

## Stanlis: Edmund Burke and the Natural Law

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unions will next ask for collective bargaining on employer-subsidized "legal-aid" programs for union members. It is to be hoped in his next edition, Professor Trumbull will explore this further.

It is worth noting that the Unauthorized Practice Committee of the American Bar Association was initially formed as a result of the suggestions made by the Committee on Professional Ethics. The problems of ethics and unauthorized practice are closely related. Recognizing this, the Unauthorized Practice Committee, in 1950, suggested the formation of the Joint Conference on Professional Responsibility by the Association of American Law Schools and the American Bar Association. Needless to say, all of those who have been active in this field concur with Professor Trumbull's happy choice of the title, "The Lawyer's Professional Responsibility." It is believed that this title places the proper emphasis, so that future work in this field will be directed, not toward the notion that "ethics" consists solely in being a good gentleman and not being caught doing bad things, but rather toward the vital, concrete, particular responsibility of the practicing lawyer to his profession and to the public.

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*Edmund Burke and the Natural Law.* By PETER J. STANLIS. Ann Arbor: University of Michigan Press, 1958. Pp. xiii, 311. \$5.75.

The latter half of the eighteenth century was an era of sharp conflicts in British politics. With the trial of Hastings, English law began to investigate the exploitation of the wealth of India; a few powerful voices were heard in protest at the highhanded methods employed by the English in crushing the aspirations of Ireland; some parliamentary support was given the claim of the American Colonists to share fully in the benefits of British citizenship; the French Revolution forced England's political leaders to take a stand on the theories of popular sovereignty and the right of the people to revolt. Against this background Peter Stanlis describes the consistent and eloquent plea of Edmund Burke for the House of Commons to maintain a conservative and a just policy in the face of political forces pulling the British Commonwealth to the left and to the right. Burke is represented as stepping into every fray armed with the best traditions of the natural law, the law of nations, and the English common law to guide the country's decisions. Though he was not a lawyer, few had Burke's deep knowledge and respect for England's legal traditions, and there were few who were as willing to apply this tradition to the future direction of the state.

Through a thorough analysis of Burke's speeches, essays, and published letters, the author gives a rather complete account of this great parliamentarian's political philosophy. The reader can understand why Burke was so opposed to the reform of Parliament on Utilitarian principles. To the Jacobin cry for greater freedom and popular representation on the basis of the sacred rights of men, Burke responded with an exposé on the true meaning of the natural law in the tradition of Cicero, St. Thomas Aquinas, and Richard Hooker. With such vigor did Burke unmask the revolutionary and voluntaristic notions of natural law, that he has often been misrepresented by historians as being a pure Positivist or Utilitarian.

Unfortunately, Stanlis does not make an open admission that Burke was not a political or legal philosopher. He was a very practical man of public affairs. His strongest arguments are taken from English legal tradition, not from natural law as such. In fact, many interesting questions are raised by Burke relative to the permanence and content of natural law, but no solution is given. If Burke chose to be a statesman rather than a theorist, England undoubtedly profited from the choice. This book shows how vital natural law principles can be in their application to the problems of state.

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*Freedom, Virtue and the First Amendment.* By WALTER BERNS. Baton Rouge: Louisiana State University Press, 1957. Pp. 264, Index. \$4.00.

Walter Berns here shuffles a goodly number of mixed and dated Supreme Court decisions, assorted quotations from the classics, some random remarks by justices, professors, lawyers, and students, and concludes that, as applied to the first amendment, there exists some monumental judicial obfuscation and confusion. One conclusion, that virtue holds a higher place in our society than constitutionally guaranteed freedom of speech, on superficial examination, seems valid; it is only upon our discovery that reasonable men may differ as to the make up of virtue, that this premise becomes somewhat uncertain.

His essay holds that the freedoms of the first amendment were not and are not intended to be absolute; that neither a "Headquarters Detective" magazine, a Terminiello in Chicago, or a Eugene Dennis advocating Communist theory is entitled to the protection of the first amendment. To sustain his theory, he relies upon isolated attacks upon concepts from time to time advanced by the court and the individual justices.

A subordinate idea, and one both novel and with some genuine appeal, is that rational men do know virtue, and that virtue needs no definition. This premise has some charm. Much is to be said for the theory that honest men know what is basically right, and what is basically wrong. Yet this theory is disproved by the very system used by Berns to sustain it. He cites decision after decision in which reasonable men do differ as to the proper boundaries of freedom of speech. Moreover, men of profound scholastic attainment are quoted by the author as showing that there can be no arbitrary boundaries upon these freedoms.

Aside from the conclusions of the author, the book provides a valuable service in an appraisal of the several first amendment opinions, and the patterns that emerge from a comparative study of a generation or two of such writings. The reliance of the court upon a jury instruction in a Terminiello case, its avoidance of a head-on clash in another; its forbearance toward the Jehovah Witnesses sects; its denial of the right to a pacifist to address a policeman in rather rough language; its denial to Eugene Dennis the right to advocate his Communist beliefs; all these are accurately examined and competently analyzed.

There is genuine value, and solid contribution by Berns, as he measures the stands taken in one decision against obliquely different or almost opposite stands in another. In this area of study, the work is of stable value. The con-