at all, assumes the form of an exposition or history of the various systems of philosophic thought, ancient and modern, rather than a scientific attempt to determine philosophic truth, or to establish a true philosophic-religious system of thought. In most of our secular institutions of higher learning philosophy has become a rather unimportant elective subject. To many college graduates, or even college professors . . . at most . . . it is a study of man's opinions and conflicting views (most of which are not worth the paper they are written on)."

Turning from philosophy to legal education we find that down to the end of the civil war courses in departments or schools of law generally had the Blackstonian ideal of educating the gentleman rather than giving specifically vocational training for the lawyer. But with the increasing flood of judicial decisions there was a shift from lectures on the law of nature and of nations and philosophically jurisprudential subjects to technical analytical studies of specifically American law. Ideas of specialization, of concentrating on facts with scientific objectivity as in the social sciences to the avoidance of the philosophical and the ethical came to dominate legal education in America. The great turning point was, of course, the institution of the case system by Langdell at Harvard in 1870. It was based on the assumption that the law could be taught inductively. For a long period in American law schools it was used without any reference to philosophy, administered to students often without

philosophical training or education in general ideas, dominated by the conceptions of a mechanistic Austinian jurisprudence according to which positive law was a self-sufficient science having no relation to the social sciences, utterly divorced from ethics and from natural law. The problem for many years was merely to find out what the law was; sole concern was with the "is," none, at least systematically, with the "ought." The curriculum and spirit of legal education were intensely practical; teacher and student concentrated, as James would say, on the "cash value" of ideas, not on theories or abstractions. Courses of no immediate use to the private practitioner such as legal history, comparative law, Roman or civil law and legal philosophy generally disappeared, or here and there anemically survived as electives—relegated to the cellar or the closet along with legal ethics. And that subject generally consisted merely of a hasty deferential bow to Sharswood or bar association canons of ethics that were courtesies of the trade rather than principles with any solid philosophical or reasoned ethical basis.

Thus the whole sweep of thought in political science, economics, sociology, anthropology, history, psychology, philosophy, and in legal education during the last hundred years was in the direction of relativism, positivism, empiricism, concentration on concrete measurable facts and the analysis of narrowly circumscribed situations by specialists using their own highly specialized techniques. The emphasis was on change rather than stability, on the temporal and immediate rather than the eternal, on the natural to the exclusion of the supernatural. There was

distrust of synthesis and of metaphysics, disregard of ontology, suspicion of philosophy.

To the relativity of the social sciences was added a confusion resulting from profound changes in the physical sciences during the latter part of the last one hundred years. These changes were particularly disturbing to those who had turned from religion to dogmatic materialistic science as their god or had hoped that an integrated philosophy would emerge from facts produced by the inductive sciences as soon as there were facts enough. It was seen that the physical sciences had their own basic assumptions, previously unchallenged. The solid matter of Newtonian physics was replaced by something wave-like. "Fixed measures, constant rules became ambiguous. Bodies could be of two sizes at the same time, straight lines contemporaneously crooked." It was discovered that "the assumptions of classical physics were not universal necessities of nature, but only somewhat parochial principles of analysis suitable for handling a limited type of material." Causality was doubted. Whitehead said: "The stable foundations of physics have broken up. . . . The old foundations of scientific thought are becoming unintelligible. Time, space, matter, material, ether, function, electricity, mechanism, organism, configuration, structure, pattern, all require reinterpretation." There was reason for Dewey saying: "If reality itself be in transition . . . this doctrine originated not with the objectionable pragmatist, but with the physicist and naturalist and moral historian."

Thus it is certain that the whole climate of opinion,

both educational and popular, was favorable to the seeds of pragmatism.

We recognize, of course, that the roots of pragmatism go back to the Sophists. We recognize the fact that the temper of thought in the United States was akin to that which dominated European thought during the last century and that pragmatism is not an exclusively American invention flowering only on American soil. Nevertheless pragmatism made a particularly strong appeal to the American mind. As de Tocqueville said: "To evade the bondage of system and habit, of family-maxims, class opinions, and, in some degree, of national prejudices; to accept tradition only as a means of information, and existing facts only as a lesson to be used in doing otherwise and doing better; to seek the reason of things for one's self, and in one's self alone; to tend to results without being bound to means, and to aim at the substance through the form;—such are the principal characteristics of what I shall call the philosophical methods of the Americans."

Pragmatism was practical. So was the American. Like the frontiersman and the man of business it tended to scorn theory; there was condemnation in the word "theoretical." Both glorified action at the expense of reflection; efficiency was their god. Both emphasized short-term visible, tangible results rather than long-term eventualities, distrusted the abstract, preferred concrete and definite facts that could be weighed, measured, counted, and banked; looked to the future rather than

the past. As de Tocqueville noted in his diary: "There is no country in the world where man more confidently seizes the future." Or as Bliss Perry put it: "Here in America everything was to do; we were forced to conjugate our verbs in the future tense." So too the logic of both looked to consequences rather than to premises. They were of the "restless temper" that the Frenchman also noted. "The American," he said, "has no time to tie himself to anything; he grows accustomed only to change, and ends by regarding it as the natural state of man. He feels the need of it, more, he loves it; for the instability, instead of meaning disaster to him seems to give birth only to miracles about him." Both pragmatism and the American were *ex tempore*, particularly valued the expedient, were generally inclined to regard differences of principle as merely verbal and of no great consequence unless something momentous was visibly at stake, distrustful of what they called dogma. Both pragmatism and the American were individualistic, anti-authoritarian, proud of the right of private judgment, equalitarian in that one man's opinion was as good as another's. Both were materialistic, prided themselves on what they called their tough, hard realism but nevertheless were sentimental and often idealistic—provided that the ideals were sufficiently vague.

Rousseau and romanticism are seen in both. The ineradicable moral sentiments of man, vestigial remnants of transcendentalism, secularized protestantism and humanitarian impulses derived from the Christian ethic and impelling even those avowedly agnostic, skeptic or

materialist, were capitalized and canalized into the support of secular education. By concentrating on pedagogical methods and on material equipment, on means and organizations, the divisive effect of any conscious or unconscious disagreement as to the essential nature of man and the ultimate end of the educational process was avoided. As religious faith weakened and dogmatic science of the late nineteenth century was seen to be a false god, more and more earnest men and women made public education their non-sectarian, non-credal, intensely practical and tangible religion. As a leading pragmatist said, the teacher's desk became an altar. And John Dewey was the prophet of the new religion which was fused into a worship of democracy that rapidly won adherents. Ethics and truth were man-made, instruments of an anthropological humanism, expressions of the general will in which each man mystically participated. As Kallen says: "For Dewey growth is intelligence, intelligence is freedom, freedom is education, education is growth." Education plus government of a socialistic type would enable men to work together with a sense of unity and to achieve their ideals. The ideals, however, were not stated any more than the objective of the "growth" which was education. The big thing was shared experience and "this active relation between the ideal and the actual" to which Dewey gave the name "God." God, he said, is simply "the unity of all ideal ends arousing us to desire and actions."

In 1888 Dewey had written: "Democracy and the one, the ultimate ethical ideal of humanity are to my mind

synonymous. The idea of democracy, the ideas of liberty, equality, and fraternity, represent a society in which the distinction between the spiritual and the secular has ceased . . . the church and the state, the divine and the human organization of society are one." Forty-six years later he defined religious faith, not as belief in a supernatural deity nor in values transcending human life, but as "the unification of self through allegiance to inclusive ideal ends, which imagination presents to us and to which the human will responds as worthy of controlling our desires and choices." Evidently the 'inclusive ideal ends' whatever they might from time to time turn out transiently to be, were to be determined or sought for in a democratic educational system whose only philosophy—if it be a philosophy—was to be pragmatism. And the pragmatism was to be democratic in a democracy in which, according to Dewey, "the governed and the governors are not two classes, but two aspects of the same fact—the fact of the possession by society of a unified and articulate will."

Here once again is the sovereign general will of Rousseau, sentimental, anti-intellectual, making its own standards to suit the desires of the transient hour, taking expediency as its guide, restrained by no objective standards or by recognition of any higher law than force and the will to power. Certainly to the pragmatist there was to be no restraint of natural law.

And here at the last I mention natural law. But I have done this purposely. For I need not point out how difficult it would be for natural law with its basis in absolutes,

in reason, in eternal unchanging verities, to withstand the erosion of this philosophical and cultural environment. What interest could there be in scholastic natural law, in true natural law, among a generation of materialists as Carleton Hayes called the men of 1870 to 1900, men of a sensate culture as Sorokin described those of this age, among men contemptuous of tradition whose scorn of the medieval was matched only by their ignorance of the accomplishments of the medieval mind? They were repelled also from what they thought was natural law by two brands of pseudo-natural law. First, that represented by the excessively theoretical and abstract creations of the French revolutionary mind with its succession of paper constitutions echoed by the closet-spun codes of Bentham. Second, the Spencerian identification of natural law with the brute struggle for existence and individualistic, atomistic laissez-faire. Indeed it was the humanitarian revulsion at abuses of the capitalistic system run riot and proletarian protest that brought into being the progressive movement of the first part of this century. Pragmatism was a powerful weapon against the status quo and it is not without significance that so many leaders of the movement were pragmatists. More and more they called upon the state for aid; for control of economic processes, often without too much thought as to the dangers of a totalitarian trend. This was the paradox of liberalism.

Liberalism in the law had certain salutary effects which no one of sense would deny any more than he would assert that all of pragmatism was evil. But the evil effects of pragmatism and its offspring legal realism were clear:

the introduction of what to many was regarded as an unwise and unnecessary disregard of *stare decisi* and too wide a degree of judicial discretion, indeed the conversion of the judge too often into a legislator in constitutional cases. But most dangerous of all was the unsettling of the philosophical bases of the law. These evil effects I know you know because of the clear and trenchant criticisms of legal pragmatism by such scholastics as Francis Lucey, S.J., John C. Ford, S.J., William H. Kenealy, S.J., R. W. Mulligan, S.J., Msgr. William Dillon, Clarence Manion, Brendan F. Brown, the late Walter Kennedy, and Miriam Theresa Rooney. Nor shall I here discuss the profound influence of Mr. Justice Holmes because of his skillful use of his long-occupied key position on the Supreme Court, because of his intellectual power, the prestige of his name, and the felicities of a style sufficient to deceive even the elect. So also I shall not pause here to refer to some return of philosophy to the law schools, the growing discontent with pragmatic secular education, with a science that has created a Frankenstein monster which threatens to destroy us and which gives us neither assurance, nor hope, nor wisdom. But if anything is becoming clear to this confused revolutionary generation when the foundations of civilization are shaken to the depths, it is that the law like life needs an integrating philosophy that will give some objective standards, some sure footing amidst the shifting sands of crumbling secular institutions.

You and I know that the answer lies in the further invigoration and wider acceptance of scholastic natural

law; that natural law which represents the experienced reason of men of many races, tongues and cultures since far before the birth of Christ; that natural law whose achievements for fifteen centuries the Carlyles have traced, to which Coke and our revolutionary forefathers appealed, and which for the Founding Fathers was the one sure basis of constitutional liberty in America, indeed in any land at that time.

One hundred and forty million men and women, each unique and infinitely precious in the eyes of God, seek refuge in the temple of American law. They look for protection against the abuses of arbitrary power whether by individuals, ruthless minority groups, or by the clamorous majority in a vast continental democracy. If they find that the foundations of that structure have been subtly undermined so that it no longer gives them assurance of protection; if they see with newly-opened eyes that the law administered therein is merely the embodiment of arbitrary force, of command and not of reason or enduring principles of justice, they will shatter it to bits and revert to primeval chaos or insurrection organized. And that catastrophe will occur if a pragmatic philosophy dominates the law, particularly American constitutional law. For, the basic philosophy of the Constitution gone, only an empty shell of verbiage remains. That discovered, the public opinion which supports the law, the Constitution and the courts, will turn against them for their mockery of justice and seek other gods—perhaps the gods of force.

Ben W. Palmer

THE DOCTRINE OF NATURAL LAW IN PHILOSOPHY

I

THE general purpose of this essay is to discover what is common to the acceptance of natural law in all epochs of European history, despite diversity of doctrine on other related points. It seems that many agree about natural law, though they disagree about related metaphysical and theological principles. Because of such disagreement, the agreement may not go very deep; yet it is worth examining in order to determine the line which divides those who accept and those who reject natural law.

Most of the writers to be mentioned do not accept what is perhaps the most exhaustive and most analytical treatment of natural law. Many of them do not know, and those who know do not accept, St. Thomas's whole theory of law, especially in its basic presuppositions; but, nevertheless, there are certain minimum points of agreement between Aquinas and these others about natural law.

There are two general approaches to any philosophical controversy. You can ask which men uphold and which men oppose a certain conclusion; and thus you can determine the opposition of minds on the issue. But if you ask of those who stand on one side of the issue, what are their definitions and analyses, their reasons and demonstrations,

you will discover those you thought in agreement parting company.

The maximum agreement among philosophers is found when you consider only their conclusions. The maximum disagreement, or at least diversity, appears when you consider their reasoning or analysis.

Looked at in the second way, none of the great philosophers ever completely agrees with any other on natural law. Aristotle, for example, tends to disagree with St. Thomas in many details. Yet if you look only to the main point, you can place them side by side as exponents of a doctrine which can loosely be called a "doctrine of natural law."

I should like to begin, therefore, with finding the shared truth and by trying to say precisely what that shared truth is, even though it will be manifest, when the truth is analyzed and the reasons for it are examined, that the philosophers who are thus associated in agreement, do not agree throughout or deeply.

Let me list the philosophers who, it seems to me, for one reason or another, affirm natural law. They are Plato and Aristotle, St. Thomas, Locke, Rousseau, Kant, and, with a little hesitation, I would even add Hobbes and Spinoza. This is not an exhaustive list, but it is a list which includes the widest diversity of philosophical opinion. I have listed only the truly great—the capital writers. I have not bothered to name followers and commentators, of which, as in the case of St. Thomas especially, there are so many who add so little.

II

Let me begin, then, by stating what all these minds hold in common concerning natural law. Let me try thus to state the issue between them as naturalists and the positivists on the other side. I shall call a "naturalist" in law the man who thinks there is something other and more than positive law, a "positivist" the man who thinks that there is only positive law and that there are no rational grounds for the criticism of positive law.

What do all those whom I call "naturalists" agree on? What do they affirm? I must point out at once that they do not all use the words "natural law"; nor do they all have the same concept of natural law. But this they do hold in common: *the laws made by a state or government are not the only directions of conduct which apply to men living in society.*

They affirm that, in addition to such rules as each individual may make for himself, and in addition to the rules of conduct the state may lay down, there are rules or principles of conduct which are of even greater universality—applying to *all* men, not merely to *one* man, and not merely even to *one* society at a given time and place.

They affirm, furthermore, that there are rules of human conduct which no man has invented—*which are not positive in the sense of being posited!* (Subsequently, I shall try to show that the real meaning of positivism involves, as St. Thomas points out, the notion of the arbitrary, an institution of the will as opposed to something natural, discovered by the intellect.)

They agree that man's reason is endowed with the capacity of perceiving these universal laws or principles of conduct, and that, if they are recognized as being laws of reason or rational principles, these laws need no other foundation or authority than the recognition of their truth.

They agree in affirming that these principles are somehow the source of all the more particular rules of conduct, even those which individuals make for themselves or those which governments make in political societies and seek to maintain by force; and they agree that these principles constitute the standard by which all other rules are to be judged good or bad, right or wrong, just or unjust, and in terms of which constitutions and governments are similarly to be judged.

With respect to all these points, I have no hesitation in claiming unanimity on the part of the philosophers named, with the possible exception of Hobbes and Spinoza. The latter stand on the very edge of the line which divides the naturalists from the positivists; or perhaps they can be said to be in a borderline area in which the two doctrines tend to be inconsistently fused and the whole controversy thereby confused.

III

Let us now consider the different ways in which the shared conclusion about natural law is affirmed. I shall not try to make this survey exhaustive. Let us begin with the Greeks.

So far as either word or concept is concerned, there is

no doctrine of natural law in the philosophy of Plato and Aristotle. The very phrase "natural law" would be an impossible collocation of words in Greek, because the meaning of the Greek word for law connotes the conventional—the very opposite of the natural. The Greek equivalent for "natural law" is "universal" or "common" law, not "common law" in the sense of our Anglo-American tradition, but common in the sense of belonging to all particular codes of law. The Greeks perceived that each state or society of the ancient world had its own particular body of *conventions or laws*; yet there was something common to all of them.

The principles or precepts common to all, they regarded as the common or universal law. Aristotle, for example, therefore distinguished between natural and legal (or conventional) *justice*—never between natural and legal *law*.

Let me quote Aristotle. "Of political justice part is natural, part legal—natural, that which everywhere has the same force and does not exist by people's thinking this or that; legal, that which is originally indifferent, but when it has been laid down is not indifferent." If what Aristotle meant by "natural justice" were to be expressed in a set of propositions or principles, practical in character, such propositions would very closely resemble the precepts later called, in the middle ages, the principles of natural law. They might not include what Aquinas treats as the first principle of natural law, but they would probably retain many of the propositions which St. Thomas calls the secondary precepts, such as, *thou shalt not kill*,

thou shalt not steal, and thou shalt not commit adultery. These principles of natural justice, moreover, function as natural law does. Natural justice for Aristotle measures the justice of constitutions and the justice of laws—the legal justice which corresponds to the justice in positive law.

Natural justice leaves many things undetermined which must be determined by the conventions of political or civil law. These are the things which Aristotle says cease to be indifferent only after the state has enacted them into law. In Aristotle's doctrine of equity, natural or absolute justice calls for the correction of legal or conventional justice, i.e., of the written or positive law, wherein, by reason of its generality, it is unjust in the particular case. This demonstrates the relation between natural and legal *justice*, not natural and positive *law*, although, of course, there is an obvious parallel between the two.

Is there anything lacking in Aristotle's doctrine at this point? It might be said that natural justice, even if it were the equivalent of natural law, is not as extensive, because the sphere of justice is limited to man's relation to other men and to society. It does not cover those problems in human conduct which are not social. Yet, even if natural justice deals only with man's social conduct, Aristotle makes one point which suggests the first principle of natural law. It occurs where Aristotle speaks of the final end as the first principle in ethics, and makes it perfectly clear that all sound, practical thinking about the means depends on reason's perception of the end. Without any of the language or apparatus of later natural law

doctrine, this is not very dissimilar from theories which speak of the first principle of practical reason as a principle directing conduct to its ultimate end. This principle is expressed in the words "Seek the Good."¹

Let us turn next to the Stoics, and to the philosophy of Marcus Aurelius, for example. Here we have a kind of pantheism, in which an indwelling reason is nature's divinity. Throughout Stoic thought, this indwelling reason is looked upon as the principle or standard of human conduct, which is measured by its conformity to nature or, what is the same, rationality. In the context of these Stoic ideas, there arises in Roman jurisprudence a distinction, not merely between the written and the unwritten law, but between that which is right for all men everywhere because it is based on nature, and that which is right only after it has been legally instituted by particular states or governments.

I am not an etymologist and I know very little about languages, but I feel that if the translation of the word "ius" had always been "right" and not "law," and if the Latin word "lex" had always carried the same meaning as the Greek word "nomos," then much of the contro-

¹ Until men properly conceive their happiness, they have not found the first principle which determines all other moral decisions. The familiar statement of the first principle of natural law does not distinguish between the real and the apparent good. The good *unqualified* could be either or both. If one were to say "Seek the good, real or apparent," there would be no practical meaning to the proposition, because one cannot *avoid* seeking the good, real *or* apparent. What one seeks is always either the real *or* the apparent good, and a law to be truly a moral law must be one that can be violated or transgressed. Hence, the only thing which can be a direction to a free will is a proposition of this sort: Seek the *real* good and the *whole* good, not any part of it alone. That rule of action can be violated every day, and probably is.

versy about "natural law" would never have taken place. No one would have misunderstood the distinction between a *right by nature* and a *right by political institution*. It is due to the Stoics, I think, that "*ius naturale*" and "*ius civile*" later came to be spoken of, not as two kinds of right, but as two kinds of law—*natural* and *civil law*.

In consequence, we have both distinctions side by side: natural and civil or positive law; natural and positive right. This is a cause of great confusion in all subsequent thinking. In the Stoic philosophy we also find a notion which does not appear in Greek thought, namely, that everything which has a nature is governed by natural law, for in every nature there dwells rationality.

In St. Thomas, we cannot help but perceive a confluence of Greek and Stoic doctrines. I wish to call attention to a few points in St. Thomas's theory of natural law which have a bearing on the major issue. The natural law is not made by man, but discovered by him. If the principles of the natural law are self-evident, and the conclusions which can be drawn from it are strictly deducible, then the natural law can be promulgated by teaching in the same way that geometry is. The natural law is binding in conscience, not by the coercion of external force. It is broader in scope than all of positive law since it is concerned with everything that belongs to man's happiness, not merely with the welfare of the state or society, which is only a part of man's happiness.

John Locke, through the benefit of Hooker's influence upon him, writes in the tradition of Aquinas. For him, natural right is the standard for judging all civil laws and

the basis for rebelling against or disobeying those state regulations which violate natural law. Locke gives no analysis of the primary and secondary precepts of natural law. But though he may differ very radically from Aristotle and Aquinas on basic philosophical questions, Locke affirms a standard for positive law comparable to Aristotle's natural justice, and he conceives the natural law as the law of reason. Much the same kind of thing can be said about Rousseau in relation to the tradition.

On the other hand, Kant speaks a different language. He speaks of innate as opposed to acquired right, and of private as contrasted with public right, and he talks in terms of rules of conduct which belong to the pure practical reason. Yet he is fundamentally affirming what others mean by natural law, for he is here treating those principles of conduct which are discovered by reason quite apart from convention or experience—rules not made by the state, rules which are the measure of right in all the laws of the state.

If, however, we turn from Kant to Hobbes, we find that the latter flatly denies there is any justice or injustice apart from the constituted commonwealth. He denies, therefore, that there is any standard of law prior to the existence of a sovereign power. Until the sovereign makes laws, no man can say what is just and unjust. That being so, no one can say that the sovereign is just or unjust because the laws he makes are the standard of justice. This appears to be legal positivism.

Nevertheless, Hobbes affirms natural law to be the law of reason. This natural law directs men to quit the state

of nature for their good and security and to form a commonwealth. It requires them to keep the covenants they make. Yet when Hobbes talks about this law of nature, which is the law of reason, he makes the point that it is not law but counsel or advice.

IV

Omitting the borderline case of Hobbes, I have tried to show that a certain degree of agreement exists concerning natural law. I would now like to show what that agreement comes to in its most general terms.

It consists in the affirmation that there exist moral and political truths which men can discover by their reason. These truths have the status of knowledge rather than mere opinion. They are either self-evident or they can be demonstrated. In short, whether or not a writer uses the phrase "natural law," whether he has one or another theory of it, he stands against positivism if he affirms that human conduct, and moral decisions in the sphere of private or public action, can be based on knowledge of right and wrong, good and evil, or on a knowledge of what end should be sought by all men (the first principle) and what means are necessarily indispensable (the secondary precepts).

Accordingly it is easy to summarize the view taken on the other side of the issue. It consists in the denial of such practical truths or knowledge. It consists positively in saying that all moral judgments are matters of opinion, that there is nothing in human nature or reason which determines what men should seek or how to seek it. The

only resolution of political disputes is by appeal to force, the force of numbers or of arms.

One other point to be learned from our brief survey of the agreement about natural law is the cause of confusion in the discussion of natural law.

Hobbes is the man who illustrates this point best. Why does he deny that what he calls "natural law" is really law in the strict sense? The answer is, of course, that he has a definition of law which necessarily excludes "natural law." Is he wrong in this? No, I do not think he is at all wrong—certainly not *as a philosopher*.

If, for example, he were a positivist in the complete sense of the skeptic who says that there are no moral or political truths, then he would be wrong. But that he does not say. Hobbes may be wrong in his political theory. He may be wrong in his metaphysics. But he is not wrong if he thinks that *natural and civil laws are not laws in the same sense*, and if he denies that the same definition can be applied to both.

Why is this point worth mentioning? One reason is that there are two sorts of opponents of natural law: the skeptics who deny universal validity to any moral or political principle; and those who are not skeptical, who admit that there are such truths, but find a stumbling block in the use of the phrase "natural law." Many good lawyers belong to this latter group. Many of our law schools face this difficulty with natural law because they fail to recognize that the word "law" when used in the phrases "natural law" and "positive law" is being used equivocally, not univocally.

I shall devote the remainder of this address to amplifying the last point made with reference to Hobbes. I shall try to substantiate it by reference to St. Thomas's analysis of natural law. If we examine St. Thomas's discussion of the definition of law, we shall find that it applies only to positive law, and that natural law is law only in the manner of speaking.

V

Let us begin with St. Thomas's definition of law as an ordinance of reason, for the common good, promulgated by him who has charge of the community. Obviously, these words need explanation, and where St. Thomas answers objections to the parts of the definition, such explanation is given.

He says that all law proceeds from *both* the reason *and* the will of the lawgiver.

In explaining the phrase "for the common good," St. Thomas admits that two quite distinct meanings are intended—happiness or beatitude, and the good of the body politic. Both are ends, but the latter is not an end *simpliciter*. Both are common goods, but they are not *common* in the same sense.

St. Thomas also says that "without coercive power, a rule is only advice or counsel," and not law. He adds that coercive power is vested either in the whole people or in some public personage.

If you combine the note of coercion with the notion that only the whole people or their vicegerent have the authority to make laws, it immediately indicates which

meaning of the common good is involved in the definition of law, *viz.*, the political common good, the good of the community, not happiness or beatitude.

Furthermore, ask yourself these questions. Why should not any man be competent to make law? Why should not any man's ordinance of reason have the authority of law? If law is simply an ordinance of reason, one man's reason, if sound, is as good as another's; and one man's reason, if sound, is much better than the reason of the whole people, if that reason should be unsound. Why does the source of law have to be the whole community, if law is nothing but an ordinance of reason? No answer can be given to these questions, unless we remember the factor of will which enters into the definition of law as well as the factor of reason.

How does the law proceed from the will of the law-giver? The answer is that in the kind of law which is made by the whole community or its vicegerent—namely, positive law—the making of law consists in a *voluntary* choice among diverse ordinances proposed by reason. The ordinances of positive law are derivable from the principles of practical reason. They are, as St. Thomas says, determinations of, not deductions from, these principles. Each determination involves that which, prior to legal determination, was indifferent—neither naturally just nor unjust. The lawmaker, therefore, can freely choose between alternative formulations of a rule of law—the alternatives being in most cases equally just though perhaps not equally expedient.

Rules of positive law are strictly *opinion*. I am using

the word "opinion," in the strict sense, as applied to propositions to which the intellect assents only when it is moved to assent by the will. Rules of law or positive laws are, as opinion, *arbitrary*, that is, voluntarily adopted. If rules of positive law were not arbitrary, you would have no choice between this or that rule of law. If reason could prove that this particular rule was the only possible rule consistent with the principles of natural law, then there would be no need for a duly constituted legislature to give that rule the authority of law. Any competent philosopher or jurist, even though a private citizen, would have all the competence needed for the making of laws.

St. Thomas says that "a thing is called positive when it proceeds from the human will." Hence if law proceeds in any way from the human will, it is positive law; and if natural law does not proceed in any way from the human will, as it does not, then it is not law according to St. Thomas, if we take seriously his remark that law must proceed *both* from the will *and* the reason.

Natural law is law only if we look to God as its maker, because, as St. Thomas says, it proceeds from the will as well as from the reason of God. But if you consider natural law purely on the human level, whereon it is simply discovered by reason, with no aid from the will, then, being entirely a work of man's reason, natural law does not meet St. Thomas's definition of law.

The difference between natural law and positive law is tremendous. For instance, how is anything promulgated on the human level? Obviously by speech or act. Thus customs can promulgate laws because they are juridically

significant actions; but obviously customs cannot promulgate natural laws. How, then, is the natural law promulgated? Is it promulgated in the same way as the positive law?

The natural law, as St. Thomas points out in many passages, is promulgated by teaching. The man who knows the principles of natural law can teach natural law in the same way as the man who knows geometry can. He need have no more authority than any other teacher—no greater authority than he has knowledge.

How does the legislature promulgate positive law? There is nothing less like teaching than the promulgation of law by a legislature. A legislature *declares* the law. In the very best sense of the word, it makes law by *fiat*, which means that the law gets its authority from the official or public authority of its maker, not his knowledge.

How do we learn what the positive law is? If we are interested in the law of Indiana on a certain point, how do we learn it? By teaching in the sense in which the teacher is one who demonstrates conclusions from premises? Hardly. The law of Indiana can only be taught by statement and it can only be learned by memory. This is due to its arbitrary character as positive law. Thus we see how ambiguous the word “promulgation” is when applied to natural and positive law—just as ambiguous as the word “law” is.

St. Thomas says that the man who promulgates the law must be a man who has the authority to do so. The authority he here refers to is that of the community or its

vicegerent. Hence it cannot be natural law that he is talking about. Such authority is not needed to promulgate natural law. This is confirmed by St. Thomas when he says that a rule of law must have coercive force—that it must compel obedience through fear of punishment, or, failing that, through physical constraint.

St. Thomas further points out that the notion of law contains two things: first, that it is a rule of human action, and second, that it has coercive force. He goes on to say that “a private person cannot lead another to virtue efficaciously, for he can only advise and if his advice be not taken he has no coercive power such as the law should have. . . . But this coercive power is vested in the whole people or in some public personage to whom it belongs to inflict penalties.”

Does the natural law bind in conscience only or does it also bind by its coercive power, by the fear of the penalties that follow from disobedience? Hobbes argues that natural law involves natural punishment, i.e., there is a natural penalty attached to natural law. But such is not the full meaning of coercion. You are not constrained to obey the natural law. Even if you consider the matter theologically, and refer the natural law to God as its maker, it still does not exercise *coercive power to compel obedience*. Compulsion here means the exercise of force to exact obedience to the positive law. Compulsion in this sense never enforces the natural law.

VI

Let me summarize this and draw one conclusion. I

want to show you that natural and positive law cannot be given the same definition, that no definition framed in words can ever define *both* natural and positive law, *for they do not have the same essence*. The following enumeration of properties, found in positive law but absent in natural law, should make this clear.

(1) Positive law compels obedience, not merely through fear of punishment, which also operates in the case of natural law, but through actual compulsion by an exertion of external force. There is nothing like this in the sphere of natural law.

(2) Positive law is promulgated through *extrinsic* and official promulgation, and then only through dogmatic statement, not through rational proof. In the sphere of natural law, the private individual can discover the natural law for himself by rational inquiry; and he can promulgate it to others by rational instruction.

(3) The positive law involves a free choice of the will. It is the will which institutes one ordinance of reason rather than another, and this element of choice is totally absent from the natural law. As you have no choice between this and that conclusion in geometry, or between this and that axiom, so you have no choice between this or that principle or conclusion of natural law.

(4) Positive law, moreover, obliges only those who fall within the power of the community wherein it is instituted; whereas natural law binds everyone without any regard to his political associations.

(5) The rules of positive law can be repealed from time

to time while natural law is, in a strict sense, immutable.

(6) The rules of positive law can be judged to be more or less just *relative to the constitution of the community* in which they are made, whereas there is no such relativity in the case of natural law.

With respect to each of the foregoing properties, the natural law is either negative or contrary. Let me add one more question which should provide another point of differentiation. Is there any sense at all in talking about a bad, an unjust, or a wrong natural law? Obviously not. Yet we can say with very good sense, as we sometimes do, that this is a just or unjust law. Of course, we mean a rule of positive law.

These difficulties are not easily met. If one is going to carry on the discussion of natural law in our law schools, it may be necessary to do so entirely on the philosophical level, not the theological. If this is to be done, the issue between the naturalists and the positivists can be more clearly put if the naturalists admit that natural law is not law in the same sense—having the same definition and with the same properties—as positive law. To defend his position, the naturalist has only to demonstrate that positive rules are founded on rational principles, and that positive rules can be criticized only by reference to universal standards. He should try to prevent the main issue from becoming confused or obfuscated by his own ambiguous use of the word “law.”

I think it is almost hopeless to ask those who have become accustomed to it to give up the phrase “natural law.” But if that cannot be done, then we must at every

point make clear that we understand the tremendous difference in the meaning of the word "law" when we say "natural law" and "positive law."

VII

The more we understand the difference between natural and positive law, the less likely, I think, we are to make the mistake which was certainly made all through the nineteenth century and, I regret to say, is still being made in the world today—the mistake of appealing to international law as the source of world peace. Because he wanted peace above all else, Hobbes is concerned to show that you had to have civil law, the law of a commonwealth, to keep the peace. The law of nature was not sufficient. On this point I think Hobbes is much sounder than Locke. Hobbes properly says that "the state of nature is a state of war," even though men living in a state of nature live under natural law.

Positive law without a foundation in natural law is purely arbitrary. It needs the natural law to make it rational. But natural law without positive law is ineffective for the purposes of enforcing justice and keeping peace.

Nations, like individuals, who live together under natural law alone, are in a state of war, whether or not actual shooting is going on. The world is as much in a state of war today as it was five years ago. However sound *morally* the precepts of international law may be, as conclusions deduced from natural law, they lack the coercive force of

positive law. International law is not the kind of law which can keep peace. World peace requires world government and the world-wide reign of positive law. It is not sufficient to ask for a world-wide reign of law. It must be a positive law.

The doctrine of natural law does the human race a great disservice if it in any way obscures this fundamental truth by empty eloquence concerning international law as the foundation of international peace.

NATURAL LAW AND POSITIVE LAW*

IN American jurisprudence, natural law is both a foundation and a stumbling block. It is a foundation, because it lies at the root of our juristic tradition. It is a stumbling block, because it is rejected by the prevailing philosophy.

The result is a legal system which is actually shaped in large part by a doctrine which in the formal treatment of the subject is vigorously denied. And what is more, this rejection of the doctrine in many cases comes from those who in the administration of our legal system often apply the doctrine with confidence and satisfaction.

The lesson is clear. What the law most needs today is to reexamine its parentage. The philosopher must reexamine it, to find what is truly ultimate in law. The practitioner must reexamine it, so that he will know the meaning of the instrumentalities with which he deals. And by practitioner I mean not only attorney and counsellor, but all those who carry on the affairs of the law, including legislator, judge and executive. All these may draw a lesson from a conversation which once took place between Henry Ford and three laborers. Mr. Ford asked these workers one day what they were doing. The first one said he was making a collar an hour. The second

* Also printed in 23 Notre Dame Lawyer 125 (1948).

said he was laying bricks. The third said he was building a church. Unless the lawyer sees justice as the objective, he is merely working by the hour or laying bricks. And if he sees that justice, and sees it in the very principle of its being, he will see it in the subject of this Institute, in the much belabored but perennial natural law.

I

The current denial of natural law is one of those strange anachronisms in human thought by which, instead of going forward with a progressively clearer understanding of a doctrine, the course of thought suddenly reverses itself and turns backward toward ancient errors and discredited sophistries. Natural law had pushed its way up from cloudy apprehensions of it among the early Greeks and Stoics to its position in mediaeval thought, whereby it was recognized as the end principle of positive laws, the moral limitation of the ruling power, and the foundation of free government. At that point in history, the prospects were bright. A new era had dawned. It was recognized that the state was entitled to the allegiance of the people, but it was also recognized that the rulers were the servants of the people and ruled with their consent, and that the people possessed rights which were paramount to the will of the ruler. The constitutional mechanism which would define citizenship, restrain tyranny and enfranchise the populace, was yet to be developed, but standing on the mediaeval doctrine of the dignity of man and the nature of society, its growth was clearly prefigured. But then a curious thing happened. The mechanisms of constitution

and ballot box went forward; but their doctrinal basis began to disintegrate.

If we look at our own national life, we find these two conflicting forces clearly at work. Natural law had persisted long enough in men's thinking to serve as the explicit foundation of the American republic, both in its political and its judicial aspects. Then the divergence intrudes itself. The practitioners go on, extending the constitutional framework and perpetuating the Anglo-American ideals of reasonableness and natural justice as the test of legislation and decision; but the philosophers and theorists turn backward and strike with the vigor of rebellion at the traditional basis of our boasted progress.

The habit of viewing laws as ultimately grounded in norms inherent in the nature of man and society gave way to analytical jurisprudence, which viewed laws as pure facts wholly disconnected from morals; to historical jurisprudence, for which the ultimate source of laws is evolving custom; and to positivism of many varieties but all of them united in the concept that under the ever changing stream of fact there is no intelligible abiding substratum and therefore no truth superior to the transient findings of experimental science. And if we wish to look for the nethermost point to which this avalanche of negation has carried us, we can find it in one of the recently published *Essays in Honor of Roscoe Pound*, wherein the author says that the assertion "that the law-maker should be led by justice and that the courts have to 'administer justice'" is "completely senseless." Moreover, says the author, "There is no justice. Neither is

there any objective 'ought.' . . . Thus the entire legal ideology—including rights and duties, wrongfulness and lawfulness—goes up in smoke.”¹

There is a deep significance in the fact that natural law continues to inspire and integrate our legal system in spite of this defection of the theorists. For this very survival is a fact which to the scientific mind should be suggestive of a hidden reality worthy of inquiry and research.

The evidence of natural law in our system is so widespread as to be undeniable. In the first place, there is implicit evidence of it in all those laws which reflect the *jus gentium*, that is, laws which are so spontaneously expressive of the human conscience that they are characteristic of the legal systems of all civilized countries. Such are the laws against murder, theft, treason and all those acts deemed *mala in se* as contrasted with *mala prohibita*. Such laws are but implicit evidence of natural law because, while they reflect natural law, they contain no explicit reference to their natural law foundation. If the foundation be doubted, however, one may ask, why are certain evils considered *mala in se*? If there be no higher law, why is not a statute dealing with murder in the same class as a traffic ordinance or a law governing the endorsement of a negotiable instrument? The answer is that however trenchant the negation of the philosophers the lawmaker persists in considering himself as morally bound in the one case and not in the other.

¹ Vilhelm Lundstedt, *Law and Justice: A Criticism of the Method of Justice* in INTERPRETATIONS OF MODERN LEGAL PHILOSOPHIES, ESSAYS IN HONOR OF ROSCOE POUND, 450, 451 (1947).

But the case for natural law in our legal system does not rest alone upon such implicit evidence of it, however cogent that evidence may be. There is explicit evidence of it also.

It is conspicuously evident in equity, which received its foundation from the importation into the Roman law of the *jus gentium* and the Stoic morality as correctives for the omissions and inequities of the *jus civile*. Later, under the influence of Christianity, as Pomeroy says, "the signification of *aequitas* became enlarged, and was made to embrace our modern conceptions of right, duty, justice, and morality."² In England it was likewise in response to the rigidity and incompleteness of legal forms that equity arose, first in the conscience of the Chancellor and next in a system of positive jurisprudence expressly founded upon the eternal verities of right and justice. As a result, says Pomeroy, "the principles of right, justice, and morality, which were originally adopted, and have ever since remained, as the central forces of equity, gave it a necessary and continuous power of orderly expansion, which cannot be lost until these truths themselves are forgotten, and banished from the courts of chancery."³

But perhaps the clearest and most explicit adoption of natural law in our legal system occurs in the constitutional guaranties of natural rights. These rights had been proclaimed with classic dignity and precision, in the preamble of the Declaration. The Declaration was echoed in

² POMEROY, *A Treatise on Equity Jurisprudence*, Sec. 8 (5th ed, S. F., 1941).

³ *Op. cit.*, Sec. 59.

the constitutions of some of the original states, as in that of Virginia which still provides, "That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

While the Federal Constitution failed to incorporate these principles in itself as the constitutions of Virginia and other states had done, the same result was achieved in our Federal system by a process which is now historic and which bears eloquent witness to the vitality of natural law in our jurisprudence. This historic process was initiated a century and a half ago in the doctrine of implied limitations of legislative power. A case in point is *Calder v. Bull*, decided by the Supreme Court in 1798, in which Justice Chase said, "I cannot subscribe to the omnipotence of a state Legislature, . . . although its authority should not be expressly restrained by the constitution, . . . An act of the Legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority. . . . The genius, the nature, and the spirit, of our state governments, amount to a prohibition of such acts of legislation; and the general principles of law and reason forbid them."⁴ From this, Justice Iredell dissented, saying that in the absence of a constitutional pro-

⁴ 3 Dallas 386, 387, 388, 1 L. ed. 648, 649 (1798).

vision the courts cannot invalidate a law "merely because it is, in their judgment, contrary to the principles of natural justice."⁵

The issue raised by Justices Chase and Iredell demanded a solution, for it went to the core of the Supreme Court's responsibility. That the solution came in the manner in which it did is a sign of that persistence of natural law which defies its critics even to the present day.

The solution came in the due process clause, pursuant to which no person may be deprived "of life, liberty, or property, without due process of law."

But what was "due process"? Was it, as its words imply, a mere procedural safeguard, or did it include substantive rights as well? Coke identified it with the phrase "law of the land" in the thirty-ninth chapter of Magna Charta, a phrase which Justice Johnson said was "intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice."⁶

The signs were unmistakable. An express constitutional clause being needed to satisfy those who were discontent with implied limitations, due process was to supply the need by including substantive rights.

The culmination occurred in the application of the due process clause to state legislation through the Fourteenth Amendment. The question was whether due process, interpreted in the substantive as well as the procedural sense, served to bring under the protecting arms of the

⁵ 3 Dallas 386, 399, 1 L. ed. 648, 654 (1798).

⁶ Bank of Columbia v. Okely, 4 Wheat. 235, 244, 4 L. ed. 559, 561 (1819).

Fourteenth Amendment the entire bill of rights which was contained in the first eight amendments. The Supreme Court's answer to that question constituted an explicit judicial affirmation of natural law which is now the settled doctrine of the Court. For in answer to the question, the Court held that not all the enumerated rights were protected by the Fourteenth Amendment but only those which involved those "immutable principles of justice which inhere in the very idea of free government,"⁷ those "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions,"⁸ and those immunities "implicit in the concept of ordered liberty."⁹ And moreover, said the Court, this is so "not because those rights are enumerated in the first eight Amendments, but because they are of such a nature that they are included in the conception of due process of law."¹⁰

Thus natural law, excluded from the judicial chamber

⁷ *Holden v. Hardy*, 169 U. S. 366, 389, 42 L. ed. 780, 790 (1898).

⁸ *Hebert v. Louisiana*, 272 U. S. 312, 316, 71 L. ed. 270, 273 (1926).

⁹ *Palko v. Connecticut*, 302 U. S. 319, 325, 82 L. ed. 288, 292 (1937).

The tests mentioned in the *Palko* and other cases cited were enumerated by Mr. Justice Frankfurter in *Louisiana v. Resweber*, U. S. Supreme Court L. ed. Advance Opinions, Vol. 91 — No. 5, pp. 359, 365 (1947).

In a special concurring opinion in *Adamson v. California*, U. S. Supreme Court L. ed. Advance Opinions, Vol. 91 — No. 17, pp. 1464, 1476 (1947), Mr. Justice Frankfurter discussed the subject again, saying, "In the history of thought 'natural law' has a much longer and much better founded meaning and justification than such subjective selection of the first eight Amendments for incorporation into the Fourteenth. If all that is meant is that due process contains within itself minimal standards, which are 'of the very essence of a scheme of ordered liberty,' *Palko v. Connecticut*, 302 U. S. 319, 325, 82 L. ed. 288, 292, 58 S. Ct. 149 (1937), putting upon this Court the duty of applying these standards from time to time, then we have merely arrived at the insight which our predecessors long ago expressed."

¹⁰ *Twining v. New Jersey*, 211 U. S. 78, 99, 53 L. ed. 97, 106 (1908).

as an abstraction, reentered the chamber in the concrete garb of the constitution. It was an illustration of the fact, frankly acknowledged by Justice Harlan in a later case, that "the courts have rarely, if ever, felt themselves so restrained by technical rules that they could not find some remedy, consistent with the law, for acts, . . . that violated natural justice."¹¹ It is also an illustration of the realism of the poet Horace, "*Naturam expellas furca, tamen usque recurret*. You may drive out nature with a pitchfork, yet it will always return."¹²

It is to this adherence to natural law under the aegis of due process that we are indebted for the protection by our courts of one after the other of our cherished rights: the inviolability of conscience, the right to express one's convictions, to acquire knowledge, to work at one's chosen calling, to educate one's children, and to those other conditions of freedom and self-realization which, as the Court says, are implicit in natural justice.

This persistence of natural law in the hands of the practical jurists is a sign of its compelling reasonableness, a reasonableness which sets practitioner against theorist even when they are combined in the same person. Nothing else can explain the phenomenon of Justice Holmes who as a philosopher poured his scorn upon natural law, but as a judge felt compelled to decide a case on what he termed "fair play" and "substantial justice";¹³ or the

¹¹ *Monongahela Bridge Co. v. United States*, 216 U. S. 177, 195, 54 L. ed. 435, 443 (1910).

¹² *EPISTLES*, I, x 24, quoted by HEINRICH A. ROMMEN, *THE NATURAL LAW*, 267 (St. Louis, B. Herder Book Co., 1947).

¹³ *McDonald v. Mabee*, 243, U. S. 90, 91, 92, 61 L. ed 608, 609, 610 (1917).

more explicit confession of Judge Dillon who, though accepting the doctrines of analytical and historical jurisprudence from a theoretic standpoint, abjured the doctrines in his practice, saying, "If unblamed I may advert to my own experience, I always felt in the exercise of the judicial office irresistibly drawn to the intrinsic justice of the case, with the inclination, and if possible the determination, to rest the judgment upon the very right of the matter. In the practice of the profession I always felt an abiding confidence that if my case is morally right and just it will succeed, whatever technical difficulties may stand in the way; and the result usually justifies the confidence."¹⁴

Looking therefore at our legal system in the concrete, it may fairly be said that the system possessed in large measure a natural law foundation, and that natural law has continued to inspire and integrate it in conspicuous degree in spite of the most persistent and devastating attack to which a doctrine could possibly be exposed. Has this just happened, or is there an abiding, objective link between man-made laws and those first principles of the practical, human reason to which, with greater or less fidelity and subject to whatever lapses, man ever returns in the practical art of government by law? That it is the latter, analysis will surely show.

II

There are three levels of law. Since it is of the utmost importance that these three levels be carefully distin-

¹⁴ LAWS AND JURISPRUDENCE OF ENGLAND AND AMERICA, 17 (1894), quoted by POUND, LAW AND MORALS 36, 37 (1926).

guished, a uniform terminology is greatly to be desired. I will use the terminology proposed by Professor Mortimer J. Adler, namely, *principles, precepts* and *rules*.¹⁵

Of these, the ultimate reality is the *principle*. It is the practical judgment that good must be done and evil avoided. It is not a conclusion drawn from premises by reasoning, but in the sense an intuitive judgment, a self-evident or first principle. Hence it cannot be proved or demonstrated, and by the same token it need not be proved or demonstrated. It is the counterpart in the practical reason of the principle of contradiction in the theoretic reason. It is the starting point, the foundation, of the science of right and wrong.

At the outset, it is important to observe a basic distinction. The principle *Seek the good* directs man to his end, which is happiness, or the possession of what is good for man as man. But man's nature being complex, his happiness involves a multiplicity of goods. Therefore, the first principle may be expressed in two ways. It may be expressed simply *Seek the good*, to refer to the whole of goods, or it may be broken down into several principles, to refer to the various goods. Some of these goods relate to man's private life. With these we are not here concerned. The good with which we are here concerned is the common good, that is, the good of the whole community, which to the individual is but a partial good because man, though a social being, is not simply a social being,—a distinction which, by the way, separates a free society from a totalitarian one.

15 *A Question About Law*, in *ESSAYS IN THOMISM* 207, 212 (1942).

For our subject matter, therefore, the principle is *Seek the common good*. This is the natural law, strictly speaking, or if by law we mean positive law, perhaps we may better say this is the principle of laws.¹⁶ But this principle, likewise, is capable of being broken down by analysis into the three propositions expressed by Ulpian in the third century, *do good to others, avoid injuring others, and render to each his own*. The first two of these are the principles of general justice, that is, of justice to the community, and therefore they are also called legal or social justice. The third—*render to each his own*—is the principle of special justice, that is, of justice to the individual, which from the viewpoint of the state is called distributive justice and from the viewpoint of another individual is called commutative justice.

The next level of law, which we will call *precepts*, is made up of conclusions which are immediately and necessarily drawn from the principles and which constitute the means for the attainment of the social good which is expressed by the principles. They are sometimes called the secondary principles of the natural law. They consist generally of the *jus gentium* which I have mentioned, propositions which characterize the laws of all societies because they are necessarily deduced from the principles. It is true that these precepts are a part of the natural law, in the sense that they are not of man's making but are conclusions from the principles, but on the other hand

¹⁶ This proposal is made by Professor Adler in *A Question About Law*, above cited. I think that the proposal constitutes an important contribution to clarity on this subject, because of the confusion which has arisen from use of the term *law* for both the *principle* and the *rule*.

they differ from natural law strictly speaking in the sense that they are the result of a process of reasoning, as contrasted with the indemonstrable and ultimate character of the principles. Both principles and precepts are incapable by themselves of governing action,—for different reasons, however: in the case of principles, because they specify only the end, and action depends on specification of means; in the case of precepts, because they specify the means only generally and without reference to the contingent circumstances which are always involved in action. The inadequacy of the precept in a specific case may be illustrated by the precept against killing. Obviously the precept aims at wrongful killing, but it fails to define the circumstances which makes killing wrongful as against those which make it justifiable, and it also fails to specify the punishment. What the precept needs, to serve as a guide of action, is to be embodied in a more specific mold, that is, to be determined by receiving that particularization necessary to bring it to bear upon the contingent facts of life as they exist in the concrete. It is akin to the process by which a craftsman, in order to build a house, determines the general form of a house to a particular shape. The house cannot come into concrete existence without the general form. The general form cannot result in a house without the reduction to a particular shape.

Out of this process of determination of precepts arises the law in the lawyer's sense, the positive *rules* which govern specific cases. To this third level of law can be applied St. Thomas Aquinas's definition of law as "an

ordinance of reason for the common good, made by him who has the care of the community, and promulgated.”¹⁷

When we enter this third level, we enter a new world, which is in sharp contrast to that of the other two levels. For whereas at the first two levels the reason is necessarily governed by objective “oughtness,” either in the sense of first principles or of conclusions necessarily drawn therefrom, now, at the third level, all is tentative and uncertain, contingent and changeable. The reason is that rules involve facts, from which two consequences flow. The first is that since facts are infinite in number, they cannot all be comprehended by human reason. Therefore any rule which is based upon them must be based upon the generality of experience and will be defective to the extent that it fails to provide for the unknown or the unusual case. The second is that facts change, and therefore laws must change, to preserve a reasonable relation to facts.

In comparison, therefore, with the principles and precepts of natural law, which are necessary propositions and bind reason in their grasp, the rules of positive law are relative, contingent and changeable. The tax statute, for example, or the law governing the relations between capital and labor, or the law which will govern the use of atomic power, represent efforts by the lawmaker to bring the precepts of justice to bear upon facts of such inexhaustible complexity and profound changeability that the justice of those laws can never be more than approximate

¹⁷ *SUMMA THEOLOGICA*, I-II, q. 90, a. 4.

and tentative. Therefore, far from being final or conclusive, they need amendment and revision to keep pace with the findings of the social sciences and with the evolution of the social order to which they apply.

It may be of passing interest to note that this doctrine of the essential relativity and contingency of positive law, which sounds so refreshingly modern in an age dominated by science, was actually laid down by a mediaeval monk writing in a monastic cell. In fact, so impressed was this monk, St. Thomas, by the relativity of laws that he said that "suitably to introduce justice into business and personal relations is more laborious and difficult to understand than the remedies in which consist the whole art of medicine,"¹⁸ a confession which, in view of the state of medicine in St. Thomas's day, was a confession indeed!

This should be the answer to criticisms based upon that caricature of natural law by which men endeavored in the last century to deduce a whole legal system from the principles of natural law. Positive rules are not deductions from natural law; they are determinations of it. That is, the area of the functioning of the lawmaker is coextensive with the degree by which the precept is undetermined, namely, by which it needs determination by reduction to a particular form. And this particularization involves a choice among matters which are in themselves indifferent, because it is only to the extent that these matters *are* indifferent that the precept remains undetermined. Therefore it follows that positive laws or rules are the products

¹⁸ ETHICORUM, V, 15, quoted by ROMMEN, *op. cit.*, 12 p. 252.

of acts of the will, in that the will specifies the particular determination to be made from among alternative indifferent ones, although of course the formulation of the alternatives is made by the intellect. In other words, law-making is an art. It is a work of prudence. From this it is also evident that laws are made, not discovered, except in the natural principles in which they are ultimately grounded.

This should also serve to answer the criticism of the natural law as being a glittering generality, incapable of governing the particular case. The natural law is not designed to govern the particular case; but, as Pollock said, neither are the general principles of any science.¹⁹ A science is made up of principles and applications. Natural law is the principle of laws. Laws are the applications of that principle in the government of human conduct. Without the laws, the principle is sterile. But without the principle, the laws would be irresponsible and anarchic.

Finally, what has been said should undermine the charge that natural law involves a fixity which is an obstacle to progress. Natural law is timeless, in that man is eternally related to the common good and to his neighbor by the bonds of justice. Law involves constancy and change. The constancy is in the principle, which lies behind the facts; the change is in the rule, which includes

¹⁹ Review of BROWN, *INTERNATIONAL SOCIETY: ITS NATURE AND INTERESTS*, XXXIX *Law Quar. Rev.* (1923), quoted by CHARLES GROVE HAINES, *THE REVIVAL OF NATURAL LAW CONCEPTS* 330 (1930).

the facts. Progress in law can come from two directions. It can come from those changes in rules which are necessitated by greater knowledge of circumstances or by change in circumstances. It can also come from an increased awareness of the natural law itself, as it has in the abolition of slavery, the emancipation of women and the recognition of the common good as the end of government, and let us hope, as it will some day, in the abolition of racial discrimination and war.

III

Natural law has survived because men naturally think in terms of it. The legal realists tried to exclude values from laws, but in vain. The values which they thrust out through one door reentered through another. And any effort to place those values at any point short of the ultimate principles of the practical human reason is similarly futile. There is no choice between these principles and some other source of values. The only choice is between values and an effort to remake man without values, the consequences of which we have lately witnessed. These consequences are not happy ones, and they are radically alien to the tradition by which we live. Moreover, their appearance in the twentieth century constitutes a warning that however rugged is the force of natural law in human thinking, there is no guaranty, even in a civilization in which that doctrine has been the major thread for a millennium and a half, that that thread may not be temporarily lost, with results which threaten the extinction of justice and the death of that civilization. Truth will rise

again, though it be crushed to earth. But it *can* be crushed to earth, and at this moment it is crushed to earth in the larger portion of the globe.

We who retain the truth in our practice, toy with an alien philosophy at our peril. As a man thinks, so is he, or so he will be. Even now the signs are not wanting. A moral science has discovered a divine power in the atom, which for lack of values has already been used experimentally on human beings and now challenges not only constitutional guaranties but life itself. The family, the unit of society, is a vanishing institution. Education is on a starvation diet, deprived of the fundamental orientations of philosophy and the things of the spirit. Thus we in the democracies, on whom has fallen the burden of world leadership in a critical hour, are ourselves "disregarding the omens and disdaining the stars."²⁰

If the legal philosophers persist in denying our birth-right, salvation must lie with the practitioners, whose profession Dean Wigmore called a "priesthood of justice." In order to discharge the duties of that priesthood, the legal profession must recapture its standing as a learned profession. And mere knowledge of facts is not learning, even though those facts be laws. A higher intellectual dedication remains, a dedication to those principles which give to laws their meaning, their purpose and their ultimate claim to the allegiance of men.

If legal education takes its part in this high task, and if the practitioner rises to the responsibility thus presented

²⁰ G. K. Chesterton.

to him, the day may yet be saved, and the struggle for law and justice which has been the glory of Western civilization may be prolonged to avert that crisis which now threatens to dim its light forever.

Harold R. McKinnon

THE ETERNAL LAW BACKGROUND OF THE NATURAL LAW

Introduction

A singular and truly providential coincidence reminds us that exactly twenty-five years ago today Pope Pius XI, of revered and saintly memory, was busily engaged in his study in the Vatican Palace, putting the finishing touches to the page proofs of the first Encyclical of his renowned Pontificate. Significantly enough this Papal Message to the world, published on December 23, 1922, was entitled, "The Peace of Christ in the Kingdom of Christ."¹ In this historical document the scholarly Pontiff appealed to the entire world to return to the basic concepts of the Eternal Law of God, so that Europe and the other countries of the world might be saved from impending chaos and disaster. In view of what has happened during these past twenty-five years, the warnings of Pope Pius XI now seem ominously prophetic.

In this Encyclical Letter the Pope lamented that:

"There is, over and above the absence of peace and the evil attendant on this absence, another deeper and more profound cause for present-day conditions. This cause was even beginning to show its head be-

¹ Encyclical Letter, "*Ubi arcano*," December 23, 1922, *Acta Apostolicae Sedis*, XIV (1922), 673-700. An English translation appears in *Social Well-springs*, II, 13, 16 (edited by Joseph Husslein, S. J. Bruce, Milwaukee, 1942), and in *Principles for Peace*, 341, 345, (Washington, 1943, edited by Harry C. Koenig).

fore the war and the terrible calamities consequent on that cataclysm should have proven a remedy for them if mankind had only taken the trouble to understand the real meaning of those terrible events. In the Holy Scriptures we read: 'They that have forsaken the Lord shall be consumed.' No less well-known are the words of the Divine Teacher, Jesus Christ, Who said: 'Without Me you can do nothing' and again, 'He that gathereth not with Me, scattereth.'

"These words of the Holy Bible have been fulfilled and are now at this very moment being fulfilled before our very eyes. Because men have forsaken God and Jesus Christ, they have sunk to the depths of evil. They waste their energies and consume their time and efforts in vain sterile attempts to find a remedy for these ills, but without even being successful in saving what little remains from the existing ruins.

"It was a quite general desire that both our laws and our governments should exist without recognizing God or Jesus Christ, on the theory that all authority comes from men, not from God. Because of such an assumption, these theorists fell short of being able to bestow upon law not only those sanctions which it must possess but also that secure basis for the supreme criterion of justice which even a pagan philosopher like Cicero saw clearly could not be derived except for the Eternal Law. Authority itself lost its hold upon mankind, for it had lost that sound and unquestionable justification for its right to command on the one hand and to be obeyed on the other. Society, quite logically and inevitably, was shaken to its very depths and even threatened with destruction,

since there was left to it no longer a stable foundation, everything having been reduced to a series of conflicts, to the domination of the majority, or to the supremacy of special interests.”²

Today, exactly a quarter of a century after the publication of this epochal Encyclical, nations still reject, in large measure, the Eternal Law of God, which the Pope so accurately called the supreme criterion of justice. Thus the world finds itself without peace, without justice, without the establishment of an abiding moral order.

“We have already seen,” continues the same Pontiff, “and have come to the conclusion that the principal cause of the confusion, restlessness, and dangers, which are so prominent a characteristic of false peace, is the denial of the sovereignty of law and lack of respect for authority, effects which logically follow upon the denial of the truth that authority and power come from God, the Creator of the world and its Universal Law-giver. The only remedy for such a state of affairs is the Peace of Christ, since the Peace of Christ is the Peace of God, which could not exist if it did not enjoin respect for law, order and supreme authority.”³

In view of this solemn pronouncement given to the world in 1922, we have good reason to pause and to ask ourselves why precisely do so many human beings refuse to acknowledge the existence of such a truth as the Eternal Law, emanating from God Himself, the Supreme

² *Principles for Peace*, pp. 340-341; A.A.S. XIV (1922), 683.

³ *Id.*, p. 345.

Legislator for all mankind? In other words, why are the dice so heavily loaded against justice, truth, and the abiding peace of Jesus Christ?

The answer to this query has been given by another great Pontiff, our present Holy Father, and significantly enough, in his own first Encyclical Letter, addressed to the world, on October 20, 1939. He states that:

“At the head of the road which leads to the spiritual and moral bankruptcy of the present day stand the nefarious efforts of not a few to dethrone Christ, the abandonment of the law of truth which He proclaimed and of the law of love which is the life-breath of His kingdom. In the recognition of the supreme prerogatives of Christ, and in the return of individuals and of society to the law of His truth and of His love lies the only way to salvation. . . .

“The present age, Venerable Brethren, by adding new errors to the doctrinal aberrations of the past, has pushed these to extremes which lead inevitably to a drift towards chaos. Before all else, it is certain that the radical and ultimate cause of the evils which We deplore in modern society is the denial and rejection of a universal norm of morality as well for individual and social life as for international relations; We mean the disregard, so common nowadays, and the forgetfulness of the Natural Law itself, which has its foundation in God, almighty Creator and Father of all, supreme and absolute Lawgiver, all-wise and just Judge of human actions. When God is denied, every basis of morality is undermined; the voice of conscience is stilled or at any rate grows very faint, that voice which teaches even to the illiterate and to

uncivilized tribes what is good and what is bad, what lawful, what forbidden, and makes men feel themselves responsible for their actions to a supreme Judge.

“The denial of the fundamentals of morality had its origin in Europe, in the abandonment of that Christian teaching of which the Chair of Peter is the depository and exponent. That teaching had once given spiritual cohesion to a Europe which, educated, ennobled and civilized by the Cross, had reached such a degree of civil progress as to become the teacher of other peoples, of other continents. But, cut off from the infallible teaching authority of the Church, not a few separated brethren have gone so far as to overthrow the central dogma of Christianity, the divinity of the Saviour, and have hastened thereby the progress of spiritual decay.

“The Holy Gospel narrates that when Jesus was crucified, ‘there was darkness over the whole earth,’ a terrifying symbol of what happened and what still happens spiritually wherever incredulity, blind and proud of itself, has succeeded in excluding Christ from modern life, especially from public life, and has undermined faith in God as well as faith in Christ. The consequence is that the moral values by which in other times public and private conduct was gauged have fallen into disuse; and the much-vaunted laicization of society, which has made ever more rapid progress, withdrawing man, the family and the state from the beneficent and regenerating effects of the idea of God and the teaching of the Church, has caused to reappear, in regions in which for many centuries shone the splendours of Christian civilization, in a manner ever clearer, ever more distinct,

ever more distressing, the signs of a corrupt and corrupting paganism: 'There was darkness when they crucified Jesus.'

"Many perhaps, while abandoning the teaching of Christ, were not fully conscious of being led astray by a mirage of glittering phrases, which proclaimed such estrangement as an escape from the slavery in which they were before held; nor did they then foresee the bitter consequences of bartering the truth that sets free, for error which enslaves. They did not realize that, in renouncing the infinitely wise and paternal laws of God, and the unifying and elevating doctrine of Christ's love, they were resigning themselves to the whim of a poor, fickle human wisdom; they spoke of progress, when they were going back; of being raised, when they grovelled; of arriving at man's estate when they stooped to servility. They did not perceive the inability of all human effort to replace the law of Christ by anything equal to it; 'they became vain in their thoughts.'

"With the weakening of faith in God and in Jesus Christ, and the darkening in men's minds of the light of moral principles, there disappeared the indispensable foundation of the stability and quiet of that internal and external, private and public, order, which alone can support and safeguard the prosperity of states.

"It is true that, even when Europe had a cohesion of brotherhood through identical ideals gathered from Christian preaching, she was not free from dissensions, convulsions and wars which laid her waste; but perhaps they never felt the intense pessimism of today as to the possibility of settling them, for they had

then an effective moral sense of the just and of the unjust, of the lawful and of the unlawful which, by restraining outbreaks of passion, left the way open to an honourable settlement. In our days, on the contrary, dissensions come not only from the surge of rebellious passion, but also from a deep spiritual crisis which has overtaken the sound principles of private and public morality.”⁴

⁴ AAS. XXXI, pp. 543-546.

I. THE DIVINITY OF CHRIST AND THE ETERNAL LAW

Some eighty years ago, the Russian novelist, Dostoevski (1821-1881) observed that the modern world rejects Christ, as God, for the very simple reason that it wishes to have no God at all. Many of our modern lawyers, it appears, are reluctant to acknowledge Christ as God because such an admission would necessitate belief in the Holy Trinity as the Supreme Legislator for mankind. But as St. Thomas points out, we can have no clear concept of the Eternal Law, in relation to the Natural Law, or to any other Law, unless we humbly believe in Christ as Supreme Legislator,⁵ as well as the Redeemer of mankind, and in the Holy Trinity as the source of all Divine Life and Law. Moreover, we should realize that the tacit assumption that God simply does not count in law can be more dangerous to lawyers, particularly to young lawyers, than positive opposition to God.⁶

⁵ Council of Trent, Session VI, *On Justification*, Canon XXI: "If anyone saith that Jesus Christ was given of God to men as a Redeemer in Whom to trust and not also as a Legislator, Whom to obey, let him be anathema."

⁶ At the present time, opposition offers a challenge to thinking human beings whereas the subtle implication that Divine Authority does not exist in the world is a most insidious form of modern sophistry. This status of affairs simply confirms Christian believers in the realization of the truth that human nature in its present state is a fallen human nature redeemed by Jesus Christ Who is the Supreme Legislator of mankind as well as its Redeemer. The soul of an unbaptized, unregenerated human being, who is filled with mundane desires and erroneous opinions, can well have the understanding so darkened that neither the sunlight of natural reason nor the supernatural Wisdom of God may illumine it clearly. Pope Leo XIII, Encyclical Letter, "*Libertas Praestantissimum*," June 20, 1888, *The Great Encyclical Letters of Pope Leo XIII*, 137-145.

II. THE MOST HOLY TRINITY AND THE ETERNAL LAW

When we ask the modern lawyer to contemplate with reverence and humility the divine life of the Holy Trinity, we are merely asking him to go back in spirit to the American, European and Semitic traditions of our laws, of our civilization and of our Christian culture. In 529, when the Emperor Justinian promulgated his renowned Code of Roman Law, he specifically invoked and embodied in his legislation, the Name of the Most Holy Trinity, just as he dedicated his Institutes to Jesus Christ, the Supreme Legislator of mankind. Thenceforward it became the custom of truly Christian nations to acknowledge, in all legislation, the dependence of humankind upon the Divine Creator and Legislator. Thus it was, that lawyers, legislators and judges alike, constantly envisioned and proclaimed their humble belief in God when they studied law, enacted legislation or adjudged lawsuits.

It is heartening to note that ten years ago this month when the Constitution of the Irish Free State went into effect, on December 29, 1937, it began with these solemn words: — "In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and of States must be referred, We, the People of Ireland, humbly acknowledging all our obligations to Our Divine Lord, Jesus Christ, Who sustained our Fathers through centuries of trial . . . do hereby adopt, enact, and give to ourselves this Constitution."

Only three months ago, the Constitution of the State of New Jersey ratified on September 10, 1947, acknowledged its humble gratitude to God in these significant words: — “We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution.”

As one ponders the faith, humility, and commendable common sense of the Preambles to these Constitutions, one realizes how frightfully hollow and inept were the opening words of the Covenant of the League of Nations, signed in 1920, . . . “The high contracting parties . . .” What a godless, inane, and hopeless introduction to a Covenant destined to maintain peace, justice, and charity in a war-torn world. Can one wonder then, why a second World War followed so soon after Versailles?

The origin of all law goes back, as St. Thomas strikingly points out, to the Holy Trinity, back to that life of knowledge and love, which constitutes the essential glory of the Three Divine Persons.⁷ The Divine Word became incarnate in order to illumine from without, the fire of this glory, in bestowing upon mankind the knowledge and love of the Most Holy Trinity. Well indeed then is He called “The Splendor of the Glory of the Father”⁸ come as He tells us Himself, “Not to destroy, but to fulfill the law.”⁹

⁷ St. Thomas Aquinas, *Summa Theologica*, I-II, Questions XC-XCI, CIX-CX.

⁸ St. Paul, Epistle to the Hebrews, 1, 3.

⁹ St. Matthew 5, 17.

“In the language of philosophy, God is in intimate contact with all things, by His Power, by His essence, and by His Presence. The exercises of His Power on things does not cease with their creation. Conservation is a continual creation. Without the uninterrupted influence of God, nothing could continue in existence. Since the Lord’s power and the exercise of that power is at the heart of all this, His Essence must, of necessity, be there also; for in Him Power, Essence, Operation, Nature are one Indivisible, Simple Reality. Finally, the Creator is present everywhere because there is nothing that escapes His observation and attention. Wherever therefore, there is any created reality, God is present in the totality of His being, with all His being, with all His attributes and all His perfections. He is in my body and in every fibre of it. He is in my soul, and in its faculties, and in the activities of these faculties. He is in me wholly, and He is wholly outside of me. And just as He is in me in the totality of what He is, so is He likewise in all creatures.

“But beyond this universal and ordinary way according to which God is in all creatures, there is a distinct way of presence which can be found only in the case of rational creatures. In these He can be present as an object known and loved is present in him who knows and loves. An example drawn from nature will illustrate the difference between these modes of presence. Light shines in the eyes of the blind, in whom the organ of vision is intact and the nerve only destroyed. The eye is flooded with light, but there is no vital reaction. The rays are fully present *in* the eye but not *to* the eye. The visual faculty is powerless to possess by a vital act, what is, nevertheless, sending its vibrations through the organ of vision.

Furthermore in the case where the eye is not diseased, the measure of its possession of what is presented to its gaze is not unvarying. Objects of vision may be maintained under the same conditions of illumination, yet they will be seen more or less perfectly according to the strength, power and acuity of the visual faculties of those who contemplate them. They are seen, and therefore more perfectly possessed, by those whose vision is more perfect.

“It is thus in a parallel manner between God and the soul, through which He pours the light of His being. He shines on all things, whether in the mineral realm, in the realm of plants, or in the realm of animals; and He shines also even in the souls of the sinner. But there is nowhere in these worlds an answering reaction. He is present in them, but not to them. They do not possess Him, even when they are submitting to His influence. And when the blindness of sin is dispelled and He illuminates the souls of the just from their very centre; when He is present not only in them but to them, even then He is not present to all and possessed by all in the same degree. He is more perfectly in, and more fully possessed by those whose grace is more abundant and whose sanctity is more elevated. It is sanctity that sharpens the soul’s vision and strengthens the soul’s embrace of its God.

“Hence, just as the faculty of vision, when in a healthy state, has power to receive within itself and to possess in a vital act the figures of coloured objects, so, too, the soul when endowed with sanctifying grace, has power to seize and to take to itself, has power to react vitally to the divine light streaming from its source. The faculty of intelligence fortified

by the infused virtue of faith, can fix its gaze on God as He is in His own inner life. The faculty of will, reinforced by the infused virtue of love for the divine, is empowered to cleave to God in acts of real affection. These two faculties are, as it were, the arms by which the soul is enabled to enfold the Holy Spirit in its embrace.”¹⁰

III. THE MEANING OF THE ETERNAL LAW

With these remarks in mind let us try to grasp the meaning of the Eternal Law, in relation to all law and particularly in relation to the Natural Law. Briefly, the Eternal Law is naught else but the exemplar of Divine Wisdom directing all actions and movements.¹¹ Or as St. Augustine prefers to say, “It is the supreme exemplar to which we must always conform.”¹²

From all Eternity there was present to the Spirit of God the plan of the government of the world, which He had determined to create. This plan of government is the Eternal Law, according to which God guides all things toward their final goal, namely, His own glory and the eternal happiness of mankind.¹³ There is nothing, therefore, which does not come under this law, neither star, nor tide, nor plant, nor animal, nor man, nor Angel, for Divine Providence extends to all.

“The Eternal Law is God’s wisdom, inasmuch as it is the directive norm of all movement and action. When God willed to give existence to creatures, He

¹⁰ James Leen, *By Jacob's Well*, (New York, 1940), 112-114.

¹¹ St. Thomas, *Summa*, I-II, Quest. XCIII, Art. 1, *ad* 3.

¹² St. Augustine, *De Lib. Arbitrio*, I, 6 (PL 32, 1229).

willed to ordain and direct them to an end. In the case of inanimate things, this Divine direction is provided for in the nature which God has given to each. . . . Like all the rest of creation, man is destined by God to an end, and receives from Him a direction toward this end. This ordination is of a character in harmony with man's free, intelligent nature.

"In virtue of his intelligence and free will, man is master of his conduct. Unlike the things of the material world he can modify his action at will, he is free to act or to refrain from action, just as he sees fit. Yet he is not a lawless being in an ordered universe. In the very constitution of his nature, he likewise has a law laid down for him, reflecting that ordination and direction of all things, which is the Eternal Law."¹⁴

As Pope Leo XIII states in his Encyclical Letter on "Human Liberty,"

"reason prescribes to the will what it should seek after or shun, in order to the eventual attainment of man's last end, for the sake of which all his actions are to be performed. This dictate of reason is called law. In man's free will, therefore, or in the moral necessity of our voluntary acts being in accordance with reason, lies the very root of the necessity of law. Nothing more foolish can be uttered or conceived than the notion that because man is free by nature, he is therefore exempt from law. Were this the case, it would follow that to become free we must be deprived of reason; whereas the truth is that we are

¹³ V. Cathrein, v. "Concept of Law," *The Catholic Encyclopedia*, IX, 55.

¹⁴ James J. Fox, v. "The Natural Law," *The Catholic Encyclopedia*, IX, 76-77.

bound to submit to law precisely because we are free by our very nature. Law then is the guide of man's actions. It turns him towards good by its rewards, and deters him from evil by its punishments.

“Foremost in this office comes the Natural Law, which is written and engraved in the mind of every man; and this is nothing but our reason, commanding us to do right and forbidding sin. Nevertheless all prescriptions of human reason can have force of law only inasmuch as they are the voice and the interpreters of some higher power on which our reason and liberty necessarily depend. For, since the force of law consists in the imposing of obligations and the granting of rights, authority is the one and only foundation of all law—the power, that is, of fixing duties and defining rights, as also of assigning the necessary sanctions of reward and chastisement to each and all of its commands. But all this, clearly, cannot be found in man, if, as his own supreme legislator, he is to be the rule of his own actions. It follows therefore that the law of nature is the same thing as the Eternal Law, implanted in rational creatures, and inclining them to their right action and end; and can be nothing else but the eternal reason of God, the Creator and Ruler of all the world.

“To this rule of action and restraint of evil God has vouchsafed to give special and most suitable aids for strengthening and ordering the human will. The first and most excellent of these is the power of His divine grace, whereby the mind can be enlightened and the will wholesomely invigorated and moved to the constant pursuit of moral good, so that the use of our inborn liberty becomes at once less difficult and less dangerous. Not that the divine assistance hin-

ders in any way the free movement of our will; just the contrary, for grace works inwardly in man and in harmony with his natural inclinations, since it flows from the very Creator of his mind and will, by whom all things are moved in conformity with their nature. As the Angelic Doctor points out, it is because divine grace comes from the Author of nature, that it is so admirably adapted to be the safeguard of all natures, and to maintain the character, efficiency, and operations of each.

“What has been said of the liberty of individuals is no less applicable to them when considered as bound together in civil society. For, what reason and the Natural Law do for individuals, that human law, promulgated for their good, does for the citizens of States. Of the laws enacted by men, some are concerned with what is good or bad by its very nature; and they command men to follow after what is right and to shun what is wrong, adding at the same time a suitable sanction. But such laws by no means derive their origin from civil society; because just as civil society did not create human nature, so neither can it be said to be the author of the good which benefits human nature, or of the evil which is contrary to it.

“Laws come before men live together in society, and have their origin in the Natural, and consequently in the Eternal, Law. The precepts, therefore, of the Natural Law, contained bodily in the laws of men, have not merely the force of human law, but they possess that higher and more august sanction which belongs to the law of nature and the Eternal Law. And within the sphere of this kind of laws, the duty of the civil legislator is, mainly, to keep the commun-

ity in obedience by the adoption of a common discipline and by putting restraint upon refractory and viciously inclined men, so that, deterred from evil, they may turn to what is good, or at any rate may avoid causing trouble and disturbance to the State.

“Now there are other enactments of the civil authority, which do not follow directly, but somewhat remotely, from the Natural Law, and decide many points which the law of nature treats only in a general and indefinite way. For instance, though nature commands all to contribute to the public peace and prosperity, still whatever belongs to the manner and circumstances, and conditions under which such service is to be rendered must be determined by the wisdom of men and not by Nature herself. It is in the constitution of these particular rules of life, suggested by reason and prudence, and put forth by competent authority, that human law, properly so called, consists, binding all citizens to work together for the attainment of the common end proposed to the community, and forbidding them to depart from this end; and in so far as human law is in conformity with the dictates of nature, leading to what is good, and deterring from evil.

“From this it is manifest that the Eternal Law of God is the sole standard and rule of human liberty, not only in each individual man, but also in the community and civil society which men constitute when united. Therefore, the true liberty of human society does not consist in every man doing what he pleases, for this would simply end in turmoil and confusion, and bring on the overthrow of the State; but rather in this, that through the injunctions of the civil law all may more easily conform to the prescriptions of the Eternal Law.

“Likewise, the liberty of those who are in authority does not consist in the power to lay unreasonable and capricious commands upon their subjects, which would equally be criminal and would lead to the ruin of the commonwealth; but the binding force of human laws is in this, that they are to be regarded as applications of the Eternal Law, and incapable of sanctioning anything which is not contained in the Eternal Law, as in the principle of all law. Thus St. Augustine most wisely says: ‘I think that you can see, at the same time, that there is nothing just and lawful, unless what men have gathered from this Eternal Law.’ If, then, by any one in authority, something be sanctioned out of conformity with the principles of right reason, and consequently hurtful to the commonwealth, such an enactment can have no binding force of law, as being no rule of justice, but certain to lead men away from that good which is the very end of civil society.

“Therefore, the nature of human liberty, however it be considered, whether in individuals or in society, whether in those who command or in those who obey, supposes the necessity of obedience to some supreme and Eternal Law, which is no other than the authority of God, commanding good and forbidding evil. And so far from this most just authority of God over men diminishing, or even destroying their liberty, it protects and perfects it. For the real perfection of all creatures is found in the prosecution and attainment of their respective ends; but the supreme end to which human liberty must aspire is God.

“These precepts of the truest and highest teaching, made known to us by the light of reason itself, the Church, instructed by the example and doctrine of

her divine Author, has ever propagated and asserted; for she has ever made them the measure of her office and of her teaching to the Christian nations. As to morals, the laws of the Gospel not only immeasurably surpass the wisdom of the heathen, but are an invitation and an introduction to a state of holiness unknown to the ancients; and, bringing man nearer to God, they make him at once the possessor of a more perfect liberty. Thus the powerful influence of the Church has ever been manifested in the custody and protection of the civil and political liberty of the people. The enumeration of its merits in this respect does not belong to our present purpose. It is sufficient to recall the fact that slavery, that old reproach of the heathen nations, was mainly abolished by the beneficent efforts of the Church.

“The impartiality of law and true brotherhood of man were first asserted by Jesus Christ; and His apostles re-echoed His voice when they declared that in future there was to be neither Jew, nor Gentile, nor Barbarian, nor Scythian, but all were brothers in Christ. So powerful, so conspicuous in this respect, is the influence of the Church, that experience testifies how savage customs are no longer possible in any land where she has once set her foot; but that gentleness speedily takes the place of cruelty, and the light of truth quickly dispels the darkness of barbarism. Nor has the Church been less lavish in the benefits she has conferred on civilized nations in every age, either by resisting the tyranny of the wicked, or by protecting the innocent and helpless from injury; or finally by using her influence in the support of any form of government which commended itself to the citizens at home, because of its justice, or was feared by their enemies without, because of its power.

“Moreover, the highest duty is to respect authority, and obediently to submit to just law; and by this the members of a community are effectually protected from the wrongdoing of evil men. Lawful power is from God, ‘and whosoever resisteth authority resisteth the ordinance of God’; wherefore obedience is greatly ennobled when subjected to an authority which is the most just and supreme of all. But where the power to command is wanting, or where a law is enacted contrary to reason, or to the Eternal Law, or to some ordinance of God, obedience is unlawful, lest, while obeying man, we become disobedient to God. Thus, an effectual barrier being opposed to tyranny, the authority in the State will not have all its own way, but the interests and rights of all will be safeguarded—the rights of individuals, of domestic society, and of all the members of the commonwealth; all being free to live according to law and right reason; and in this, as We have shown, true liberty really consists.”¹⁵

IV. RELATIONSHIP BETWEEN THE ETERNAL LAW AND CREATION

St. Thomas explains the relationship that exists between the Eternal Law and all creation in such a brief and illuminating way that we can best borrow a few of his unforgettable thoughts.

“Since all things subject to Divine Providence are ruled and measured by the Eternal Law, it is evident that all things partake in some way in the same Eternal Law, in so far as, namely, from its being imprint-

¹⁵ Pope Leo XIII, Encyclical Letter, “*Libertas Praestantissimum*,” June 20, 1888, *The Great Encyclical Letters of Pope Leo XIII*, (New York, Benziger Brothers, 1903), 139-144.

ed on them, they derive their respective inclinations to their proper actions and ends.

“Now among all others, the rational creature is subject to Divine Providence in a more excellent way, in so far as it itself partakes of a share of Providence, by being provident both for itself and for others. Therefore, it has a share of the eternal reason. . . .”¹⁶

“The light of natural reason, whereby we discern what is good and what is evil, which is the proper function of the Natural Law, is nothing else than an imprint on us of Divine Light. It is, therefore, evident that the Natural Law is nothing else than the rational creature’s sharing in the Eternal Law. . . .”¹⁶

In view of the intimate relationship that exists between God and law, we can readily understand why peoples and nations begin to ridicule and to reject law, and particularly the Natural and Eternal Law, precisely in the measure in which they cease to believe in Christ, as God. This is just another reason, it appears, why we Americans of the present generation have the special and personal responsibility to warn the skeptics, as well as the uninformed, that it is a law of life, as proved by history, that the “Natural, as well as the Eternal, Law invariably buries its undertakers.”

As some of you perhaps recall, in 1925, Theodore Dreiser wrote his *American Tragedy*. Unfortunately, he himself proved to be a living embodiment of the great American tragedy, by cutting himself off from the religion and beliefs of his childhood. As a result, he was a sad,

¹⁶ St. Thomas, *Summa*, I-II, Quest. 91, Art. 2.

discontented, bewildered man in the last years of his life. In his book, *The Stoic*, he wrote this haunting lament: — “Chronically nebulous, doubting, uncertain, I stared at everything, only wondering, not solving.”

During the past twenty-five years a great deal of American law, American jurisprudence, and American legal writings have become chronically nebulous, doubting, uncertain, staring at everything, only wondering, not solving. Unless we return to the true understanding of law, the future will be one of chagrin, of bewilderment, of tragedy. Ours is the privilege, ours is the heritage, ours is the sacred personal duty “to restore all things under the Headship of Christ,” the Universal Lawgiver.¹⁷

Can any legal system long survive, when it is being ceaselessly and systematically assailed by myriads of sophistries, erroneous juristic concepts, by the pragmatism of an omniscient State, by the naturalism of a Dewey, the sociological jurisprudence of a Pound, the scoffing skepticism of a Holmes, the relativism of a Cardozo, the positivism of a Hohfeld, the functionalism of a Cohen, the symbolism of an Arnold, the realism of a Llewellyn, or the utilitarianism of a Frankfurter?¹⁸ Such bewildering systems—most of them godless—of law and of jurisprudence have become a definite menace to our American Law and legal thought. Under the very aegis of the Goddess of

¹⁷ St. Paul, Epistle to the Ephesians, 1, 10.

¹⁸ Geoffrey OConnell, *Naturalism in American Education*, (New York, 1938); *Man and Modern Secularism, Essays on the Conflict of the Two Cultures*, (New York, 1940); M. T. Rooney, *Lawlessness, Law, and Sanction*, (Washington, 1937), “Relativism in American Law,” *Proceedings of the American Catholic Philosophical Association*, 1945, “Mr. Justice Cardozo’s Relativism,” *The New Scholasticism*, XIX (1945), 1-45.

Justice, un-Christian publicists and even jurists are subjecting American Law to a slavery of the spirit, and are reducing us free Americans to the status of benighted morons, stripped of our personal, God-given dignity, and bereft of our basic rights. In truth, these sciolists are the very ones against whom St. Paul indignantly inveighs in his First Epistle to Timothy, when he writes: —

“There are certain ones who have gone astray, wandering off into silly sophistries. They claim to be teachers of the law, but they understand neither the meaning of their own words, nor the assertions which they so arrogantly proclaim.”¹⁹

In his Christmas Allocution of December 24, 1942, Pope Pius XII alluded to this same tendency manifesting itself in many quarters of the globe, when he said: —

“Outside the Church of Christ, juridical positivism has reigned supreme, attributing a deceptive majesty to the enactment of purely human laws, and effectuating the fateful divorce of law from morality.”²⁰

If we are ever going to have an abiding moral order in America and lasting international peace, we must re-establish a truly Christian juridical order of life, based on the immutable principles of the Eternal Law.

In his autographical letter to President Truman on August 26, 1947, Pope Pius XII emphasized the necessity of changeless principles as a guarantee of abiding peace in the world.

“What is proposed, is to ensure the foundations of a lasting peace among nations. It were indeed futile

¹⁹ St. Paul, First Epistle to Timothy, 1, 7.

²⁰ A.A.S. XXXIV (1942), 338-343.

to promise long life to any building erected on shifting sands or a cracked and crumbling base. The foundations, We know, of such a peace—the truth finds expression once again in the letter of Your Excellency—can be secure only if they rest on bed-rock faith in the one, true God, the Creator of all men. It was He Who of necessity assigned man's purpose in life; it is from Him, with consequent necessity, that man derives personal, imprescriptible rights to pursue that purpose and to be unhindered in the attainment of it.

“Civil society is also of divine origin and indicated by nature itself; but it is subsequent to man and meant to be a means to defend him and to help him in the legitimate exercise of his Godgiven rights. Once the State, to the exclusion of God, makes itself the source of the rights of the human person, man is forthwith reduced to the condition of a slave, of a mere civic commodity to be exploited for the selfish aims of a group that happens to have power. The order of God is overturned; and history surely makes it clear to those who wish to read, that the inevitable result is the subversion of order between peoples, is war. The task, then, before the friends of peace is clear.

“Is Your Excellency over-sanguine in hoping to find men throughout the world ready to cooperate for such a worthy enterprise? We think not. Truth has lost none of its power to rally to its cause the most enlightened minds and noblest spirits. Their ardour is fed by the flame of righteous freedom struggling to break through injustice and lying. But those who possess the truth must be conscientious to define it clearly when its foes cleverly distort it, bold to defend it and generous enough to set the course of their lives,

both national and personal, by its dictates. This will require, moreover, correcting not a few aberrations. Social injustices, racial injustices and religious animosities exist today among men and groups who boast of Christian civilization, and they are a very useful and often effective weapon in the hands of those who are bent on destroying all the good which that civilization has brought to man. It is for all sincere lovers of the great human family to unite in wresting those weapons from hostile hands. With that union will come hope that the enemies of God and free men will not prevail.

“Certainly Your Excellency and all defenders of the rights of the human person will find whole-hearted cooperation from God’s Church. Faithful custodian of eternal Truth and loving mother of all, from her foundation almost two thousand years ago, she has championed the individual against despotic rule, the labouring-man against oppression, Religion against persecution. Her divinely-given mission often brings her into conflict with the powers of evil, whose sole strength is in their physical force and brutalized spirit, and her leaders are sent into exile or cast into prison or die under torture.

“This is history of today. But the Church is unafraid. She cannot compromise with an avowed enemy of God. She must continue to teach the first and greatest commandment incumbent on every man: ‘thou shalt love the Lord thy God with thy whole heart, with thy whole soul, with all thy strength,’ and the second like unto the first: ‘thou shalt love thy neighbor as thyself.’ It is her changeless message, that man’s first duty is to God, then to his fellow-man; that that man serves his country best who serves his

God most faithfully; that the country that would shackle the word of God given to men through Jesus Christ helps not at all the lasting peace of the world. In striving with all the resources at her power to bring men and nations to a clear realization of their duty to God, the Church will go on as she has always done, to offer the most effective contribution to the world's peace and man's eternal salvation.

“We are pleased that the letter of Your Excellency has given Us the opportunity of saying a word of encouragement for all those who are gravely intent on buttressing the fragile structure of peace until its foundation can be more firmly and wisely established. The munificent charity shown by the American people to the suffering and oppressed in every part of the world, truly worthy of the finest Christian traditions, is a fair token of their sincere desire for universal peace and prosperity. The vast majority of the peoples of the world, We feel sure, share that desire, even in countries where free expression is smothered. God grant their forces may be united towards its realization. There is no room for discouragement or for relaxing of their efforts. Under the gracious and merciful providence of God, the Father of all, what is good and holy and just will in the end prevail.”²¹

V. REASONS FOR THE NEED OF A DIVINE ETERNAL LAW

Lawyers who are not truly versed in the history and philosophy of law sometimes ask why there should be any

²¹ A.A.S. XXXIX (1947), 380-382.

need of a Divine Eternal Law in addition to the Natural Law and Human Laws.²² We need but enumerate a few reasons.

First of all, man is directed to perform his proper actions in view of the final purpose of his existence. If man were destined only to a purely natural end, then there would be no need for any further direction on the part of his reason in addition to the Natural Law and Human Law. However, since man is destined to an end of eternal happiness, which far transcends man's natural ability, it is necessary that he should be guided by a God-given law. We know that by the Natural Law, the Eternal Law is participated proportionately to the capacity of human nature. Man, however, needs a higher way in which to be directed to his supernatural end. For this reason God gives an additional law to man, whereby he shares more perfectly in the Eternal Law.

The second reason for the Divine Eternal Law is that different people form diverse judgments on human actions, especially when dealing with contingent and abstruse matters. This is due principally to the instability and uncertainty of human judgment, from which would result divergent and even contrary laws.

“Men's judgments, like their watches:
None goes just alike,
But each believes his own.”

Wherefore, in order that man may clearly know, without any doubt, what he ought to do and what to avoid, it was necessary for him to be directed in his proper actions by

²² St. Thomas, *Summa*, I-II, Quest. 91, Art. 4.

the unerring law of God Himself, that is, the Divine Eternal Law.

The third reason is that man can enact laws only in those matters of which he is competent to judge. Now, we all know that a man is not capable of judging the interior, hidden and secret movements of another's soul, but only of the external, manifest acts. For the perfection of virtue and of mankind, it is necessary that man conduct himself uprightly in interior acts, as well as in external affairs. It is clear that no Human Law could adequately and effectively direct or control the interior acts. Hence, the necessity of the Divine Eternal Law.

The final reason adduced for the Divine Law, and given to us by St. Augustine, is that no Human Law can possibly forbid all evil deeds and misdemeanours. Any system of Human Law that would try to do so, would be so restrictive and repressive, that the Blue Laws of the Puritans would appear like a Roman holiday.²³ In other words, it is just humanly impossible for any human legislator to forbid all secret, hidden thoughts and motives. In order, therefore, that no evil might remain unforbidden and unpunished, it was necessary for the Divine Law to supervene, in virtue of which all sins, secret as well as manifest, are forbidden.

VI. EXISTENCE OF A TRUE ETERNAL LAW

Some few years ago a writer, who was more sardonic than profound, claimed that there really can be no Eternal Law. Every law, he asserted, is imposed on someone.

²³ *De Lib. Arbitrio*, I, 5, PL 32, 1228.

And there was really no one existing from all eternity on whom the Eternal Law could have been imposed, because God alone exists from eternity.

To this sophistry it is easy to reply that those things which do not exist in themselves, exist in God, inasmuch as they are known and preordained by Him Who, as St. Paul says, "calls nonexistent beings as though they were existent."²⁴ Hence, we see that the eternal concept of the Divine Law bears the character of an Eternal Law, in so far as it is ordained by God for the government of creatures known to Him, even before they were called into actual being.²⁵

VII. DERIVATION OF ALL LAWS FROM THE ETERNAL LAW

Not only does every rational creature know more or less about the Eternal Law, but human beings should become increasingly aware of the fact, that every true law is derived in some way from the Divine Eternal Law. This might be demonstrated in the following manner. Law denotes a plan, directing acts toward an end. Now there is in life a sort of hierarchical order whereby plans and directives emanate from higher authority to lower authority, such as we see in Federal Laws, State Laws, County Laws, Municipal Statutes, and the like.²⁶

²⁴ St. Paul, Epistle to the Romans, 4, 17.

²⁵ St. Thomas, *Summa*, I-II, Quest. 91, Art. 1, *ad* 1.

²⁶ The Church offers a more striking example of this principle in her universal laws, the enactments of ecumenical councils (Canons 222-229), the statutes of plenary and provincial councils (Canons 281-292), the statutes of diocesan synods (Canons 356-362), and the like.

Since the Eternal Law is that supreme and exalted plan of government existing in God Himself, the Supreme Legislator, all plans of government on inferior planes are derived from the Eternal Law. Hence it is that all laws, in so far as they partake of right reason, are derived from the Eternal Law. In other words, all that is just and lawful in temporal laws is derived from the Eternal Law.²⁷

In the Morgan Library on Madison Avenue in New York City, there is an interesting, illuminated Manuscript of the fourteenth century, from the University of Bologna. The Manuscript is a treatise on law. An artist of consummate ability has embellished the parchment at the beginning of the text with a painting of the Almighty Father, seated, as it were, in a medieval Court Room, with the Divine Son and the Holy Ghost, surrounded, in turn, by innumerable Angels, the Apostles and the heavenly Court, despatching two Archangels to earth. One Archangel presents to a king the book of law for all temporal kingdoms. The second Archangel offers to a Pope a similar volume, containing the laws of the Church. It was in this beautiful and simple way, that both the medieval artist and jurist understood, depicted and described the derivation of all law from the Eternal Law of God.

VIII. OUR KNOWLEDGE OF THE ETERNAL LAW

An objection that is sometimes made to the notion of an Eternal Law is that a person cannot possibly be obligated by a law about which he knows nothing. And we

²⁷ St. Thomas, *Summa*, Quest. 93, Art. 3.

realize that there are many people, even lawyers, they tell us, who profess to know little or nothing about the Eternal Law. Fortunately, St. Thomas answers this objection in a masterly way: —

“A thing may be known in two ways: first in itself; secondly, in its effects, in which some likeness of that thing is found. For instance, someone, not seeing the sun in its substance, may know it, by its rays. Hence, we must admit that no one can know the Eternal Law, as it is in itself, except God and the Blessed who see God in His essence.”²⁸

Every rational creature, however, knows the Eternal Law according to some reflection, in a greater or lesser degree. Knowledge of truth is a kind of reflection and sharing of the Eternal Law, which is unchangeable truth, as St. Augustine tells us.²⁹ Now all men know the truth in a certain measure, at least, as to the common principles of the Natural Law. As to the other truths, they partake of the knowledge of truth, some more, some less. And in this respect they know the Eternal Law in a greater or lesser degree.

IX. THE ETERNAL LAW KNOWN THROUGH THE NATURAL LAW

The Eternal Law is known to us through the Natural Law, but is nonetheless prior to every other law, to Natural Law, as well as to all Human Law. Furthermore, it is the very basis and source of every other law.

²⁸ St. Thomas, *Summa*, I-II, Quest. 93, Art. 2.

²⁹ *De Vera Religione*, XXXI, PL 34, 147.

The Eternal Law existed in God before the created world existed, just as the architect's plan preceded the construction of the Empire State Building. This same Eternal Law was even promulgated before the world appeared, despite the fact that its promulgation was not received until creatures existed.

X. THE PROMULGATION OF THE ETERNAL LAW

In view of what has just been stated, it may well be objected that any law is meaningless, which is enacted or promulgated before the very existence of the subjects for whom it is intended. Now we know that the Eternal Law, destined for the created world, existed before the creation of mankind.

If the Eternal Law had been intended only as a mere means to creatures, then it would indeed have been absurd to promulgate it to nonexistent creatures. But the Eternal Law, as we have seen, is not merely and solely a means to something beyond itself. Like the Natural Law, the Eternal Law has the character of a directing principle, in itself. It directs things to their proper end. It is the Wisdom of God Himself, Who is the Creator and Supreme Legislator of mankind.³⁰

It is obvious that the Eternal Law did not produce its effects until the world existed and until the conditions of its fulfillment were realized. But since the Eternal Law is not distinct from God Himself, it had attained its end,

³⁰ St. Thomas, *Summa*, I-II, Quest. 90, Art. 4; Quest. 93, Art. 2.

even before created beings were called into being, by the omnipotent Creator and Supreme Legislator, Who "speaks to nonexistent beings, as though they were existent."³¹

XI. LAW AS AN ORDINANCE OF RIGHT REASON

In view of the fact that Human Law emanates from the Divine Eternal Law, it is easy to understand, why it has the nature of a true law, only in so far as it partakes of right reason. Should Human Law deviate from right reason, it becomes thereby an iniquitous law. Such an unjust law would not have the nature of an ordinance of right reason, but would be the unauthorized enactment of unconscionable tyranny.

It is hardly possible, while speaking in this Building, to mention tyrants who take God out of law, by fist or force, without alluding to the case of St. Thomas More, whose stately statue guards the west portal of this College of Law, and whose family escutcheon graces the inner archway of its Main Entrance. As Chesterton has well said of this man who was beheaded in 1535, and canonized a Saint in 1935: —

"The mind of More was a diamond, that a tyrant king threw into the ditch because he could not break it."

Whenever we treat of unjust laws, of tyrants and of dictators, we must always bear in mind the teaching of another St. Thomas, the Angelic Doctor. He warns us,

³¹ St. Paul, Epistle to the Romans, 4, 17.

that even an unjust law, in so far as it retains some semblance of law, in view of the fact that it is enacted by one who is in power, is derived in this way from the Eternal Law, for all power is from God.³² Thus St. Paul urges the Romans: —

“Let everyone be subject to the higher authorities, for there exists no authority except from God, and those who exist have been appointed by God.”³³

XII. EXTENSION OF THE ETERNAL LAW TO THINGS BEYOND THE SCOPE OF HUMAN LAW

St. Thomas concludes his discussion of the derivation of all laws from the Eternal Law by a very practical consideration. He reasons thus:

“Human Law is said to permit certain things, not as approving of them, but as being unable to direct them. And many things are directed by the Divine Law, which Human Law is unable to direct, because more things are subject to a higher than to a lower cause. Hence, this very fact comes under the ordination of the Eternal Law, that Human Law does not concern itself with matters it cannot direct. It would be different, were Human Law to sanction what the Eternal Law condemns. Consequently, it does not follow that Human Law is not derived from the Eter-

³² St. Thomas, *Summa*, I-II, Quest. 93, Art. 3, ad 2; Pope Leo XIII, Encyclical Letter, “*Libertas Praestantissimum*,” June 20, 1888, *The Great Encyclical Letters of Pope Leo XIII*, 144-145.

³³ St. Paul, Epistle to the Romans, 13, 1; Fernand Prat, *The Theology of St. Paul*, II, 322-332.

nal Law. What does follow, is rather that it is not on a perfect equality with it.”³⁴

From this we clearly discern why Pope Pius XI stated that:

“The Church teaches—since she alone has been given by God the mandate and the right to teach with authority—that not only our acts, as individuals, but as groups and Nations, must conform to the Eternal Law of God. In fact, it is much more important that the acts of a Nation follow God’s law, since on the Nation rests a much greater responsibility for the consequence of its acts, than on the individual.”³⁵

XIII. ENDURING STABILITY OF CHANGELESS PRINCIPLES OF LAW

Since all true law emanates in some way from the Divine Authority of the Eternal Law we see how lamentable are the errors of those moderns who seem to think that everything in this world is in a perpetual and planless state of ever-shifting mutation, like the sand dunes of Indiana. Only a few months ago, in fact, on April thirtieth of this year, a District Judge of New Jersey wrote these words in his opinion:

“As we have seen, the generally accepted rules of morality or ethics fluctuate in each era and the best we can do with the subject is to apply the generally accepted rules of our own day.”³⁶

³⁴ St. Thomas, *Summa*, I-II, Quest. 93, Art. 3, *ad* 3.

³⁵ Pope Pius XI, Encyclical Letter, “*Ubi Arcano Dei*,” A.A.S. XIV (1922), 689.

³⁶ Petition of Smith, 71 Fed. Supp. 972 (D. N. J. 1947).

This type of error is one of the saddest commentaries on the status of our legal thinking of today. As a result, our present-day judicial opinions and our legal writings are, in large measure, a curious admixture of errors, platitudes, sophisms and half-truths. Speaking of half-truths, we are reminded of what Stephan Leacock once said about them:

“Half-truths, like half-bricks, are more dangerous than whole ones: they go further.”

As we envision the future of American legal thinking, it is not the persecution of the concentration camp, nor even the execution in the prison-yard, that is to be feared, but rather the imperceptible corruption of the American legal mind by the insidious Trojan-horse system of infiltration of false principles. This precisely is the most alarming attack on our American thinking at the present time.

Legal thought in America is entering upon a new era. The age of confused paganism opposing Christianity is more or less at an end. The Christian legal system, as a system of values and moral standards is being attacked, or more correctly, is being betrayed, more insidiously than ever before, perhaps, in the history of mankind.

The persuasive infiltration of a de-Christianized, godless, and even anti-God system of law converging on the Christian citadel of truth from all sides, mocking its morality and ridiculing its basic principles even of the Divine Eternal Law, calls for the defence, not only of heroic wills, but of sturdy, enlightened legal minds, firmly grounded in the abiding principles of eternal truth. Today as never

before in the history of American law, a veritable Niagara of high-sounding legal terms, of catch-words, of cliches, of dithyrambic verbiage, of what the men in service contemptuously called "Gobbledygook," tumbles from the legal printing presses, in a tiresome cascade of ceaseless repetition, and thus seeks to conceal in meaningless phrases, the shallowness and poverty of thought, characteristic of an age that has lost its grip on God.³⁷

XIV. THE RE-ESTABLISHMENT OF ALL THINGS UNDER THE HEADSHIP OF CHRIST

In conclusion, may we be permitted to remind you that imbedded in the wall overlooking the Main Entrance of the Library of this College of Law is a beautiful plaque, chiseled from infrangible stone, of Christ, the King, the Author of the Eternal Law and the Legislator of a true, everlasting Kingdom. As we view this statue of a Divine King and Supreme Lawgiver let us not forget that the first struggle recorded in all history, was that of a battle in Heaven over a law and over a Kingdom, that is, the Kingdom of Christ, the Author of the Divine Eternal Law, against the lawless, arrogant, war-mongering, rebel kingdom of Satan.

May one of the blessed results of this Natural Law Institute be that America and the world may more and more

³⁷ Two volumes issued in recent years exemplify the sad state of American legal writing at the present time. A curious commixture of erroneous expressions, ponderous platitudes, sophisms and half-truths will be found, in large measure, in: *My Philosophy of Law, Credos of Sixteen American Scholars*, (Boston, 1941), and *Interpretations of Modern Legal Philosophies, Essays in Honor of Roscoe Pound*, (New York, 1947).

look to Christ, the Author of the Eternal Law and Supreme Legislator, for guidance in the principles and problems of all law. May Our Divine Lord become for every lawyer, every upright citizen, every State, and every Nation the true Lawgiver, directing lives, ennobling hearts, and divinizing souls.

We began this Paper with a reference to the Papal Encyclical of a quarter of a century ago. That span of time, we know full well, seems very long to you young men, but it is only a faded memory to the old. May the next twenty-five years witness the personal dedication of the lives of all present, to the cause of justice and truth, to the spread of the correct concepts of the Natural Law and the Eternal Law among mankind.

May this College of Law become a veritable trysting-place of the immutable principles of Divine Justice. And may it become, ever more and more, a temple of abiding truth, with its foundations firmly grounded in the imperishable cornerstone of God's Eternal Law.

For all of us, whether young or old, it is later than we think in the present-day struggle for the enduring, unchanging principles of law. For all, whether young or old, the years are passing swiftly, and swiftly the decades follow. May our lives be so truly dedicated to the cause of justice and of truth that we may be privileged to share fully and eternally in what the Preface of the Mass of the Feast of Christ the King so beautifully calls an eternal and everlasting Kingdom:

“A Kingdom of truth and of life,

A Kingdom of holiness and of grace,
A Kingdom of justice, of love and of peace":
That abiding Peace of Christ,
In the Kingdom of Christ.

Under God, then, may our sharing in this Kingdom, with all men of good will, be so genuine, our study of the Eternal Law be so devoted, our endeavors be so constant, our efforts so fruitful, that truly Christian governments—founded on the principles of the Eternal Law—of the people, by the people, and for the people may not perish from the earth.

Rev. W. J. Doherty, C.S.C.