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BOOK REVIEW

LEVIATHAN AND NATURAL LAW, F. Lyman Windolph, Princeton, Princeton University Press, 1951, \$2.50. ix, 147.

The long-standing debate between the adherents of the rival doctrines of natural law and positivism, which dispute has taken on new life in the past few years, is the subject of this book. The author, a distinguished Lancaster (Pennsylvania) lawyer, offers it as the result of forty years of reading and thinking on the subject of politics. His book is a convincing demonstration that a busy practicing lawyer may also be a scholar, whose philosophy draws strength from the practical experiences of his daily practice.

Someone has said, the trouble with lawyers is that they think every question has two sides. Whether this be a virtue or a fault, Mr. Windolph appears to possess the trait. His thesis is that both natural law and positivism have elements of validity, and his effort is devoted to drawing from each of them that which is valid, in order to formulate a satisfactory theory of his own, rather than to demonstrate the complete truth of one view and the utter falsity of the other. To me it appears that he has been quite successful.

Much confusion and dispute can be eliminated, Mr. Windolph feels, by defining terms. When we speak of "law", we must define "law". Using the term in the lawyer's sense, as meaning a rule of conduct laid down by the government of a state, with which the individual is compelled by force to comply, there can be no such thing as a "higher" or "natural" law. And it must be recognized as a fact, he contends, that such "man-made" or "positive" law exists. If the individual is unwilling to comply with it, he must be prepared to accept the physical consequences of his nonconformity; it will do him no good to argue that "natural law" invalidates the man-made law. It does not follow from this, however, that there is no standard of right and wrong but the law as made by a particular government at a particular place and time. There may be, on the moral level, standards of right and wrong which differ from those which the state has laid down. Such standards exist, although they cannot be proved as facts but rest on faith, religious or otherwise. In this sense, then, there is a "natural law". And the natural law may obligate a man, on the moral level, to violate the law of the state, on the physical level. (The best form of government is that which comes closest to assuring the creation of a man-made law which agrees with the natural law, since only in that situation can the physical and moral welfare of man be harmoniously promoted.)

If the book stopped here, if it were simply an exercise in philosophical theory, I should hesitate to recommend it to the readers of this *Law Review*, despite the clarity and convincing quality of Mr. Windolph's exposition. But the

author proceeds to apply his theory to a number of intensely practical problems which face all of us today. Much of the value of the book is to be found in these applications, since they translate the abstract theory into concrete suggestions as to the opportunities and dangers to which citizens of a political democracy such as ours should be alert, if we wish to preserve the "inalienable" and "natural" rights we now enjoy. With these problems all citizens, and especially all lawyers, should be concerned.

"Leviathan and Natural Law" will probably not bring peace between the warring camps of natural law and positivism, but for anyone who would like a stimulating discussion of the interrelation of morals, law, and politics, I am happy to recommend it.

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