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Abstract
AFTER THE FALL OF NATIONAL SOCIALISM, the German legal theorist and former Minister of Justice Gustav Radbruch famously wrote "[w]here there is not even an attempt at justice, where equality, the core of justice, is deliberately betrayed in the issuance of positive law, then the statute is not merely 'flawed law', it lacks completely the very nature of law."2 For Radbruch, courts needed to have in certain circumstances recourse to principles of justice beyond those available in the written statute; a kind of natural law. Radbruch's call for an application of natural law at court evokes the central question in R. H. Helmholz's latest book, Natural Law In Court: A History of Legal Theory in Practice3: has the law of nature ever had any real bearing on the growth of the substantive law in the West? To answer this question, Helmholz places great emphasis on the history of court process, with a consideration of cases from Europe, England, and the United States spanning from the early modern period to the nineteenth century. Rather than relying on individual writers on natural law—a subject already well-canvassed in the literature4—Helmholz limits his investigation to legal education in each of these jurisdictions and its application at court.

Book Note

Natural Law In Court: A History Of Legal Theory In Practice, by R. H. Helmholz[1]

ADAM GIANCOLA

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Radbruch's call for an application of natural law at court evokes the central question in R. H. Helmholz's latest book, *Natural Law In Court: A History of Legal Theory in Practice*[3]: has the law of nature ever had any real bearing on the growth of the substantive law in the West? To answer this question, Helmholz places great emphasis on the history of court process, with a consideration of cases from Europe, England, and the United States spanning from the early modern period to the nineteenth century. Rather than relying on individual writers on natural law—a subject already well-canvassed in the literature[4]—Helmholz

1. (Cambridge, Mass: Harvard University Press, 2015) 260 pages.
2. Gustav Radbruch, *Lawlessness and Supra-Statutory Law* (1946), translated by Bonnie Litschewski Paulson & Stanley L Paulson (2006) 26:1 OJLS 1 at 7.
3. *Supra* note 1.
4. See *e.g.*, *Natural Law: Historical, Systematic and Juridical Approaches*, eds., Alejandro N García, Mario Šilar & José M Torralba (Newcastle upon Tyne: Cambridge Scholars Publishing, 2008).

limits his investigation to legal education in each of these jurisdictions and its application at court.

Chapter one provides a survey of the foundations of legal education in continental Europe. Helmholz outlines the sources and pedagogies that were frequently employed in the medieval universities to introduce students of the law to the *ius commune*—the body of common law derived from both Roman and canonical jurisprudence that made up the legal system on the Continent. It was within the *ius commune* that students of the law were exposed to numerous articulations of the law of nature, the guiding framework against which all positive law was to be measured.

In chapter two, Helmholz looks at the practical applications of European legal education and the imparting of the natural law on actual cases. He uses a wide selection of *decisiones* and *consilia* from the fifteenth to the eighteenth century alongside treatises and other regional sources. Helmholz discusses a number of areas of the law where natural law made a regular appearance, including in procedural law, the law of family and succession, criminal law, commercial and economic regulation, statutory interpretation, and restraints on the exercise of power.

In chapter three, Helmholz briefly details the English model of legal education which, unlike on the Continent, did not begin with the glosses of Roman and canon law sources. Nevertheless, Helmholz raises evidence of natural law jurisprudence, despite its seemingly narrower application. In chapter four, Helmholz reviews numerous English cases in which the law of nature is found to emerge in both specific and unexpected places.

Chapter five brings Helmholz's historical analysis to the United States. He gives an overview of the many legal treatises written from the time of American independence up until the middle of the nineteenth century that circulated within the first U.S. law schools—a number of which made direct reference to the law of nature as a legitimate source of law. In chapter six, Helmholz puts forth evidence of the natural law's inspiration at all levels of the American courts and in a variety of legal subjects.

The significance of this book's contribution to the legal literature should not be confined to its historical findings. Rather than limiting the scope of the book to the question of whether lawyers and the parties they represented actually relied upon the law of nature at court, Helmholz urges his readers to consider the more pressing question: Did natural law make a difference? To this question Helmholz's answer is in the affirmative, but still one that leaves room for open debate and further pondering. Perhaps most important, his use of history profoundly shifts

the existing conversation about natural law theory[5]—and for this, his effort is commendable. Helmholz aptly describes this shift: "For lawyers educated in those early centuries, the dictates of the law of nature were not platitudes. They were not theory. They were living law."[6]

5. Despite the fact that natural law theory no longer occupies the dominant position it once did among lawyers, it still has its current defenders. See for example the works of John Finnis, Germain Grisez, Joseph Boyle, and Robert George.
6. *Supra* note 1 at 40.