

Ellul: The Theological Foundation of Law

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The Theological Foundation of Law. By JACQUES ELLUL. New York: The Seabury Press, 1969. Pp. 140. \$1.95.

One might expect that *The Theological Foundation of Law* is but a masked statement of some natural law theory. That suspicion might even be heightened by learning that the author is a Christian jurist who speaks easily of God, Jesus Christ, revelation and grace. That one's assumption would be not only wrong but also the antithesis of the author's view, is only one of the intellectual surprises that mark a conscientious, creative effort to probe the Christian view of law. Professor Ellul maintains that the doctrine of natural law as a Christian doctrine is ruled out at every point.

Speaking as a Protestant Christian, Professor Ellul holds that the natural law theory ignores the totally fallen nature of man; that it wrongly assumes that man is capable of knowing justice by nature; and that it cannot extract legal principles from Biblical revelations. However, the author readily admits that natural law, as a periodic historical event, cannot be denied. He observes the phases of legal growth from primitive religious law through natural law as historical fact, and thence from natural law theorizing to the ultimate stage of technical law, which last stage we are now experiencing. The much touted theorization of natural law is really evidence of the decline of natural law as historical fact. Theory will never bring the fact back. Technical law coincides with the decadent phase of every society, because law, by becoming the artificial and alienating creature of the state, becomes increasingly rationalistic and thereby destroys the spontaneous relationship of man toward law. The "wilted flower" of natural law as historical fact can never be revived, no matter how strenuous the philosophical attempt, until a new civilization is launched. Technical law remains as the amoral servant of whomever happens to control the state.

Professor Ellul is not dismayed by the demise of natural law as legal fact. He sees this rather as the opportunity to fashion a truly theocentric philosophy of law which stresses the constant and concrete dynamism of divine justice rather than a mechanistic clock-maker theory of creation. Although not all variants of natural law philosophy can be accused of staticism, Professor Ellul is probably correct in his observation that we have come either to deny any connection between human law and divine righteousness or else to set up divine righteousness as a sort of remote high court of appeal on which to pin our hopes. For Professor Ellul, however, the sentence of Christ is the prime example of how God designs to use the unjust positive laws of men for the fulfillment of divine righteousness. The covenants of God and man in the Old Testament are also examples of the way in which divine righteousness descends to sanctify the unhallowed use of legal mechanisms by men.

Scripture, Professor Ellul reminds us, does not speak of natural law. It speaks rather of divine righteousness, not as the manifestation of an abstract theory, but as concrete, specific judgments which mysteriously combine mercy in their condemnations. Justice does not exist by itself, nor does it have a content of its own. There is no content in justice, because justice is expressed in here-and-now judgments. Man cannot

participate in God's righteousness. But since God through Christ has ennobled human law, man uses unjust human laws to organize the environment according to the will of God. The legal rules and principles of men, which are non-laws in comparison to divine righteousness, must recognize institutions in some way. Institutions are God-willed building blocks in the legal order, which, though incapable of being eliminated, can be perverted. A proper legal order will recognize the human rights accorded men by the covenant made by Christ and will leave men free to teach and practice the Gospel.

At this point, Professor Ellul somewhat abruptly concludes his preliminary study. He leaves to further studies the content of divine law, the categorizing of human rights and the nature of institutions. One can legitimately wonder whether he will succeed in eschewing the abstraction that he deplors in natural law systemization. On the one hand, he does not think it a legitimate task to inform the secular law with a Christian content. There can be no Christian law, just as there can be no Christian state, since law and state have been ordained by God for those who believe and for those who do not. On the other hand, he also thinks it a useless task to use natural law as a common ground between Christian and non-Christian. One may well ask, therefore, on what basis Professor Ellul hopes to ground more detailed works. Christian fervor is not a substitute for a reasoned analysis of neutral legal principles and rules.

The author seems to reply that natural law is designed to permit man to escape from the radical necessity of receiving revelation in order to know goodness and truth. If so, then we are left with the distasteful dilemma, despite Professor Ellul's protestations, that either Christians must alone make laws or else that the urge to infuse human law with a measure of goodness and truth is of utter indifference to a Christian. The latter horn of the dilemma is probably the more likely danger implicit in this jurist's thought. If fallen man is foredoomed to only play at an illusion of justice, then of what real concern is it to a Christian whether he lives in an age of legal spontaneity or in a technically legal era? If decadent natural law theory overemphasized the intrusion of natural law principles into secondary legal matters, the temptation in Professor Ellul's presentation is to consider all laws of the earthly city a happenstance whose importance is more apparent to God than to his creatures who seem condemned to sense justice but never to do justice.

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