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Wu: Fountain of Justice

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FOUNTAIN OF JUSTICE. By *John C. H. Wu*. New York: Sheed and Ward, 1955. Pp. ix, 287. \$3.75.

This book is concerned mainly with the influence of "natural law" and Christianity on the common law.

The first part considers the leavening effect of "natural law" in English and American legal thinking. This influence is traced in Magna Carta, Bracton, More, St. Germain, Shakespeare, Coke, Holt, and Mansfield. The acceptance of common law in America and the vagaries of "natural law" during the process are followed through the Founding Fathers, nineteenth century individualism, the reaction to individualism and rationalism, and

finally through the trend toward personalism. The second part treats of the importance for law of Christ as the eternal law itself, as the Judge of judges, and the fountainhead of legal wisdom, as the Alpha and Omega of all law, and as grace's fulfillment of nature.

Although most of the materials contained in the book have been published before, as the author explains, there is an extrinsic unity that runs throughout. The citations that the author marshals in support of his position furnish an interesting survey of judicial thinking on this subject over the past several hundred years.

The author is eminently fitted to evaluate his data. He spans East and West. He was Chief Justice of the Provincial Court of Shanghai and is now a professor of law in this country. He is best known, perhaps, for his participation in the well-known Wu-Holmes exchange of letters. His deep faith and delicate sensitivity have given him a broad tolerance and an ability to see agreements among men, as well as divergencies, whenever possible.

There can be no question but that the author's main contention is well founded and it cannot but be salutary to have these facts placed before us again. American lawmen can become rootless like American youths—scarcely knowing if they had grandparents, much less who they were. The law has not sprung full panoplied from the head of some Chief Justice. It has historical roots that are not only philosophical but also theological—and these are almost exclusively Christian.

There is, however, an important difference between the relation of Christian principles to the common law of England and to that of the United States. In England the common law grew up in a climate of Christian faith. And during the past four hundred years, there has been in England an "established" Christian religion that is recognized by law. In this country, the situation is different. American law recognizes no specific religion or code of morals. What Christian principles there are in the law are there either because they were already in the common law of England when it was adopted by the early colonies or because these principles reflect the religious beliefs of the people in general and legislators and judges in particular.

The consequences of such a divergence deserves reflection. For if law recognizes no religious or moral code outside of itself, the only norm to which it can have recourse is what is acceptable to the majority of the people. What is acceptable to this majority, however, will be determined by their beliefs or lack of them in religious and moral matters. Ultimately Christian principles will be maintained in the law of the United States only through the beliefs of its individual citizens. American law can never pull itself up by its own legal but amoral bootstraps.

Wu maintains that ". . . while the Roman law was a deathbed convert to Christianity, the common law was a cradle Christian. . . . The very name 'common law' was derived from the '*ius commune*' of the canonists." (p. 65) Further, ". . . it is no exaggeration to say that Anglo-American jurisprudence—the common law of England before the nineteenth century and the

common law of America since the eighteenth century—is permeated with the Spirit of Christianity to a greater degree than any other system of law except Canon Law.” (p. 169)

The effect of Christ on law is an aspect of the larger working of grace on nature. “But is it not significant that the two greatest systems of jurisprudence in the world should both have been pupils in the school of Christ? These systems, the common law and the Continental law, furnish the most fascinating subject for comparison. They are similar in that both nature and grace have co-operated in their making. And yet there is an important difference. With the common law, which I have called a ‘cradle Christian’, natural wisdom and the Christian influence grew hand and hand in the course of the centuries. With the Continental law, on the other hand, natural wisdom has reached a high degree of maturity before grace began to work upon it. This is perhaps why the common law is instinctively Christian, while the Continental law is rationally Christian. . . .” (p. 229)

The author is not giving a scientific analysis of law or “natural law” in this book. If he were, these issues would receive a more concise treatment. The essence of law, rather than being explained as “conformity to reason” (p. 219), would undoubtedly be identified as an ordination of reason (p. 12), that is, a directive judgment of the lawmaker. One is a prerequisite condition of law, that is, it must be just or conformable to reason; the other is the essence of law itself. Again, in a fuller treatment, the difference between science and prudence would be brought out. Law, like ethics, is a science (pp. 198, 230) only if its content is limited to broad enough generalizations. Confronted with such specific problems as what percentage of a man’s income should be taxed by legislation or what facts should be admitted as material in adjudication, law ultimately manifests its true nature—which is not science but prudence.

One of the most needed clarifications today concerns what “natural law” is and how it differs from revelation. In a more complete handling of the subject, not only would “natural law” be centered on men’s basic inclinations (p. 22), but an explanation could be given of what can be known from these inclinations that will furnish directives for man-made law and how they can be known. What law men want to know is what precisely are the “fundamental principles” concerning which “the peoples of all races and all stages of civilization are in substantial agreement” and which “brings out the essential unity of mankind” so clearly? (p. 220) Only when these are painstakingly and candidly determined, can the foundation be laid for distinguishing between what is known from nature and what is known from revelation. For, although the content of each may ultimately be found to coincide, the manner in which they are known is the difference between reason and faith.

The author has brought to our attention in this book a problem of the greatest importance to law. It is one that touches law’s very nerve—the place of morals and religion in its content. We are much indebted to him

for a job well done. But, he says, (p. 208) "It is up to the younger generation of jurists to build up a truly fundamental philosophy of law by resorting to the very fountains of the common law, the spirit and teaching of Christ. If we are teleologically minded, let us not satisfy ourselves with anything short of the end which is also the beginning, the Omega who is also the Alpha."

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