

INTRODUCTION

Men have invoked the Natural Law for more than twenty-two hundred years. Expressions of the concept have varied in detail. There is, nevertheless, a central core of meaning common to them all. The State is not the sole source of human rights and duties. Above it there abides an objective norm, unchanging and unchangeable, by which the moral integrity of man-made laws can and must be measured. Hebrew prophet, Greek philosopher and Roman jurist long ago envisioned such a higher law. The Christian Era saw its meaning deepened and its sanctions made complete.

In the beginning, God, acting with Supreme Intelligence, created all things according to a Divine Plan. That Plan is the Eternal Law. Man, endowed by his Creator with an immortal soul, an intellect and a free will, can ascertain the primary dictates of the Eternal Law by his own reason, apart from direct Revelation. Such dictates thus made known, together with the inferences flowing rationally from them, constitute the Natural Law. To his Creator, Man as a creature owes primary duties. Correlative to such duties he has certain rights, "unalienable" and beyond human power to impair or to destroy. The laws then which men make for men in civil society will express and supplement the Natural Law.

Knowing therefore no limitations of time or space, no boundaries based on color, race or creed, the Natural

Law is the God-given birthright of all men, everywhere, forever. From it the Spanish Catholics, Vitoria the Dominican and Suarez the Jesuit, drew the first principles upon which the Dutch Protestant, Grotius later built a modern Law of Nations. English lawyers in their contest with would-be despots appealed to the Natural Law. Following in the same tradition, American lawyers wove its doctrines into the texture of the Declaration of Independence, and for generations American law students began their studies with acknowledgment of the Eternal Law and the Natural Law as valid criteria of human laws. Such doctrines vanished from most American law schools in more recent days of Secularism, Pragmatism and Subjectivism. Jurisprudence, anciently acclaimed as the science "of things divine and human, of the just and the unjust," was ejected from its broad domain and narrowly confined to the historical or analytical study of man-made laws alone. It had no armor to offer Man in the hour of his great crisis when the Totalitarian State arose.

With the future of the Atomic Age rushing swiftly toward him, Man once again faces the concept of a State claiming unlimited power over the human personality and refusing recognition to rights and duties not created by itself. To meet the "Absolute" of the State, Man has desperate need of an "Absolute" of his own. Such an Absolute the thinkers of over twenty-two centuries found in the Natural Law. Is that doctrine the answer to Man's need today? To that question the Natural Law Institute of the College of Law of the Univer-

sity of Notre Dame dedicates itself. Humbly conscious of the noble tradition it thus carries on and fully aware of the high responsibilities entailed, the Institute invites and welcomes to participation in its undertakings, jurists and legislators, judges and lawyers, men everywhere who are concerned with human law, its nature, scope and limitations.

The Natural Law Institute, established in 1947 has then as its objects the examination of the history of the Natural Law doctrine, the clarification of its true basis and its adequate restatement in the light of modern problems. Sessions of the Institute are held each year and the proceedings are published in annual volumes of which the present volume is the Third.

The 1947 sessions were devoted to an exposition of the broad philosophical implications of the Natural Law doctrine. In 1948 the theme was the historical development of the doctrine. In 1949 four distinguished authorities discussed the relations between the Natural Law and four great departments of positive law — the Common Law, Canon Law, Constitutional Law and International Law.

The unusually large attendance at the various sessions of the 1949 Institute and the widespread interest in the Institute's objectives indicated that the Natural Law doctrine can no longer be regarded as something of historical interest only. As Mr. Arthur Krock, writing in the *New York Times*, November 29, 1949, declared:

In the clashing succession of violent events these days, the discussion to be resumed by the Institute

at Notre Dame may seem dull, philosophical hair-splitting, and equally unimportant. But the growth of state controls of man all over the world, including the United States, and his acceptance of the legalism which enforces them, compose an acute, present-day problem for all who are governed.

At the conclusion of the 1949 sessions the University announced the establishment of a Natural Law Library, the generous gift of Mr. Alvin A. Gould, sponsor of the 1948 and 1949 sessions of the Institute. The Library, an outgrowth of the work already undertaken at the College of Law, is designed to bring together in one place, readily accessible to scholars, the most comprehensive collection of books and materials on the Natural Law. A description of the Library is included in an appendix to this volume.

The Editor wishes to express deep appreciation to the Reverend John J. Cavanaugh, c.s.c., President of the University of Notre Dame, to Dean Clarence E. Manion of the College of Law, to Mr. Alvin A. Gould, sponsor of the Institute's sessions, to Mr. Frank A. Peluso, Student Chairman, to the faculty and student body of the College of Law and to the many, many others whose untiring efforts made possible the success of the 1949 meeting.

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WILLIAM A. CASTELLINI

(1900-1950)

The University of Notre Dame in general and the Natural Law Institute of the College of Law in particular, note with deep regret the passing of Mr. William A. Castellini, Class of 1922. Mr. Castellini's sincere interest in the objectives of the Natural Law Institute and his untiring efforts in securing its successful establishment earned him the right to be called one of its founders. Although he has been taken from us, his inspiration will remain always. May he rest in peace.

