

FOREWORD

Courses in formal legal education were established at Notre Dame more than eighty years ago. Throughout the years, the University's College of Law has insisted that law cannot be divorced from morality. This principle of thought and teaching has enabled us to remain faithful to the Natural Law doctrine which was placed by the American Founding Fathers as the standard of all valid man-made law. Nevertheless, in most American law schools a purely pragmatic or materialistic philosophy of law has long displaced Natural Law jurisprudence and has exerted in our times a powerful influence upon the thinking of jurists, judges, and lawyers. In 1947, the College of Law organized the Natural Law Institute in order to extend the study of Natural Law beyond the limits of the classroom. We are convinced that an American law school today, aside from its responsibility in the training of future lawyers, has also a duty to the legal profession and the public at large. Through the Natural Law Institute, Notre Dame's College of Law is trying to assist in the restoration of the moral foundation upon which American law was originally built.

In four short years, the Institute has made gratifying progress in discharging its main function. It has won recognition as a focal point of Natural Law studies in the United States. Its annual convocations have been attended by legal scholars, judges, and lawyers from this country and abroad. The papers read at these convocations have been published each year by the University

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Press. A special library of books on Natural Law, the generous gift of Mr. Alvin A. Gould, sponsor of the convocations since 1948, has been opened in the College of Law, and its valuable materials will serve the ends of productive scholarship in the study of Natural Law.

The present volume contains five papers read at the Institute's 1950 convocation. Taken as a whole, they demonstrate that the Natural Law is not a mystical abstraction, the exclusive province of the academic scholar unmindful of the day-to-day problems of the legal practitioner. Nor is the Natural Law the peculiar possession of the lawyer. Legal scholars, jurists, judges, and lawyers alone cannot rescue American law from the unfortunate routine of positivism and materialism. The layman, too, must be made aware of the implications of Natural Law doctrines and his voice must strengthen the demand that morality be given back to law. It is noteworthy, therefore, that two of the five papers included in this volume are the products of non-lawyers.

It should hardly be necessary to point out again that the idea of Natural Law is not uniquely Catholic, nor even Christian. Two of the participants in the 1950 convocation were Protestant in religious affiliation; two were Roman Catholics; one was a Jew. Yet their papers show a common agreement founded on reason that in Natural Law philosophy alone can we find a solid defense of the assertion that certain "fundamental" rights are inherent in man's nature and hence beyond destructive attack by hostile human authority.

We Americans are accustomed to speak with easy assurance about our precious "fundamental" rights. But to call a right fundamental is not to answer the question

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why it is fundamental. And that is precisely the question which a troubled generation is asking urgently of those who make, interpret, and apply our laws. A justice of the United States Supreme Court has remarked that in interpreting our Bill of Rights today, the purely positive precedents set by the cases of other years are often found unreliable because of changing conditions. If that be so, then we are necessarily driven back to first principles. In the American Declaration of Independence, the first principles regarding human rights were enunciated in the light of the Natural Law philosophy. Before the State existed, God created man. Out of the relationship of creature and Creator arose certain rights. It is because of this relationship that our rights are "inalienable"; and being thus inalienable they are fundamental, as we say today. Such first principles of the origin of human rights ought to function as standards to evaluate those human laws which necessarily must be made to regulate the exercise of fundamental rights. The papers in the present volume, discussing such rights, exemplify the modern vitality of a return to the first principles of Natural Law.

The writer therefore feels warranted in repeating here what he wrote as a foreword to the first volume of the Natural Law Institute Proceedings four years ago:

The Natural Law 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

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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.

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