

FOREWORD

The late Mr. Justice Cardozo called attention to "the impulse of jurisprudence in these days to fling herself into the arms of philosophy for shelter and consolation." Not one, but many competing philosophies strive today to possess the soul of jurisprudence. Among these is the historic "Natural Law" concept which the founders of the American Republic used as a basis for the Declaration of Independence and clearly implied in the Ninth Amendment to the Constitution itself. This same concept is the philosophy respected by the law curriculum of the University of Notre Dame for more than eighty years.

An American law school in our times, while discharging its primary duty to its students, has also a responsibility to the great profession for which it prepares them and to the public they are to serve. Notre Dame's College of Law accepted such a responsibility in establishing the Natural Law Institute five years ago. The Institute sought to extend the study of Natural Law beyond the limits of the classroom, and to encourage re-examination by laymen as well as by lawyers, of the claims of the Natural Law as a philosophy of law offering not merely temporary "shelter and consolation," but a firm foundation for the future.

The results have been gratifying. The increasing number of books and articles on Natural Law in the past few years and the frequency with which our highest courts now refer to it, indicate a "second spring" for the Natural Law in American jurisprudence. Even those unwilling to accept the Natural Law now frankly acknowledge its

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renewed vigor in contemporary legal thought. To this "renaissance" the Institute has made an inspiring contribution. As Mr. Justice Frankfurter says, "the Natural Law Institute of Notre Dame University is now an established institution in our legal world."

The volumes of the Proceedings of the Institute, of which the present is the fifth, taken together, constitute a comprehensive introduction to the many aspects of Natural Law philosophy. This was made possible by grouping the various lectures or papers of each succeeding convocation around a central theme. Thus, in 1947, the theme was the general philosophical background of the Natural Law; in 1948, its history and development since Greek and Roman days were examined; in 1949, the relation between the Natural Law and four major divisions of Positive Law was the subject of inquiry; in 1950, the lecturers discussed the Natural Law basis of what we are accustomed to call our "fundamental rights."

The papers read at the 1951 convocation and included in the present volume constitute a fitting climax to the Institute's program. It had been said that the Natural Law concept carried with it certain "theological implications" peculiar to the Christian, or even more narrowly, to the Catholic tradition of the western world. Christian writers, however, had long asserted that Natural Law, by its very definition, was the endowment of all men, as children of God, regardless of time and place, color, race or creed. St. Paul had written nearly two thousand years ago:

For when the Gentiles who by nature have not the Law, fulfill the requirements of the Law, these, though they have not the Law are a law unto

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themselves, showing as they do, the demands of the Law to be written on their hearts; and an approving conscience beareth them out, amid the debate of thoughts that accuse or defend.

(Rom., ii, 14-15)

Would the thinking and the writing of the peoples of the non-Christian world, particularly the non-western world, corroborate St. Paul's words? This question was before the Institute's convocation at Notre Dame in December, 1951. In an unprecedented undertaking, five scholars of highest rank and reputation, representing the thought of the non-Christian world, Jewish, Moslem, Buddhist, Hindu and Confucian, came together for four days of concentrated discussion in an American Catholic University, under the chairmanship of an American Catholic Archbishop. From their voices we were privileged to hear what the traditions of over a billion of the earth's inhabitants had to say about the Natural Law and the claim for its universality as advanced by the thinkers and writers of the Christian world. No more magnificent exemplification of true "academic freedom" grounded upon sovereign respect for the conscience of man as the child of God could be imagined. It was not to be expected that complete harmony in terminology would occur between the thought of Christian and non-Christian, or that the results of Oriental intuition would sound familiar to western ears accustomed to the ring of the Aristotelian-Scholastic syllogism. The careful reader of the papers in the present volume will, nevertheless, discern the deeper and more abiding harmony in the evidence that all men everywhere have constantly reached

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out towards a norm, a standard or criterion of conduct, an *absolute* not the work of human hands and therefore carrying with it a regulative force superior to anything men themselves could devise. What matters it if their "reach" may have "exceeded their grasp"? The significant and inescapable fact is the very tendency of men to "reach" at all. In what they thus seek, East and West are one.

The first phase of the Institute's program is now complete. Much remains to be done. Wide boundaries have been staked out and broad fields ploughed. These must be cultivated. The Natural Law must become a living force in the thinking and practice of American lawyers and judges. To this end acute and untiring scholarship is indeed demanded. It must not be a scholarship remote and cloistered, but one ever mindful of the practical and immediate problems of the lawyer and of the courts today.

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