

THE HERITAGE LECTURES

469

The Case For
and Against
Natural Law

By Russell Kirk



The Heritage Foundation was established in 1973 as a non-partisan, tax-exempt policy research institute dedicated to the principles of free competitive enterprise, limited government, individual liberty, and a strong national defense. The Foundation's research and study programs are designed to make the voices of responsible conservatism heard in Washington, D.C., throughout the United States, and in the capitals of the world.

Heritage publishes its research in a variety of formats for the benefit of policy makers; the communications media; the academic, business, and financial communities; and the public at large. Over the past five years alone The Heritage Foundation has published some 1,500 books, monographs, and studies, ranging in size from the 927-page government blueprint, *Mandate for Leadership III: Policy Strategies for the 1990s*, to the more frequent "Critical Issues" monographs and the topical "Backgrounders," "Issue Bulletins," and "Talking Points" papers. Heritage's other regular publications include the *Business/Education Insider*, *Mexico Watch*, and *Policy Review*, a quarterly journal of analysis and opinion.

In addition to the printed word, Heritage regularly brings together national and international opinion leaders and policy makers to discuss issues and ideas in a continuing series of seminars, lectures, debates, briefings, and conferences.

Heritage is classified as a Section 501(c)(3) organization under the Internal Revenue Code of 1954, and is recognized as a publicly supported organization described in Section 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Individuals, corporations, companies, associations, and foundations are eligible to support the work of The Heritage Foundation through tax-deductible gifts.

Note: Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

The Heritage Foundation
214 Massachusetts Avenue, N.E.
Washington, D.C. 20002-4999
U.S.A.
202/546-4400

The Case For and Against Natural Law

By Russell Kirk

The literature of natural law is complex, copious, and monthly growing vaster. All I aspire to accomplish in this second lecture on “The Future of Justice” is to offer some general introduction to the subject, together with reflections on the protections and dangers of natural-law doctrines, and observations concerning natural law and constitutional government.

A great deal of loose talk about natural law has occurred in very recent years. It was objected to Judge Bork’s nomination to the Supreme Court that Bork did not believe in natural law; and when Judge Thomas was interrogated for that bench, the objection was raised that he *did* believe in natural law. These protestations came mostly from the same group of senators. Clearly a good many public men and women nowadays have only vague notions of what is signified by this term *natural law*.

Objectively speaking, *natural law*, as a term of politics and jurisprudence, may be defined as a loosely knit body of rules of action prescribed by an authority superior to the state. These rules variously (according to the several differing schools of natural-law and natural-rights speculation) are derived from divine commandment; from the nature of humankind; from abstract Reason; or from long experience of mankind in community.

But natural law does not appertain to states and courts merely. For primarily it is a body of ethical perceptions or rules governing the life of the individual person, quite aside from politics and jurisprudence. When many persons ignore or flout the natural law for human beings, the consequences presently are ruinous—as with the unnatural vices that result in the disease of AIDS, or with the ideological passions, defying the norm of justice, that have ravaged most nations since the First World War.

The natural law should not be taken for graven Tables of Governance, to be followed to jot and tittle; appealed to in varying circumstances, the law of nature must be applied with high prudence. As Alessandro d’Entrevès writes, “The lesson of natural law is in fact nothing but an assertion that law is a part of ethics.” And, he concludes “The lesson of natural law [is] simply to remind the jurist of his own limitations.... This point where values and norms coincide, which is the ultimate origin of law and at the same time the beginning of moral life proper, is, I believe, what men for over two thousand years have indicated by the name of natural law.”

On the one hand, natural law must be distinguished from positive or statutory law, decreed by the state; on the other, from the “laws of nature” in a scientific sense—that is, from propositions expressing the regular order of certain natural phenomena. Also natural law sometimes is confounded with assertions of “natural rights,” which may or may not be founded upon classical and medieval concepts of natural law.

The most important early treatise on natural law is Cicero’s *De Re Publica*. The Ciceronian understanding of natural law, which still exercises strong influence, was well expressed in the nineteenth century by Froude: “Our human laws are but the copies, more or less imperfect, of the eternal laws so far as we can read them, and either succeed and promote our welfare, or fail and bring confusion and disaster, according as the legislator’s insight has detected the true principle, or has been distorted by ignorance or selfishness.”

Russell Kirk is a Distinguished Scholar at The Heritage Foundation.

He spoke at The Heritage Foundation on July 15, 1993, delivering the second in a series of lectures on “The Future of Justice.” The first lecture in the series, “The Meaning of ‘Justice,’” was published as *Heritage Lecture* No. 457 on March 4, 1993.

ISSN 0272-1155. ©1993 by The Heritage Foundation.

As interpreted by the Roman juriconsult, and later by the medieval Schoolmen and Canonists—Thomas Aquinas especially—the legacy of the classical *jus naturale* endured with little challenge until the seventeenth century. In England during the sixteenth century it was powerfully upheld by Richard Hooker in his *Laws of Ecclesiastical Polity*. In the Christian world the natural law was received as a body of unwritten rules depending upon universal conscience and common sense, ascertainable by right reason. But with the stirrings of secularism and rationalism during the seventeenth century, a new interpretation of “natural law” began to develop, conspicuous (near the end of the century) in the works of Hugo Grotius and Baron Samuel von Pufendorf. This latter secularized concept of natural law was held by many of the *philosophes* of the eighteenth century, and took on flesh during the French Revolution, when it was vulgarized by Thomas Paine.

Nevertheless, the older understanding of natural law was not extinguished. It was ringingly reasserted by Edmund Burke, in his distinction between the “real” and the “pretended” rights of men. Through the disciples of Burke, and through the influence of the Catholic Church, the classical and Christian natural law has experienced a revival in the latter half of the twentieth century.

During the nineteenth century, natural-law concepts were overshadowed by the powerful Utilitarian system of Jeremy Bentham; by the theories of John Austin and the Analytical Jurists; by legal positivism; and later—particularly in the United States—by legal pragmatism. In the United States, the older and newer schools of natural law have contended against each other since the latter half of the eighteenth century, and both have been hotly assailed by positivistic, utilitarian, and pragmatic interpretations of law. Yet appeals to the “natural law” or “a higher law” have recurred often in American politics and jurisprudence; both conservatives and radicals, from time to time, have invoked this law of nature

The Catholic Church continues to adhere to the classical and Thomistic understanding of the natural law—to an apprehension of Justice that is rooted in the wisdom of the species. Sir Ernest Barker put thus the idea of natural law: “This justice is conceived as being the higher or ultimate law, proceeding from the nature of the universe from the Being of God and the reason of man. It follows that law—in the sense of the law of the last resort—is somehow above lawmaking.”

The most lucid and popular exposition of natural law is to be found in the Appendix, “Illustrations of the *Tao*,” to C. S. Lewis’s little book *The Abolition of Man*. Therein Lewis distinguishes eight major natural laws of universal recognition and application, together with several illustrations of each, drawn from a wide diversity of cultures, religions, philosophical discourses, and countries. He expounds the Law of General Beneficence; the Law of Special Beneficence; Duties to Parents, Elders, Ancestors; Duties to Children and Posterity; the Law of Justice; the Law of Good Faith and Veracity; the Law of Mercy; the Law of Magnanimity. No code of the laws of nature ever having existed, it is ineffectual to try to enforce that body of ethical principles through courts of law; no judge hands down decisions founded directly upon the admonition, “Honor thy father and thy mother, that thy days may be long in the land”—or the Commandment’s equivalents in the Babylonian List of Sins, the Egyptian Confession of the Righteous Soul, the Manual of Epictetus, Leviticus, the Analects, or Hindu books of wisdom. Nevertheless, such perpetual precepts lie behind the customs and the statutes that shelter father and mother.



So much, succinctly, by way of definition. Turn we now to the difficulty of explaining natural law to the average sensual man. Permit me to discourse with you for a little while about natural law and the moral imagination. Incidentally, I am helped here by an unpublished essay by the late Raymond English, who understood and praised the natural law, and understood and despised the claims for “natural right.” Let me quote English directly:

The natural law cannot be understood except through the elements of poetry and imagination in the soul. The poetic and the moral imagination are parts of human reason. For the man who does not feel himself in some sense a child of God, who is not possessed by the “desire and pursuit of the whole,” and for whom words like *honor* are meaningless, the notion of natural law must be a Mumbojumbo, a bogle to make children behave tolerably well, a fantasy from the adolescence or the childhood of the race. Poets, James Elroy Flecker says, are those who swear that Beauty lives although lilies die; and the natural law is the poetry of political science, the assurance that Justice lives though states are imperfect and ephemeral. Justice is to politics what beauty is to art; indeed, beauty and justice become almost identical at the highest levels of human aspiration.

Permit me, ladies and gentlemen, to repeat here that the natural law is more than a guide for statesmen and jurists. It is meant primarily for the governance of persons—for you and me, that we may restrain will and appetite in our ordinary walks of life. Natural law is not a harsh code that we thrust upon other people: rather, it is an ethical knowledge, innate perhaps, but made more clearly known to us through the operation of right reason. And the more imagination with which a person is endowed, the more will he apprehend the essence of the natural law, and understand its necessity. If such a one, despite his power of imagination, offends against the natural law, the greater must be his suffering. So I have discovered in the course of a peregrine life. And over a good many decades I have found that most contemners of the natural law are dull dogs, afflicted by a paucity of imagination. As Adam Mickiewicz instructs us:

Your soul deserves the place to which it came,
If having entered Hell, you feel no flame.

Such is the case for the importance of natural law. Permit me to turn now to the case against natural law, as expressed by the legal positivists—most strongly, perhaps, by the German scholar Hans Kelsen. They regard natural law as a body of sentimental fictions; they hold that the state is the only true source of law. The views of John Austin and the Analytical Jurists are similar: all law is decreed by the political sovereign, they hold. Rather than moving abstractly among the several schools of jurisprudence in the twentieth century, I offer you now the contents of a letter I received recently from a German inventor and industrialist who had read in the Bavarian magazine *Epoche* some remarks of mine on natural law. My correspondent is a very intelligent and indeed talented man, considerable of a naturalist in that he studies flora and fauna. In politics, I suppose he may be classified as a German liberal of the old school. His communication, refreshingly innocent of the jargon of jurisprudence and ethics, suggests the mentality that lies behind the denigration of natural law by positivists and secular humanists, who recognize and deride the Christian and the classical origins of the idea of natural law.

“Whether the term ‘law of nature’ is more frequently used nowadays, or whether the *jus naturale* is an old invention,” my German correspondent begins, “I think this term is wrong and misleading. There is no law or legislative system which can be derived from nature. Nature has rules developed during evolution, but there is only a *jus hominis* and no *jus naturale*.”

“In other words,” my friend goes on,

all ethical norms are developed and worked out by human beings, in this case mostly by the *homo stultus*, subspecies *sapiens*.... The order of nature follows in many respects the right of the stronger, which, in fact, keeps nature with all its plants and animals in excellent shape. But mankind has set up ethical rules, good ones and bad ones, very different from natural rules. Many of these man-made rules are quite bad, sinning against nature....

The very deplorable situation of the species *homo stultus* comes from wrong ethical rules, which are against nature. I am not pleading for the right of the stronger between human beings, but for more influence of the rare subspecies *sapiens*, especially of those individuals who understand nature—which means also the nature of human character. Unfortunately Jesus did not understand the real nature of men; nor do the socialists understand it when they expect that people will work for the state rather than for themselves....

I offer another example, in which American legislators have chosen the wrong solution. There is a law in the United States, if I am correct, which forbids the killing of foreign heads of state. If I am correct this is concerned with clandestine actions, e.g. by the CIA. This law is unethical. Assuming that no American president or the American government plans to eliminate a foreign dictator just for fun, but rather because he is a danger to the United States or to his own people or both, then removing a dictator as soon as possible would save the lives of many; and is, in consequence, completely justified.

We should agree that right is an exclusively human creation. What is regarded as rightful by one group of people within a community, can be regarded as wrongful by another group. I seek a terminology where there is a clean and clear distinction between what comes from nature and what comes from human efforts. Human efforts are aimed very often, with the best intentions, in the wrong direction. I mean “wrong” in this sense: against nature, for nature cannot be neglected without harming the human race....

Failing to realize that often human character is bad must lead to destroying a society through leniency. We have to determine when our ethical laws accord with nature and when they counteract nature. We must not ignore “the rule of the fittest,” when we decide to kill a dictator, for instance. We acknowledge the right of every nation to use as much force as possible when fighting another nation to death. The fight between nations follows what could be called natural right, but is better called the rule of nature.

For this German correspondent of mine, you will have noted, “nature” signifies animal nature, Darwinian nature, red in tooth and claw. Therefore he despises appeals to natural law, and believes that not only all positive or traditional law, but all ethical principles, are human creations merely. And these human contrivances, he implies, sometimes may be mistaken; we might be wiser to found our human institutions on the principle of competition, favoring the fitter.

Here, I suggest, we perceive the mentality that lies back of the jurisprudence of Hans Kelsen and certain other positivists: critics of the whole concept of natural law.

Yet in one matter my correspondent does turn to the extreme medicine of natural law: his commendation of tyrannicide. This is interesting, as it is related to Germany in this century.

German jurisprudence demands that the citizen be strictly obedient to the state, for the state is the source of all law, the omniscient keeper of the peace. No law but positive law has been recognized in Germany since the fall of the German monarchy; natural law has no place at all.

Adolph Hitler, chosen Reichschancellor by lawful means, and confirmed in power by the Reichstag in 1933, was sustained later by national plebiscites. He was the head of the German state, the source of all law, to which all Germans had been taught obedience. Yet certain Germans—army officers, scholars, professional people, chiefly—found his actions evil. By quasi-constitutional means he had subverted the constitution. His popularity had become tremendous, and his military power. Only by death might he be removed.

Therefore a little knot of brave and conscientious men determined to save Germany and Europe by killing Hitler. They had been reared in the doctrine that all citizens must obey the inerrant state. In this exigency, however, they turned to doctrines of natural law for justification. Was there no remedy against an unnatural master of the state? In the teachings of natural law they discerned a fatal remedy. Fatal to them, at least; for nearly all of the heroic men involved in the several conspiracies against Hitler died frightful deaths. I knew well Dr. Ludwig Freund, a kindly professor of political science, one of the two survivors of the first plot to kill Hitler. By nature Professor Freund was a law-abiding gentleman. And being law-abiding, in defense of true law he was prepared to slay the chief of state, perverter of Germany’s laws and the laws of man’s nature.

I repeat that we have recourse to natural law, as opposed to positive law, only as a last resort, ordinarily. My only service as a jurist occurred in Morton Township, Mecosta County, some decades ago, when for two consecutive terms I was elected—unanimously—justice of the peace. When determining a disputed boundary between two farms, a justice of the peace does not repair to theories of natural law and meditate upon which of two claimants is the more worthy of judicial compassion; rather, the justice of the peace turns to statute, common law, possibly to local custom—and to the files of the recorder of deeds at the county seat. And so it is with the ordinary administration of law at every level. Statute, charter, and prescription ordinarily are sufficient to maintain the rule of law—the end of which, we ought not to forget, is to keep the peace.

Yet to guide the sovereign; the chief of state; the legislator; the public prosecutor; the judge when, in effect, he sits in equity—to guide you and me, indeed—there endures the natural law, which in essence is man’s endeavor to maintain a moral order through the operation of a mundane system of justice. Unlike my German correspondent, the sustainer of natural law knows that there is law for man, and law for thing; and that our moral order is not the creation of coffee-house philosophers. Human nature is not vulpine nature, leonine nature, or serpentine nature. Natural law is bound up with the concept of the dignity of man, and with the experience of humankind ever since the beginnings of social community.

It will not do to substitute private interpretations of natural law for common law or civil law, any more than it would have been well for England, during the Reformation, to have obeyed the

“Geneva Men” by sweeping away common law and the whole inherited apparatus of parliamentary statutes, to substitute the laws of the ancient Jews. Positive law and customary law, in any country, grow out of a people’s experience in community; natural law should have its high part in shaping and restraining positive and customary laws, but natural law could not conceivably supplant judicial institutions. Yet were natural-law concepts to be abandoned altogether—why, then, indeed, the world would find itself governed by

The good old rule, the good old plan,
That they shall take who have the power,
And they shall keep who can.



Turn we now to relationships between the natural law and the American judiciary. Not since Associate Justice Joseph Story adorned the Supreme Court of the United States, early in the nineteenth century, has any member of the Supreme Court had much to say about natural law. Nevertheless, in recent decades a number of Supreme Court decisions seem to have been founded upon natural-law notions of a sort. I think, for instance, of the Warren Court’s decision (the opinion written by Chief Justice Warren himself) that congressional districts within the several states must be so drawn in their boundaries as to contain so nearly as possible the same number of persons within the several districts—a matter previously left to the discretion of state legislatures. In part, this intervention was founded upon Jeremy Bentham’s principle of one man, one vote; but also there seems to have lurked at the back of the minds of justices the notion that exact political equality, as told by numbers, somehow is “natural,” whatever state and federal constitutions might prescribe and whatever the opinions of the Framers may have been. One might cite, too, the Court’s decisions in the school-desegregation cases. This question having been raised, let us examine how far we should appeal to natural law against statute and Constitution. Here we turn to an historical example and to the judgment of a leading American political and religious writer who endeavored to reconcile the claims of authority and the claims of freedom.

I refer to the “higher law” controversy of 1850 and to Orestes Brownson, the Catholic scholar and polemicist. In March 1850, on the floor of the United States Senate, William Henry Seward made his famous declaration that there exists “a higher law than the Constitution.” He was referring to the Fugitive Slave Law and the Supreme Court. At once a hot controversy arose. In January 1851, Brownson published his review-essay entitled “The Higher Law,” in which he refuted the claim of Seward, the Abolitionists, and the Free-Soilers to transcend the Constitution by appealing to a moral “higher law” during debate on the Fugitive Slave Bill.

Brownson agreed with Seward that

there is a higher law than the Constitution. The law of God is supreme, and overrides all human enactments, and every human enactment incompatible with it is null and void from the beginning, and cannot be obeyed with a good conscience, for “we must obey God rather than men.” This is the great truth statesmen and lawyers are extremely prone to overlook, which the temporal authority not seldom practically denies, and on which the Church never fails to insist....

But the concession of the fact of a higher law than the Constitution does not of itself justify the appeal to it against the Constitution, either by Mr. Seward or the opponents of the Fugitive Slave Law. Mr.

Seward had no right, while holding his seat in the Senate under the Constitution, to appeal to the higher law against the Constitution, because that was to deny the very authority by which he held his seat.... After having taken his oath to support the Constitution, the Senator had, so far as he was concerned, settled the question, and it was no longer for him an open question. In calling God to witness his determination to support the Constitution, he had called God to witness his conviction of the compatibility of the Constitution with the law of God, and therefore left himself no plea for appealing from it to a higher law.

We cannot be bound, Brownson continued, to obey a law that is in contravention of the law of God.

This is the grand principle held by the old martyrs, and therefore they chose martyrdom rather than obedience to the state commanding them to act contrary to the Divine law. But who is to decide whether a special civil enactment be or be not repugnant to the law of God? Here is a grave and perplexing question for those who have no divinely authorized interpreter of the divine law.

The Abolitionists and Free-Soilers, Brownson remarked, had adopted the Protestant principle of private judgment.

But this places the individual above the state, and is wholly incompatible with the simplest conception of civil government. No civil government can exist, none is conceivable even, when every individual is free to disobey its orders whenever they do not happen to square with his private convictions of what is the law of God.

The Church, Brownson writes, is the authoritative interpreter of the divine law. He reminds his readers that the state is ordained of God; but the state is not the supreme and infallible organ of God's will on earth.

Now it is clear that Mr. Seward and his friends, the Abolitionists and the Free Soilers, have nothing to which they can appeal from the action of government but their private interpretation of the law of God, that is to say, their own private judgment or opinion as individuals; for it is notorious that they are good Protestants, holding the pretended right of private judgment, and rejecting all authoritative interpretation of the Divine law. To appeal from government to private judgment is to place private judgment above public authority, the individual above the state, which, as we have seen, is incompatible with the very existence of government, and therefore, since government is a divine ordinance, absolutely forbidden by the law of God—that very higher law invoked to justify resistance to civil enactments.... No man can ever be justifiable in resisting the civil law under the pretence that it is repugnant to the Divine law, when he has only his private judgment, or, what is the same thing, his private interpretation of the Sacred Scriptures, to tell him what the Divine law is on the point in question, because the principle on which

he would act in doing so would be repugnant to the very existence of government, and therefore in contravention of the ordinance, therefore of the law, of God.

Brownson's argument—which we have not time enough to analyze in full today—in substance is this, in his own words: “Mr. Seward and his friends asserted a great and glorious principle, but misapplied it.” It was not for them to utter commands in the name of God. Their claims, if carried far enough, would lead to anarchy. The arguments of some of their adversaries would lead to Statolatry, the worship of the state.

The cry for liberty abolishes all loyalty, and destroys the principle and the spirit of obedience, while the usurpations of the state leave to conscience no freedom, to religion no independence. The state tramples on the spiritual prerogatives of the Church, assumes to itself the functions of schoolmaster and director of consciences, and the multitude clap their hands, and call it liberty and progress!

Brownson advocated compliance with the Fugitive Slave Law, which clearly was constitutional; indeed, obligatory under Article IV, Section 2 of the Constitution. It was his hope to avert the Civil War which burst out ten years later. “Now there is a right and a wrong way of defending the truth, and it is always easier to defend the truth on sound than on unsound principles,” he wrote. “If men were less blind and headstrong, they would see that the higher law can be asserted without any attack upon legitimate civil authority, and legitimate civil authority and the majesty of the law can be vindicated without asserting the absolute supremacy of the civil power, and falling into statolatry—as absurd a species of idolatry as the worship of sticks and stones.”



Very possibly, ladies and gentlemen, you have found in these passages from “The Higher Law” and in Brownson's general argument various considerations highly relevant to our own era.

As Brownson remarks, the natural law (or law of God) and the American civil law are not ordinarily at swords' points. Large elements of natural law entered into the common law of England—and therefore into the common law of the United States—over the centuries; and the Roman law, so eminent in the science of jurisprudence, expresses the natural law enunciated by the Roman jurists. No civilization ever has attempted to maintain the bed of justice by direct application of natural-law doctrines by magistrates; necessarily, it is by edict, rescript, and statute that any state keeps the peace through a system of courts. It simply will not do to maintain that private interpretation of natural law should be the means by which conflicting claims are settled.

Rather, natural law ought to help form the judgments of the persons who are lawmakers—whether emperors, kings, ecclesiastics, aristocratic republicans, or representatives of a democracy. The civil law should be shaped in conformity to the natural law—which originated, in Cicero's words, “before any written law existed or any state had been established.”

It does not follow that judges should be permitted to push aside the Constitution, or statutory laws, in order to substitute their private interpretations of what the law of nature declares. To give the judiciary such power would be to establish what might be called an archonocracy, a domination of judges, supplanting the constitutional republic; also it surely would produce some curious and unsettling decisions, sweeping away precedent, which would be found highly distressing by friends to classical and Christian natural law. Only the Catholic Church, Brownson reasoned, has authority to interpret the laws of nature; but the Supreme Court of the United States, and the inferior federal courts, and our state courts, take no cognizance of papal encyclicals. Left to their several private

judgments of what is “natural,” some judges indubitably would do mischief to the person and the republic. The Supreme Court’s majority decision in the case of *Roe v. Wade*—in which a pretended “right of privacy,” previously unknown, was discovered—in actuality amounted to a declaration of the “natural right” of a mother to destroy her offspring.

Now it seems to me curiously naive to fancy that American courts always would subscribe to Thomistic concepts of the laws of nature, and abjure Jacobin doctrines of natural right. Courts of law must ordinarily accord with the general legislative authority; otherwise the Book of Judges is followed by the Book of Kings.

In the seventh edition of *The Conservative Mind*, I have written that the first canon of conservative thought is “Belief in a transcendent order, or body of natural law. Political problems, at bottom, are religious and moral problems. A narrow rationality, which Coleridge called the Understanding, cannot of itself satisfy human needs.... True politics is the art of apprehending and applying the Justice which ought to prevail in a community of souls.”

Now Mr. Robert Bork, whose opinion as to the application of natural-law doctrines by members of the Supreme Court I have just now endorsed with some vigor, has taken notice of this. In an essay entitled “Natural Law and the Constitution,” Mr. Bork advises my friend Mr. William Bentley Ball to abjure my exhortation of this sort. “The dictum also is inaccurate,” Bork adds, “for it arbitrarily disqualifies as conservatives people who accept and struggle to preserve every conservative value but who do not believe that such values derive from a transcendent order.” One might as well say, I suggest, that the Church ought not to emphasize the dogma of the Resurrection because that might alienate some people who are not Christians, but are possible well-wishers.

I have thought highly of Mr. Bork—although he seems to have no clear understanding of natural law and its function—but he appears to have thought lowly of me. Perhaps we both have been mistaken.

That federal judges, Mr. Bork included, have not been learned in the natural law is one of the educational misfortunes of our age. When the time is out of joint, we can repair to the teachings of Cicero and Aquinas and Hooker about the law of nature, in the hope that we may diminish man’s inhumanity unto man. The natural law lacking, we may become so many Cains, and every man’s hand may be raised against every other man’s.

