

INTRODUCTION

The Natural Law is as old as Man himself. Ages ago Chinese thinkers and Hebrew prophets, Greek philosophers and Roman jurists caught the vision of a Supreme Law transcending and therefore necessarily informing the laws men make for men. From that Law resulted certain basic human rights. These rights the State was morally competent to implement and protect but not to impair or destroy. Nor could the State's commands be the sole criteria of right and wrong, for, independent of the State there existed an objective standard, rationally ascertainable, by which the final value of all human laws can and must be tested.

What thus was seen so long ago "as in a glass darkly," Christianity brought into clearer focus, for Jesus Christ came indeed "not to destroy but to fulfill." In the beginning God created all things. As a Supremely Intelligent Creator, He acted in accordance with a Divine Plan. Christian philosophers termed that Plan—the Eternal Law. Man, endowed by his Creator with an intellect, free will and an immortal soul, can discover through his own reason, unaided by direct Divine Revelation, the primary dictates of the Eternal Law. These dictates and what may be rationally inferred from them constitute the Natural Law. Human or Positive Law then performs its proper function when it conforms to Natural Law, expressing it and supplementing it. Man, moreover, since he is the creature of God, owes certain

primary duties to his Creator. The rights correlative to the full discharge of these duties are truly "unalienable." Man himself cannot voluntarily surrender them. No human power can take them from him.

The world's history and literature for twenty-five hundred years demonstrate the universality and vitality of the appeal to Natural Law. Sophocles' *Antigone* invoked the Natural Law as did England's martyred Chancellor-Saint, Thomas More, twenty centuries later, when each stood condemned by man-made statute. In the seventeenth century English Protestant lawyers bred in the same common law tradition as More, made the Natural Law the basis of their restatement of English Constitutionalism. In the same century the Dutch Protestant, Grotius, erected the superstructure of modern International Law on the Natural Law foundations already solidly laid by the Spanish Catholic scholars — Vitoria, the Dominican, and Suarez, the Jesuit.

In the United States the Natural Law became part of the authentic fabric of American Constitutionalism when Thomas Jefferson wove Natural Law principles into the American Declaration of Independence. Succeeding generations of American law students began their studies with the Natural Law until it was driven from the curricula of most American law schools by Pragmatism, Materialism and Secularism. Jurisprudence was then confined to the study of the history of man-made laws alone or to the analysis of their purely positive content. Such a Jurisprudence had logically no reply when in our time the Totalitarian States assaulted the basic dignity of the human personality. *Their* Jurisprudence too, was a Pragmatic Jurisprudence divorced

from Natural Law. At Nuremberg, Man, appalled at the brutal conclusions to which amoral Jurisprudence had led, demanded that Law be restored to its moral foundations. How else could the indictment of the vanquished enemy be consistently maintained?

Today Man again faces the threat of the Omnipotent and Omnipotent State in which human rights and duties have no higher source than the State's own positive *fiat* and hence must give way if they block the paths the State wills to follow. To meet the ominous challenge of this "Absolute" of the State, Man today has desperate need of an "Absolute" of his own. Can that need be met by the reinvigoration of the Natural Law doctrine in which the thinkers of the ages found an "Absolute" for Man arising out of his essential nature as the child of God and destined for an End beyond the State?

To this question the Natural Law Institute of the College of Law of the University of Notre Dame has been humbly dedicated. What the College of Law itself has been doing for decades in its regular courses the Institute seeks to do on a wider scale — to investigate the historical development of Natural Law doctrines, to study their true relation to Positive Law, to restate them in the light of current problems and thus to assist in the restoration of Natural Law to the position of eminence once universally accorded it by American statesmen, jurists and lawyers.

The 1947 sessions of the Institute were devoted to an exposition of the broad philosophical implications of Natural Law doctrines. In 1948 the theme was their historical development through the ages. In 1949 four

distinguished scholars discussed the relations between Natural Law and Common Law, Constitutional Law, Canon Law and International Law.

The papers read at the 1950 Convocation of the Institute and reprinted in this volume were concerned with certain "rights" which we Americans call "fundamental,"—the right to liberty, the right to property, the right to freedom of expression and the right to pursue happiness. Does the Natural Law as the source of human rights offer a true and solid explanation of what men really mean when they call such rights "fundamental"? This was the central theme of the 1950 sessions.

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