

## EPILOGUE

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During the first four years of its existence, the Natural Law Institute concerned itself with various aspects and applications of the natural law as understood by eminent jurists of the Western World, particularly America. This year's series represents a new, and we think, most fruitful approach to the natural law. The present volume reaches beyond the Western World to the great cultures of the East in an endeavor to find some common ground, and possibly, some additional support for the basic concept of the natural law.

This widening of scope is certainly fitting, for the natural law is by virtue of its definition co-extensive with man. Moreover, given the present world situation, we may have uncovered an additional basis for unity in a world where the process of human and spiritual unity has certainly not kept pace with the technological advances towards physical and geographical unity.

In seeking for a bond of unity in a world fraught with racial, religious and cultural tensions, where could one seek nearer the core of the problem than in a universally accepted concept of natural law? This law is supra-national, supra-cultural, and yet highly unifying and most fundamental, for it begins with what makes a man, any man, human, his faculty of reasoning, and ends with God, who is the Author of this law and the end of all men's seekings.

We are here reminded of the pattern set forth by Professor Jacques Maritain, at the second session of UNE-

SCO's General Conference, calling for an effort to discover practical points of convergence in the light of the fullest possible mutual understanding. Dr. Hakim relates this to our present subject:

When the different nations of the earth and the followers of different religions meet, they should not meet to convince one another about their distinctive dogmas and mysteries; if they do that, they will find no common ground. Religious faith is now eclipsed all over the world by the powerful influences of materialistic sciences. It has become difficult, almost bad form and violation of etiquette to take the name of God in an international gathering of politicians or jurists. People have begun to say that for humanity, morality is enough, and religion is nothing but morality tinged with emotion. I say, very well then, let us start with basic morality, although I have serious doubts whether morality can lead a healthy, autonomous existence without being rooted in theism. It is, nevertheless, a step towards reality that the nations of the earth, divided racially, nationally, and by narrow and fanatical interpretations of religion, meet and put their signatures to a Charter of fundamental human rights acknowledging thereby the common ethical basis of humanity. Humanity seems to be advancing toward God, though with uncertain and hesitating steps. When the present-day materialism has had its day and people begin to realize a common spiritual basis as well, they may put their signatures to belief in one God as they have consented to believe in one world and one humanity, however their actual practices may fall short of their verbal professions.

We do not mean to say here that we have come to blend

our differences, national, cultural or religious, into one amorphous and uniform whole, but rather that we must, in the face of a world torn by utterly conflicting philosophies of life regarding man and his human rights, solidify the ranks of all those who do agree, at least, upon a basic pattern for human happiness and order and peace in this world, founded on a natural law established by God.

This is obviously no easy task. We are speaking here of a meeting of East and West on a matter that is fundamental to all human existence and activity. It means much more than driving the same tractors, or flying the same airplanes, or using the same weapons. It is highly significant to find unity in this area even though different languages are spoken, different literatures read, or even different rituals followed. Unity regarding a basic concept of the natural law means unity of men as men, agreement about what it means to have fundamental rights as a human being. Recognition of the natural law erects a standard that human reason alone can recognize as being a principle of world order above the petty differences of civil codes and man-made laws.

Again, we are not saying that there is no other unity that is deeper or more significant, but we are asserting that here is a common ground where we can begin to draw all men, everywhere, together in a unity that reflects what is common to human beings as human beings. There is a force at work in the world today which does not accept this basic spiritual unity of man as a child of God, endowed with inalienable human rights. At least, we who do accept the natural law can present a united front in a world already divided in too many other ways not to be united at least in this, in which we agree, and on the

basis of which we oppose those who would dehumanize man.

The foregoing papers were not in any sense artificially contrived to meet our purposes in seeking a common ground. We hoped that such a common ground could be established, but we asked the various authors to state freely how they might find points of contact between what we understand as the natural law, and what they sincerely understood as the import of their culture in this area. Our purpose in this epilogue is merely to ask the question: Were such points of contact discovered as to give some hope of establishing a valid basis for a meeting of minds, eastern and western, as regards the basic concept of the natural law?

Our first reaction, upon studying these papers, was most optimistic. Perhaps, because of many first impressions of agreement that may be more semantic than real, we have been too sanguine. We shall merely state the agreements as we read them in the texts, and ask the indulgence of the authors if we have seen more than they intended by their words. There were so many points of apparent agreement, that even in the event that we have read a superficial denotation and missed a more important connotation in some passages, we feel confident that enough common ground has been established to open up a new and significant bridge of unity amid many world-wide islands of differences hitherto separating man from man, race from race, culture from culture. If only this bridge of spiritual and human agreement may be widened and lengthened by further and more enlightened discussion from both sides, this year's Institute will be well justified.

It would help at this juncture to outline procedure.

Our method is simple. We will merely establish what seem to be the fundamental elements in our concept of the natural law, and then attempt to find wherein the various authors express whole or partial agreement in these fundamental elements.

The natural law, as we understand it, is, as any other human law, a norm for human conduct. It differs from other human laws in three ways.

## I

The natural law differs from most other human laws in that its author is not man, or civil government, but God. It has variously been called the divine unwritten law, or a part of the eternal law of God for the government of the universe, insofar as it is the eternal law in human nature. While divine in origin, it is a human law as regards its subject matter which is human rights and duties, human justice. Understood in this way, natural law is contradistinguished from "written law," human or divine, from "positive law," from "civil or municipal law," or in general, from any law of human origin. St. Thomas Aquinas defines natural law as "the rational creature's participation in the eternal law" of God. The natural law is not only the law of reason (by which it is known) but the law of nature's God. This basic conception of natural law as divine in origin antedates the Christian era, which is understandable, since its roots are philosophical rather than theological.

Aristotle in his *Rhetoric*, when faced by a conflict of written and unwritten law, advises the lawyer to "urge that the principles of equity are permanent and changeless and that the universal law does not change either, for it is

the law of nature, whereas written laws often do change." Aristotle's concept of a natural justice common to all peoples coincides with our basic notion of the natural law as distinguished from positive human law. Plato too, recognizes law as a disposition of reason which orders things according to their natures, and which neither depends upon nor derives its authority from the power of the state.

In summary then, we can establish this first major element in the natural law: it is God-made rather than man-made. Several rather obvious corollaries follow from the divine origin of the natural law. It is both the foundation and the standard for further legal determinations of positive laws. Because of its origin it is unchanging as God and human nature are unchanging. Positive law to be just should conform to the general principles for human justice contained in the natural law. In case of conflict, the natural law is the superior rule for human conduct.

We shall now attempt to see in what manner the authors of this volume agree with this first element of the natural law, its divine origin and authority.

Dr. Sundaram's statements are in clear-cut affirmation. He says that for many Hindus, "their ignorance of man-made law did not in the least detract from their fundamental knowledge of the highest law, the law of God or the eternal law or natural law—call it by whatever name. They accepted unquestioningly the authority of the Law—God given Law—because they were convinced that no power on earth can supersede the divine law."

"Origin, Existence, Extinction follow according to His (God's) will. The Supreme Being does not have to admin-

ister the Law, because He is the law. He keeps eternal vigilance and is eternally at work."

Dr. Sundaram also voices agreement on the differentiation of natural law and other human laws.

"There is one fundamental difference between natural law and other forms of law. Common law, canon law, constitutional law, international law are all subject to periodical amendments and alterations. Natural law is eternal and immutable. A second basic difference is that all other laws of the second group are created, evolved, modified and altered by man; natural law is only discovered by man. . . . Lastly, any form of law that runs contrary to natural law may seemingly succeed for a while, but it is doomed to fail ultimately."

Along the lines of this last statement, Dr. Sundaram comments later in his paper:

"In the ultimate reality, the individual soul is greater than all groups, organizations, states and communities of men. If the laws of men corrupt the soul of man besides dominate his body, man has the righteous duty to rebel against such laws and reassert the natural laws of his Maker."

And finally, Dr. Sundaram relates the problem to contemporary history in India.

"If today 40 million so-called untouchables of yesterday can talk with dignity, with their heads erect and obtain equal rights and opportunities with their fellow men in their country, it is entirely due to this one man's (Ghandi's) untiring devotion to natural law—his adherence to the dignity of the soul of man."

This seems ample evidence to see the support of Dr. Sundaram and the Hindu philosophy and tradition which



he represents, for our first and most fundamental element of the natural law.

Rabbi Freehof's paper is in its totality a testimony to law coming from God, and therefore superior to the human, man-made laws. There may be some difficulty in distinguishing here between references to written divine law as contained in the revelation of the Old Testament and the unwritten natural law which is spontaneously known to reason, although placed by God in the nature of man. We have the impression that many of Rabbi Freehof's words apply to the former. Given the ancient theocracy of Israel, this is understandable. Moreover, Thomas Aquinas has said that the content of the Decalogue is natural law. We can deduce at least, that in the spirit of the Jewish tradition, a law originating from God takes precedence over man-made law.

Almost no person needed the threat of prison or the lash, to be law-abiding; for the law was not a mere human contract or the product of the wilfulness of a tyrant or the confusion of some town council. . . . It was the will of God. . . . Laws must be tested by this yardstick. Does the law violate the conscience of the community or earn its approval? If it violates it, no police power will ever be sufficient. As long as the citizens believe that law is wilful, foolish, a decree forced upon them, then they will hate the law and resist it. But when they feel that it comports with conscience, then police power becomes almost unnecessary because the law is enforced from within. The scattered Jewish communities maintained law and order because the law was accepted as coming to them from 'nature and nature's God'.

Dr. Hu Shih finds in the long history of China sev-

eral notions similar to our concept of natural law as a supreme, fundamental law, superior to all laws of mere human authority.

In Chinese tradition, this appeal to a higher authority has taken these main forms. (1) Sometimes it takes the form of appealing to the authority of an imagined and much freely idealized antiquity—the Golden Age of ancient sage-rulers. (2) Sometimes it takes the form of appealing to the will of God (*t'ien-chih*, or *t'ien-i*) as the highest norm of law. (3) Sometimes the appeal is made to the Way (*tao*) of Heaven or nature, which is the law of nature. (4) Sometimes, especially under the long, long centuries of the vast unified empire, the appeal is made to the authority of the canon (*ching*—meaning the invariable, immutable law) of the Sacred Scriptures of Confucianism as the highest authority on all matters of moral and political justice. (5) And sometimes the appeal made to Reason or Law or Universal Reason or Natural Law (*li*, or *tao-li*, or *t'ien-li*) as it is intuitively evident in the moral conscience of man. . . . all of these bear some resemblance to the historical appeals in the Western World to natural law or natural right.

Dr. Hu Shih has amplified some of these notions to show that they coincide with our first basic concept of the natural law as divine in origin and superior to other human laws. For example, five centuries before Christ the philosopher Mo Ti purified the concept of *t'ien-tao* as taught by Lao-tze and accepted by Confucius.

Mo Ti declared that the Will of God (*T'ien-chih*) should be the criterion of all judgment of right and wrong, the standard of all measures, the highest norm

and law. He said 'Now I have the Will of God. I shall use it to measure and judge the laws, penalties, and governments of the kings, princes, and grand officers of all the states in the world: and I shall use it to measure the words and acts of all the people. Whatever is in accordance with the Will of God is right; whatever is opposed to it is wrong'."

The same point is made in reference to *Ching*, the Canon of Confucianism.

It was revered and regarded as the highest authority in all matter of morals, law, social relations and governmental policy. . . . it was required reading in all Chinese schools. . . . primarily because some of the books included in the Canon in its broader sense do contain some of the universal principles of justice which in the words of Aristotle, 'All men, by natural intuition, feel to be common right and common wrong'.

Dr. Suzuki presents a problem in attempting to find some point of contact between our concept of the natural law and his presentation of it in the Buddhist Tradition. He would seem to admit a law fundamental to all human action, but based on human nature considered in itself rather than as coming ultimately from God as its creator.

Dr. Hakim leaves no doubt about the Moslem belief in the natural law as coming from God and implanted in the very nature of man.

Nature's laws are God's thoughts thinking themselves in orbits and tides. As there are signs of God's power and wisdom and beauty in all nature outside man, so are these signs inscribed in the hearts of all men. . . .

the verses of God's revelations are inscribed in letters of light in the starry heavens, in the prophetic consciousness and in the minds and hearts of those who reflect rightly on nature within and nature without. . . . According to the Quranic teaching, religion is essentially a comprehension of the natural law and living in obedience to that law, for only thereby shall man be true to himself, and only by being true to himself shall he be true to his God and just to the rest of His creatures and His creation. . . . Division of humanity into hostile groups on the basis of color, caste or creed is unnatural because it strikes at the roots of essential human values and poisons all morality and spirituality . . . Most Muslims believe that Islam has a mission, and that mission consists in overcoming racial and national barriers, demolishing class distinctions, elimination of exploitation and advancing towards universal liberty, universal equality, universal justice. These are the constituents of the natural law and the values that entire humanity is destined to realize. In God, these universal, unchangeable principles originate and towards God they lead mankind.

So speaks Dr. Hakim.

Recognizing the limitations of language to which we referred above, and the possible mistakes in the interpretation of other men's thoughts, it still appears that in the above statements by the various authors, we do find a substantial agreement on the fundamental notions of the natural law: That it originates in God and is implanted in human nature; that it supersedes all other man-made laws, and forms both a foundation and a rule for the justice of these laws; that it is unchangeable as are nature and nature's God. Certainly, if these points alone are valid,

we have a valid basis for the recognition of fundamental human rights by millions of Eastern peoples who share our hopes for justice and equity, and the natural basis for these hopes. Here is a pattern for peace and order on a world-wide basis. Here is a unity at the heart of mankind that stands in fundamental opposition to a current divisive world philosophy that recognizes neither God, nor the dignity and inalienable rights of His noblest earthly creation.

So much for the first element in our understanding of the natural law. We shall treat more briefly the other two characteristics that differentiate natural from other man-made human laws.

## II

Natural law, unlike other human laws of human origin, applies to all men of all times. The reason is rather obvious after our foregoing discussion. The natural law stems from that which is common to all mankind—their humanity as constituted by God. Men may change, but their nature does not. Many of the passages already quoted substantiate the agreement on this point. We shall merely refer to a few additional lines that have direct bearing on this aspect of the natural law: its universality in space and time.

Dr. Sundaram testifies for the Hindu tradition. "The immortality of the soul is applicable to the followers of all religions and the Law of Nature pertaining to the soul of man is of universal acceptance. Natural law, according to the Hindu is identical in all faiths and is common to all mankind."

Rabbi Freehof is no less emphatic speaking for the Jewish people.

The Divine-Natural law meant order and meant culture. To the extent that it meant order, it meant self-control through conscience. To the extent that it meant widespread culture, it achieved a democratic control over the abuses of power. These principles apply to all legal systems in all times. If men believe that the law is essentially natural and God-given, then with even a minimum of police power, order will reign. If men understand the legal foundations of their own government, they are the intelligent citizenry against which no tyranny can prevail. This is the experience and universal meaning of Natural-Divine law in Jewish history. It was small in scope, but it applies *ubique et ab omnibus*, everywhere and for everybody.

Dr. Hu Shih has also indicated the universality of the natural law in the Chinese tradition. He cites Mo Ti as using *t'ien chih*, the will of God, as the criterion of all right and wrong, using it "to measure and judge the laws, penalties, and governments of the kings, princes and grand officers of all the states in the world."

Dr. Hu Shih cites *Ching*, the Canon of Confucius, to support the universality of a concept akin to the natural law. He borrows his definition from a classical author of the fifth century (A.D.): "The times may change, dynasties may come and go, and metal and rock may decay and perish, but the Canon (*Ching*) will always remain as the unchanging rule and as the immutable law for a hundred generations to come."

Dr. Hu Shih also relates the more modern development of *t'ien lei* in the sense of universal truth or rea-

son or natural law. "The natural law (*T'ien lei*) is what every man's innate and intuitive moral conscience perceives to be the truth and the law which it is his duty to extend and apply to all things and all events."

Dr. Suzuki also relates this universality of the natural law to the Buddhist concept. "Man has a certain innate feeling, according to Buddhism, which makes him refrain from committing deeds of violence. The innate feeling is rooted in human nature equally shared by all sentient beings who live in group-life."

Dr. Hakim begins his paper by asserting that the natural law is "universal and objective, rooted in the nature of things and in the nature of humanity." He later asserts that "the essentials of ethics must be the same for all because they are inherent in the common nature of all men."

In summary, we find in each of these authors, substantial agreement on the universality of the natural law, applying to all men of all time, since all share the same human nature.

### III

The final question to which we must now address ourselves is: how do men come to know this natural law which is established by God in the nature of men? If the law is applicable to all men, it should be known to them somehow, by reason of their own natural resources of knowledge. That this is the case, we find amply documented in the various authors. This is the third outstanding characteristic of the natural law as distinguished from man-made laws. These latter must be promulgated by their human legislators. Even the Divine Positive Law

is promulgated by revelation. But the natural law can be known by all men possessing human reason.

Dr. Sundaram is clear in his testimony. "There are millions of Hindus today, and there have been millions before them, whose only knowledge of law concerned natural law." ". . . All other (human) laws . . . are created, evolved, modified and altered by man: Natural law is only discovered by man." This knowledge of God's pattern is given poetical expression by the modern Indian poet, Rabindranath Tagore:

"Life of my life, I shall ever try to  
keep my body pure, knowing that thy  
living touch is upon all my limbs.

"I shall ever try to keep all untruths  
out from my thoughts, knowing  
that thou art that truth which has  
kindled the light of reason in my mind.

"I shall ever try to drive all evils  
away from my heart and keep my love in  
flower, knowing that thou hast thy seat  
in the inmost shrine of my heart.

"And it shall be my endeavor to reveal  
thee in my actions, knowing it is  
thy power gives me strength to act."

Rabbi Freehof enunciates much the same truth: "By natural human powers of experience and reason, tested by reverent study of Holy Writ, was a great legal system developed. It was natural, human law, the law inherent in the nature of man's mind and conscience, used as an instrument to discover the implicit will of God which is eternally present in unceasing revelation."



Dr. Hu Shih explains the relevance of the Chinese notion of *Ching* to the natural law by relating its principles of universal justice to what Aristotle declared that "all men, by a natural intuition feel to be common right and common wrong."

Dr. Hu Shih also quoted a quaint passage from Mencius, who lived about three hundred years before Christ, to demonstrate that *Tao-lei*, the law of nature, which is manifested in the nature of man, can be known naturally by our reason.

All mouths of men agree in enjoying the same relishes, all ears agree in enjoying the same (musical) sounds; all eyes agree in recognizing the same beauty. Is there nothing which all minds agree in affirming to be true? What is it then which all minds recognize to be true? It is *lei* (universal truth or law) and *i* (universal right or righteousness) . . . Universal truth and right are agreeable to our mind, just as tasty meats are pleasing to our taste.

Dr. Suzuki would seem to say, if we understand him correctly, that the mind makes the law. This is, of course, saying more than we intended by our understanding of the natural law as known by human reason.

Dr. Hakim has asserted in many ways that the natural law can be discovered by human reason. We shall cite one typical statement.

All men are endowed with Reason and Liberty. The Quran says that the best of divine gifts is wisdom, and wisdom dictates surrender which would dispel discord and lead to eternal harmony with God, with one's own nature and with the nature of things. Through wisdom and surrender man gets more and

more power which is not an end in itself but a necessary means of enrichment of intellectual, moral and spiritual life. . . . The fundamental principles (of law) are rooted in the nature of man, and men of knowledge, not misled by personal or collective egotism, can discover them.

These examples should suffice to indicate the large measure of agreement that may be found in reference to the third characteristic of the natural law: that it can be known naturally by all men endowed with human reason.

#### IV

We are now prepared to answer our original question: Is there a meeting of minds, eastern and western, as regards the basic notion of the natural law?

The foregoing evidence does seem to indicate a valid basis for such an agreement, within the obvious limitations of this study. Certainly much more study of the subject is needed, but we do believe that we can well be gratified in finding even this much agreement with which to begin.

One cannot read the testimony cited from the various authors without noting a marked contrast between their reverence for God's will as a foundation for law and the modern secularist attitude of so many western jurists who will not admit of God as having any conceivable part in the framing of order and justice in this world. One cannot read these authors' unanimous avowal of absolute unchanging values deriving from man's nature as created by God, without wondering how so many modern prophets of the positivistic and relativistic schools of jurisprudence could have lost touch with the same rich-

ness found in our western tradition. One ponders the thought of these men of eastern culture, clearly outlining a theme of universal justice which applies to all men of all times, and one notes how much stronger is their position than that of the pragmatists who will be hard put to find a solid foundation for the establishment of basic human rights for all men, everywhere. And lastly, when one sees these authors' faith in the power of human reason to find a pattern for justice and order in the natural law, there is another obvious contrast between the richness of their concept, and the stark poverty of the agnosticism and skepticism that attends the efforts of many of our own legal scholars, and the futility of their sociological theories that relegate law to force, rather than reason.

Given the need for world-wide unity that can be a tower of strength against the pressing totalitarian concepts of law, one might justly wonder if perhaps we of the Western Tradition have not divested ourselves of our traditional strengths. Might we who possess the actual leadership for the heritage of free men in the world today, find ourselves ill-equipped to attain the goal we seek because of the impoverishment and perversion of our basic concepts underlying freedom, and human rights, and law, and order in this world?

Borrowing Arnold Toynbee's terminology, a return to the appreciation of the natural law would be an obvious response to this challenge. And we do believe that it would provide a realistic bond of unity between east and west, a unity forged in common ideals of peace and order that can exist between all men who recognize, respect and cherish their human dignity and rights as children of God.

# SPECIAL LECTURERS OF THE NATURAL LAW INSTITUTE, UNIVERSITY OF NOTRE DAME, 1947—1951

- 1947 ADLER, Mortimer J. (University of Chicago).
- 1947 DOHENY, (Rt. Rev. Msgr.) William J. (Judge, Sacred Roman Rota).
- 1947 McKINNON, Harold R. (Member, San Francisco Bar).
- 1947 MANION, Clarence E. (Dean, College of Law, University of Notre Dame).
- 1947 PALMER, Ben W. (Member, Minneapolis Bar).
- 1948 GEROULD, Gordon H. (Princeton University).
- 1948 LE BEL, Maurice. (Laval University).
- 1948 LEVY, Ernst. (University of Washington).
- 1948 ROMMEN, Heinrich A. (St. Thomas College).
- 1948 WILKIN, Robert N. (Judge, United States District Court, N. Ohio).
- 1949 CORWIN, Edward S. (Princeton University).
- 1949 KUTTNER, Stephan. (Catholic University of America).
- 1949 O'SULLIVAN, Richard. (Bencher, Middle Temple, London).
- 1949 ROMULO, Carlos. (President, United Nations General Assembly).
- 1950 BROGAN, Thomas J. (Formerly Chief Justice of New Jersey).
- 1950 FORD, John C. (S.J.) (Weston College).
- 1950 HUTCHESON, Joseph C., Jr. (Chief Judge, United States Court of Appeals, Fifth Circuit).
- 1950 MORLEY, Felix. (Formerly President, Haverford College).
- 1950 SOKOLSKY, George E. (Author and journalist).
- 1951 FREEHOF, Solomon. (Rabbi, Rodef Shalom Temple, Pittsburgh, Pa.).
- 1951 KHALIFA ABDUL HAKIM. (Director, Institute of Islamic Culture, Lahore, Pakistan).
- 1951 HU SHIH. (Formerly Chinese Ambassador to the United States).
- 1951 SUNDARAM, M.S. (Cultural Attaché, Indian Embassy, Washington).
- 1951 SUZUKI, Daisetz T. (Visiting Professor, Japanese Culture, Claremont College).