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The Natural Law and International Affairs Today

Oscar Halecki

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The Natural Law and International Affairs Today

Cover Page Footnote

Address at Symposium held by Guild of Catholic Lawyers of New York City, December 5, 1953. Professor of History, Fordham University

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FORDHAM LAW REVIEW

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NUMBER 1

THE NATURAL LAW AND INTERNATIONAL AFFAIRS TODAY*

OSCAR HALECKI†

WHEN I was honored with an invitation to address your meeting I accepted with great pleasure indeed, but not without some initial hesitation, and that for two reasons. The first one is very simple to tell you. I must confess I am not a lawyer, and even less an authority on law. There was a second reason which made me hesitate. Our Chairman called the problem of "Natural Law and International Affairs" intricate. It is so. It is much more controversial and difficult to discuss than the relations between Natural Law and Common Law, Constitutional Law, Canon Law, and so forth. It is less explored than the other fields, and to show you this let me quote from a publication which is, it seems to me, one of the most important American achievements in the study of Natural Law.

Most of you are probably familiar with the Natural Law Institute at Notre Dame University, inaugurated in 1947. By now six volumes of proceedings, containing about thirty valuable papers, have been published. But among these papers there is only one, and the shortest one, dealing with Natural Law and International Law. However, at the very beginning of that paper I found some comfort, for the speaker had to start exactly as I did. He had to confess, "I am no authority on law." He was a prominent statesman from the Philippine Islands, General Carlos Romulo; and I shall certainly not compare myself with him except in that lack of legal training.

On the other hand, it was a challenge to speak on that topic. I called it controversial, and that again must be briefly explained. Most people would agree that there is such a thing as Natural Law in the relations between individuals, but there is a widely spread opinion that the same idea does not apply to international relations, to the relations between sovereign states and national communities. Therefore, a great effort is required to make it quite clear that in that field, more than in any other, a return to the concept of Natural Law is badly needed. I say more than in any other, because in the international field we have experienced the worst

* Address at Symposium held by Guild of Catholic Lawyers of New York City, December 5, 1953.

† Professor of History, Fordham University.

consequences of the turning away from any law, including the Natural Law.

Those who pretend that there is no place for legal considerations in politics which ought to be governed only by expediency have led the world from one catastrophe to another, and it is high time that something is done about it. Speaking about international affairs, today shows that urgency even more clearly because at no other time of history has that abandonment of legal as well as moral principles led to so far reaching and disastrous consequences. It is equally obvious that these consequences are particularly felt in the eastern part of Europe and, therefore, it is for somebody who, without being a lawyer, is a Professor of Eastern European History, some encouragement and at the same time a serious obligation to say a few words in support of the legal tradition in international affairs.

But claiming such a privilege, I am doing it not only as a historian, but for a much deeper reason. It has been pointed out a few minutes ago in the brilliant speech of Judge Desmond,¹ and it is obvious for all of us who believe in God, that Natural Law is not merely founded in nature, but along with nature itself founded in God. To quote the famous definition of St. Augustine, to whom we have so frequently to return in our investigation even of contemporary problems, what we call Natural Law is nothing but "*ratio divina vel voluntas Dei ordinem naturalem conservari jubens et perturbari vetans.*" Therefore, everybody whatever his religious faith, whatever his training, can understand the very essence, the very principles of such a law, and that gives us a right to discuss these problems and to try at least to make a contribution to their solution. It is more than a right, it is an obligation for all Catholics and that has been told to all of us by the most prominent, or rather the infallible guide which we have in that matter, by our Holy Father, Pope Pius XII, who is so frequently looking himself for inspiration to the writings of St. Augustine.

It was very appropriate to quote on the back of our program just one sentence of his first Encyclical, *Summi Pontificatus*. It was followed by many others, to mention only *Humani Generis*, of 1950, but it seems to me that the Encyclical of October 20, 1939, prepared, written and published in the tragic days when the second world war broke out, is the most important of all. For it contains a program of the whole Pontificate and all the other statements of our Holy Father are to a large extent derived from that magnificent document.

In that first encyclical Pius XII speaks at length about Natural Law and stresses very strongly that it ought to be applied in international affairs. He speaks about International Natural Law which, of course, is

1. Desmond, Natural Law and The American Constitution, 22 Ford. L. Rev. 235 (1953).

in full agreement with the Christian principles in general. He shows it first from a negative point of view: Natural Law is indispensable in international relations because otherwise the stability of these relations would be left at the mercy of an unlimited authority of the State which is indeed contrary to the rights of the human person and of supra-national society. But even more illuminating are the passages of *Summi Pontificatus* where the positive Christian principles of International Natural Law are recalled and described.

The first of them is, according to our Holy Father, the right of any nation, large or small, to life, to independence, and to free development in the field of civilization. That idea is so dear to Pius XII that when a few weeks later he published the first of his famous Christmas Messages, that of 1939, including his five points peace program, he returned to the same idea, making the right to life and independence for all nations, great and small, the first condition of a just and lasting peace. And he also returned to that problem in many other statements, particularly in the Christmas Messages of the following years.

There is, however, a second point, a second principle which, according to Pius XII, is a basic rule of International Natural Law: the respect of, and the fidelity to treaties concluded in conformity with the positive law of nations. He explained that, of course, this does not mean that treaties may not be revised or adapted to the varying conditions of life, but he protested strongly against the idea that it depended only on the decision of the individual State to rescind unilaterally any obligation which is no longer to its advantage.

In conclusion, the Holy Father recognized Natural Law as basis of that better order of the future which he expected to emerge out of the catastrophe of the second world war. He said in so many words that this post-war order must rest "on the solid rock of Natural Law and Divine Revelation." And what is particularly important for all of us is the appeal of Pius XII to the Laity to collaborate in that "task of regeneration." And in that connection, he quoted again, St. Augustine, whose teachings have not lost their significance after more than fifteen centuries.

At the same time it must be stressed that these ideas of Pius XII, which are our guidance for the future, are themselves the result of a long tradition. When ten years ago Monsignor Koenig in an extremely valuable volume entitled *Principles for Peace* collected all the statements of Pius XII on international affairs, he included, of course, similar statements of his predecessor, Pius XI, who in his own first Encyclical, *Ubi Arcano Dei* had developed similar ideas. He had to include also many statements of the Pope of the first world war, Benedict XV, and with good reason he went back to Pius X and to Leo XIII. And when quite recently, in May 1953, Cardinal Costantini lectured in Rome on the peace program of the

Vatican, he could say without exaggeration that the Christian principles of international relations can be traced back to the distant days of St. Leo the Great, or St. Gregory the Great.

It would hardly be necessary to point out that the *Respublica Christiana* of the Middle Ages, was based on the idea of a Natural Law which governed relations not only between individuals but also between states and nations. Accordingly, the greatest philosopher of medieval Christendom, St. Thomas Aquinas, said: *ius gentium oritur ex rerum natura*. Of course when he said *ius gentium*, he did not yet mean the positive, man-made international law of later centuries; and when after the first attempts of establishing such a law, which were made by the sixteenth century theologians Vittoria and Suarez, the well known Hugo Grotius created what now is considered the basic international law, he divorced it from the idea of Divine revelation. But the interpretation of St. Thomas Aquinas can be discovered even in Grotius, because the unrestrained competition of sovereign powers, typical of his age, seemed to him "unnatural." He called it contrary not only to man's nature, but even to the cosmic order, which leads us back to metaphysical ideas.

The last statement of Grotius has been quoted quite recently in a book which has been written by a great admirer of the United States, Sir Arthur Zimmern, under the title *The American Road to World Peace*. About Natural Law, as such, he speaks very briefly. He would rather stress the difference between Roman Law imposed from above and the law of the Anglo-Saxon world based upon the consent of the people. But discussing the contribution of various nations and schools of law to the International Law of today and tomorrow, he paid a moving tribute to America, especially to Woodrow Wilson and Elihu Root. In that chapter he quoted Senator Root's letter to Colonel House, Wilson's adviser in the days of the first world war, a letter which Sir Arthur called one of the classics of American political writing, because it so well explained that in the field of international relations a return to the principles of Natural Law, or rather a complete change in the existing approach, was badly needed with a view to limiting the sovereignty of the individual State in the interest of the international community.

It would be hardly necessary to speak at length about the American tradition in that field. As far as the national constitution is concerned, as well as the constitutions of the various states, that has been very well done by Judge Desmond.² He also referred to the Declaration of Independence, where in the very first sentences not only the rights of the individual are stressed, but also those of any community which is placed under an abusive, tyrannical domination.

2. Desmond, Natural Law and The American Constitution, 22 Ford. L. Rev. 235 (1953).

I am sometimes wondering why in the field of international affairs the Wilsonian tradition, of which America can be proud, is so frequently misunderstood. But many people seem to believe that because Woodrow Wilson did not succeed in having his principles accepted altogether, he had failed. That is not so. It is even more misleading to believe that the idea of national self-determination, so dear to Woodrow Wilson, required a complete identification of the State with an ethnic or linguistic territory with artificial boundaries. Neither was this Wilson's idea, nor is it a correct interpretation of national self-determination. In a country like Switzerland, people of German, French and Italian origin have exercised through the centuries, and are exercising today, their right to self-determination by refusing to belong to the great neighbor states with which they are connected racially and linguistically, and by forming their own national community. Furthermore, for Catholics who are interested in international affairs, it is instructive to observe how much Wilson's program had in common with the peace proposals of Benedict XV, of August 1, 1917. The Pope referred to specific political issues only as far as they had obvious moral implications, but the idea of national self-determination, correctly understood, appears very clearly in the various suggestions he made.

There is, however, an additional reason why I decided to touch on these delicate problems. Last year I had the great privilege of studying in Italy as a Fulbright Research Scholar. On that occasion I listened to a lecture by one of my prominent American colleagues who explained to an Italian audience the two main schools of American political thought, which he called the idealistic one and the realistic one. Speaking about the former, he referred to Woodrow Wilson and his followers; speaking about the latter he chose as an example a book widely read in this country, published by a prominent authority in political life, Mr. George Kennan, under the title, *American Diplomacy, 1900 to 1950*. And when I spoke myself to an international group in Rome about American idealism in international affairs the only critical question which was raised concerned precisely Mr. Kennan's ideas. I shall be the first to recognize that they are very instructive. The six lectures which he published in his book are extremely rich in information. And the controversy begins only with the sixth one, where briefly he speaks about "democracy in the modern world." He tries to explain the deficiencies of American foreign policy from the day when this country entered world affairs, and among the reasons of these deficiencies he stressed the legalistic and the moralistic approach to international problems.

Legalistic, of course, is not necessarily identical with legal. And it is good to remember the famous latin saying: *summum ius, summa iniuria*.

Kennan is certainly correct when he says that many wrongs of recent years were perpetrated without any open violation of the letter of the International Law; very frequently the most dangerous aggressions and impositions of foreign rule on other people were achieved by much subtler methods so that what he calls the legalistic approach would hardly help. But he goes farther. He questions in general whether any limitations of politics by legal considerations are justified. However, his critical remarks about American policy of earlier days, for instance in the war with Spain, would rather lead us to the conclusion that there was too little consideration of legal principles. On the contrary, we can be rightly proud that in our days independence has been granted to the Philippines and offered to Puerto Rico in the name of high principles. And that leads me to the second, and even more alarming charge against American foreign policy: that it is too moralistic.

Admitting this, we would completely abandon any idea of Natural Law, because Mr. Kennan said in so many words that we ought not "carry over into the affairs of states the concept of right and wrong," nor make any "moral judgment" in that matter. And he continues: "Whoever says there is a law must of course be indignant against the lawbreaker." This is entirely correct, and in my opinion the only justification of a war in our times is the reaction against a violation of law. That does not mean that any country can be the unique judge of what is right and wrong in international affairs. But if objectively a violation of morals and law in international affairs is discovered, then the reaction is only too well justified. An action against the lawbreaker must not necessarily lead to unconditional surrender nor even to total war. On the contrary, such a "moralistic" attitude may perhaps lead us at last to something total which we all desire: to a total peace, which would be based, to quote again our Holy Father, on the eternal principles of justice and charity.

For similar reasons I could not follow Mr. Kennan in his skepticism regarding all endeavors to create conditions and machineries for such a lasting peace: the arbitration treaties, the Hague Conferences, the League of Nations, the United Nations, and so on. I would make an exception only for "World Government," which certainly goes too far and which is not at all included in the programs of the organizations which I just have enumerated. I am fully aware that not only in America, but everywhere in the world, many Catholics have been and still are hesitating whether or not they ought to support such attempts towards permanent international organizations. Here again, it seems to me, the answer is given by our Holy Father, particularly in the peace program of this Christmas message of 1939. The third point deals with the necessity of one or more international organizations and in the Christmas message of 1941 the Pope returned to that idea.

Profound Catholic thinkers, theologians, well trained in law, have pointed out that the basic ideas of the League of Nations or of the United Nations are in full agreement with our Christian interpretation of Natural Law. In that connection I should like to quote only two Jesuits, one who died at the beginning of the last war, Father Yves de la Brière, who has extensively written on this matter, and Father Richard Arès of Montreal, who only four years ago published an important book on the Catholic Church and the organizations of International Society speaking at length on the problem of Natural Law. In the days when the former was putting forward these ideas, the Catholic groups which were really interested in them used to be extremely small. That has changed by now. Let me tell you again of one of my Roman experiences. In March of this year I attended in the *Domus Pacis*, in the shadow of the Vatican, a meeting of Catholic international organizations working in all fields of international life, most of them having "consultative status" at the Economic and Social Council of the United Nations. This was clear evidence that the Catholic movement in favor of international cooperation and organization has made a tremendous progress in the life time of our generation. To give you just one example of how efficient that participation can be, an example taken from my own field of history, I should like to refer to that UNESCO project of a cultural and scientific history of mankind, which has alarmed Catholic opinion everywhere, and particularly in this country. Yet just because the Catholics finally decided not to take a merely negative protesting attitude but to do something about it, to try to influence this current in the international field, the project has been changed in many respects, and in the first issue of the new scholarly journal which is supposed to prepare the publication of the history, there is an official letter from the Brazilian President of the Editorial Commission, Mr. Carniro, to the Director of UNESCO, where he explains that the Commission will carefully avoid anything which would be offensive to Catholics or other religious groups. On the contrary, he paid his respect to the tremendous influence of the Catholic Church on the cultural life of all ages. This is just one example which I am submitting to your attention.

I would not go, perhaps, as far as General Romulo went in his lecture, referred to earlier, which was almost exclusively devoted to United Nations problems. And I fully agree that it would be a dangerous illusion to believe that, thanks to the United Nations, permanent peace has been already established and everything is perfect. Certainly not. On the contrary, I should like to specify what in my opinion is the greatest danger, the greatest weakness of any international organization in our time.

Even in the early days, the most brilliant days of the League of Na-

tions, there was indeed a difficulty of readjusting the differences between the legal conceptions of the continental Latin group of nations and of the English speaking world. Nevertheless, all the original members of the League were in agreement on the main principles of international law. Today in the United Nations we have, unfortunately, an entirely different and much more alarming situation. Not only are we far away from the "one world" idea, but within the U.N. there are entirely different worlds, with different legal conceptions, different interpretations of international life, worlds which are supposed not only to "co-exist" but to cooperate in the same organization.

As to the legal systems, it must be recalled, that some of them are definitely opposed to any kind of Natural Law, even in the purely human interpretations. We are shocked to hear from Soviet Russian writers that law is what is convenient to the working class. Similarly, in Nazi Germany judges would proclaim that law is what is in the interest of the German race. In that connection, I want to refer to an article of Father Graham, which recently appeared in the review *America*. He is rightly alarmed by the fact that even today Germans who revolted against the Nazi regime are considered traitors, though that regime was obviously contrary to Natural Law and illegitimate in the exercise of its authority. If the opinion still prevails that even such a regime had to be respected, then the danger remains rather great.

But the greatest danger we have to face now is that of Communism. It was Communism which created the first totalitarian state in history. On the last anniversary of November 7, when the Bolshevik regime was established, it was decided to proclaim that date the day of the unknown political prisoner, with good reason a symbol of the most shocking violation of all human rights. Furthermore, Communist totalitarianism became particularly dangerous because of the background it found in Russia. This is indeed a highly controversial problem, but there appeared quite recently an excellent interpretation of Russian history in two volumes, by the distinguished Russian, anti-Soviet scholar, Michael T. Florinsky, who pointed out that not only Ivan the Terrible but also his successors in the seventeenth century tried to establish a totalitarian state through their bureaucratic system. And since that country where the Communist doctrine was first put into practice, is so large and powerful, Communist totalitarianism even if limited to Russia alone represents a terrible danger to the world.

Speaking about the very essence of the Communist danger, I cannot omit one point which brings us directly back to our subject. I do not think that there are many traitors in this country, nor even active fellow-travelers. But there are only too many people who consider Com-

munism mainly an economic-social program which may have good sides so that one ought to take a position of neutral objectivity. They do not sufficiently realize that Communism in spite of its name is much more than that: an atheistic philosophy which completely rejects any law, human or Divine. The Communist danger has greatly increased in the latest years. Secretary of State Dulles has recently pointed out that within a few years to the two hundred million people of the Soviet Union, half of whom are not Russians at all, six hundred million more have been added. Of course the largest number of them are in Asia, particularly in China. I shall certainly not speak of that, particularly in the presence of an authority like Dr. Wu. But I have a right to say a few words about East Central Europe which is the heart-land of the Continent and, more important, belongs to our Christian civilization.

How could it happen that so many million people in that region have been sacrificed to a totalitarian Empire, both as individuals and as nations? Let us return to the first Encyclical of our Holy Father which was issued at a time when both totalitarian regimes, Nazi Germany and Communist Russia, were cooperating with one another, in opposition to all Christian principles of International Natural Law. Both of these powers had denied the right of some nations not only to independence, but even to very life, practicing what we now call genocide. Both of them had violated all international agreements and openly proclaimed that international relations must be at the mercy of the leading great powers. Yet, one of the totalitarian powers had to be defeated with the help of the other one, and that is the source of the present evil.

As to the details of that development and of all violations of Natural Law which occurred between 1938 and 1945 and the following years, I can simply refer to an excellent book just published in this country by a distinguished exile from Hungary, John Lukacs under the title: *The Great Powers and Eastern Europe*. But at the same time there appeared a book, by a much greater authority, the last volume of Churchill's memoirs, under the significant title: *Triumph and Tragedy*. I think most of us have been meditating over that book, trying to find out the deeper reasons why triumph proved inseparable from tragedy. It is not easy to explain even Churchill's own attitude. We would read a few pages on the tragedy of Warsaw, which are deeply moving, and could not be better written, showing a full awareness of the Communist danger which challenged every conception of law and justice. But that tragedy of Warsaw ended after sixty-three days of fighting, on October 2, 1944, and exactly one week later, on October 9th, took place that strange discussion in Moscow where Churchill passed to Stalin a note in which he suggested how predominance in various countries, including allied countries, should be

divided according to percentages. I am unable to understand why he did follow Stalin's advice to burn that paper, and now has published it. I think we come closer to the source of these interpretations and contradictions if we study Churchill's speech made before the House of Commons after Yalta. I am quoting him verbatim: "It is dangerous to look too far ahead. Only one link in the chain of destiny can be handled at a time." You will agree with me that our opinion must be just to the contrary. We have to look far ahead. We have to consider human destiny as a whole, based upon the same eternal principles and laws.

He was discussing the case of Poland, and Poland had been frequently called in those days a "test case." So it was throughout the last centuries, because all the partitions of Poland, in the eighteenth century, in 1815, in 1939, and in 1945 were the most striking examples of violations of international law in the human sense, and of the Natural Law as defined by our Holy Father: the right of all peoples to live in independence. There appeared in recent days a slender volume on Poland which, for entirely different reasons, again confirms that interpretation of the "test case." Professor Sharp's book, *Poland—White Eagle on a Red Field*, would not be worthwhile mentioning, if not published by Harvard University Press and very enthusiastically received by American critics and scholars. One of them said it would infuriate the friends of Poland. That is perhaps going too far. But it must irritate everybody who shares our opinions, not because of any statement made about Poland, not even because of any misinterpretation of America, but simply because of the misuse of quotation marks. Whenever he says good or bad, just or unjust, right or wrong, legal or illegal, these words, sacred to all of us, are put in quotation marks. For the author is convinced that according to the old doctrine of Machiavelli, politics must remain separate from ethics. Whether any place is left for Natural Law in such an international order, this is hardly necessary to ask.

But only a few days before that book appeared there happened in Poland something which is much more important to mention here, because it is the most striking warning, especially for Catholics. It is the arrest and deportation to the unknown of the Cardinal Primate of Poland, Archbishop Wyszyński. Of course, I know he is not the only martyr in the satellite countries. At the same time a tribute must be paid to those who have preceded him, Cardinal Stepinac, Cardinal Mindszenty, and Archbishop Beran. There are, however, two reasons why from our point of view his case is not only the most recent one but also the most revealing. First, Poland is a completely Catholic country. Therefore, before we received this news of Cardinal Wyszyński's arrest, we were doubtful whether the Communists would dare openly to attack that strongest force

of resistance in Poland, the Catholic Church. They did it, and therefore we know now that nothing is going to stop them. But even more important is another consideration. Speaking with the greatest possible respect of Cardinals Stepinac and Mindszenty, we cannot forget that there were at least some pretexts that they had been involved in political matters—this was, of course, slander and misrepresentation but the issue was presented that way even before the United Nations. People still could be misled. On the contrary, Cardinal Wyszynski had been extremely careful. He signed the Church-State agreement of 1950. Many people have wondered why the Polish Hierarchy did it. They did it because no principles, no questions of doctrine, no question of loyalty to the Holy See were involved. When Archbishop Wyszynski was made a Cardinal last year he did not even go to Rome, although it would not have been impossible, because he knew that whatever he would do or say there would be a political pretext for his trial. Why, then, was he arrested? Not only because he did not condemn another Bishop tried before him, but because on the memorable day of May 8th, 1953, St. Stanislaus Day, the Polish Hierarchy under his leadership made a statement where without again saying anything about political problems, a courageous defense of religious and human rights, natural rights, was undertaken, and all violations of these rights by the Communist regime were listed. The arrest of the Cardinal was the answer to that protest. Fortunately that act of violence has provoked a reaction all over the world and also in this country.

The National Committee for a Free Europe has suggested the creation of a committee where Catholics, Protestants, and Jews would join in starting a systematic action of protest against religious persecution everywhere. That is no longer a merely Catholic problem, but all Americans are interested. And no later than tomorrow, a mass meeting will take place in New York where the main speaker protesting against what happened to Cardinal Wyszynski will be the former president of the University to which I have the honor to belong, the well known Father Robert I. Gannon, S.J.

But should we not do something more in order to make the world return to Natural Law in international affairs than organizing committees and meetings of protest? In the book about Poland which I have quoted before everything which is a formal repudiation of a wrong, and even prayer, is covered with ridicule. That is, of course, a challenge to our convictions. Repudiation of what was wrong in the past, and prayer to Our Lord, the source and origin of Natural Law, is not only an obligation but can raise new hopes for us.

But even that is not enough. In July of this year the closest collaborator of our Holy Father, Pro-Secretary of State Monsignor J. B. Montini,

one of the most remarkable men of our time, addressed a letter to the *Semaine Sociale* of France, speaking about the importance of international problems and regretting that the Catholics were so slow to follow the advices received from Rome in that matter, just as they had been slow to follow in the equally important matter of social relations the advice given to them by Leo XIII in the famous Encyclical *Rerum Novarum*. He blamed the Catholics not only for being narrow-minded but even more for some kind of inertia and it seems to me that one of the deeper reasons for such an inertia is the belief that there are only two alternatives: another world war or acquiescence with the present situation. This, fortunately, is not quite so, and I am glad to say that the policy of this great country is moving in another direction, avoiding either of these two alternatives. We can hope, in the light of universal history, that the totalitarian empire which we face will follow the pattern of disintegration of all the empires of the past, and we have to be ready for that great hour, ready with our own plan for world organization.

This means a tremendous responsibility for America. During this last fifty years, America has developed not only into a great power, but into one of the two most important world powers. And it is a great mission for this country to give to the world an inspiring example, to show that there can be a power whose policy is not based upon material might but upon Natural Law, faithful to its divine source, a great power which would exercise its leadership in order to lead mankind to its ultimate goal, which is our God and Master.