Program of the Fourth Annual Meeting of
Jesuit Law School Representatives

Place: Student Union Building (the Rambler Room) Lake Shore Campus of Loyola University 6525 Sheridan Road (about ten blocks North of the Edgewater Beach Hotel).

Time: Friday December 29, 1950, starting at 4:45 P.M. and ending not later than 8 P.M.

Agenda: Thawing-out cocktails until buffet dinner at 5:15

MENU

DURING THE DINNER, the following five minute dishes are to be digested simultaneously with the shrimp:

A description of the Los Angeles Natural Law Institute
Prof. J. H. Ziemann, Loyola of Los Angeles
A description of a lawyers seminar on the natural moral law
Prof. John C. Hayes, Loyola of Chicago
A series of five minute salads with the ingredients of the natural moral law and assorted law school courses as follows:

Prof. A. E. Papale of Loyola of New Orleans (Contracts)
Dean Edward A. Hogan of University of San Francisco School of Law (Constitutional Law)
Prof. J. A. Luyckx of University of Detroit School of Law (Trusts)
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Following dinner and while relaxing under the influence of the above menu, the Reverend Francis P. Le Buffe, S. J., will give a fifteen minute talk on "How Jurisprudence May Serve As a Unifying Force in a Law School Program".

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COMMITTEE ON ARRANGEMENTS

Reverend Louis J. Twomey, S. J.
Professor Eugene J. Keefe
John C. Fitzgerald, Chairman

Professor Joseph A. Luyckx

HOW I USE THE NATURAL MORAL LAW IN MY COURSE IN TRUSTS

I. The Law of Trusts and the Natural Moral Law

The law of trusts to a greater extent than most branches of tha law is informed with the instinct of the understanding and a natural knowledge of the first principles of reason.

II. The use of Trust Cases in connections with the principles of Natural Moral Law

Cases in trust, therefore, afford frequent opportunities; 1) to distinguish the presence or absence of the natural consciousness of the elementary moral principles and the impulsion toward realization of the good; 2) to distinguish the complementary and corrective function of the natural moral law in connection with trust principles and practice; and 3) to demonstrate the abiding and permanent dictates of right reason.

III. Classroom methods of relating trust cases and the natural moral law

By introducing into case analysis and discussions:

1) Identifications of instances of the following of right reasons;

2) Identifications of instances of reluctance to depart from the dictates of right reason and accepted ethical norms;

3) Relation of particular elements in the law of trusts in the areas of enforcement of gratuitous trust declarations, trustee's responsibilities, constructive trusts, etc., to principles commonplace in perennial philosophy as enunciated in Plato, Aristotle, the Bible, St. Augustine, St. Thomas, etc.

Dean Edward A. Hogan (Constitutional Law) will comment on the "Liberalism" of Mr. Justice Murphy and will refer inter alia to A. P. Mann Jr. (36 Virginia Law Review, pp.889, 914); Buck v. Bell, 274 US 200; The McCollum case, 303 U.S. 203, and Korematsu v. United States 323 US 214.

Loyola University School of Law
December 29, 1950

THE NATURAL LAW IN CHICAGO --- AND ELSEWHERE?

In the Fall of 1948, a group of about forty attorneys, judges, legislators, and legal educators began a series of private dinner meetings at the Chicago Bar Association for the purpose of investigating, in a systematic manner, the natural moral law with which the members of the group were daily engrossed. The members were almost all from Chicago, and the majority were Catholics. The originators of the project were Judge Roger Kiley of the Illinois Appellate Court, Illinois State Senator Norman Barry, Mr. James O'Shaughnessy (former trial attorney for the Northwestern Railroad, and then and now Professor of Law at the Loyola University School of Law in Chicago), and Mr. Alexander Resa (former Representative in Congress from the Illinois Ninth Congressional District, and then Special Assistant Corporation Counsel in Chicago). Judge Kiley in particular had the idea that an exceptional opportunity had presented itself in the presence in Chicago at the Dominican House of Studies of the Reverend Walter Farrell, O.P., author of the monumental Companion to the Summa, whose name in the contemporary United States is a synonym for St. Thomas Aquinas. Fr. Farrell was prevailed upon to accept, without compensation of any kind other than the chance to leaven a significant legal group in Chicago with the ethical thought of St. Thomas, the position of discussion leader and mentor; and his superiors, with some misgivings owing to the great burden of work which Fr. Farrell was carrying in and for the Order, approved his judgment in the matter.

Six meetings (roughly one a month) were held in 1948-49, six more in 1949-50, and the first in the 1950-51 series has just been completed. It was obvious that the first task would have to be acquainting the group with St. Thomas' development of the natural moral law. The meetings in the first year, therefore, were devoted to the teachings of St. Thomas on Law (its essential elements, its attributes, its types, its obligatory character, and its source of authority). The members were provided with the Treatise on Law in pamphlet form as used in the Great Books movement, and they undertook as best they could to prepare for each meeting by preliminary critical reading of the articles to be treated at that meeting. Fr. Farrell's method of procedure was almost exclusively that of group discussion to explain, amplify, and illustrate St. Thomas' concise train of thought, with . . occasional Socratic questioning and some prelection to supply background and professional terminology. No particular effort was exerted to complete the evening's agenda, nor was the discussion patently steered; once under way, it ranged widely with every opportunity for the members to raise difficulties and to disclose misunderstandings to be resolved by the forging process of many minds at work on the same matter. The fact that the group consisted of lawyers removed any problem in initiating the discussion; generally, Fr. Farrell's problem was to finish three sentences before somebody stole the ball. Everyone was urged to speak his mind with no thought to embarrassment over elementary misconceptions; the sincerity of the members ruled out exhibitionists and arbitrary obstructionists.

With the groundwork laid in the first year, the meetings in the second series were fascinating applications of the general legal principles (plus some general ethical principles such as the principle of the double Illinois F. E. P. C. Act, the closed shop, the Smith Act, the Statute of Frauds, the Statute of Limitations, the Statute of Wills, the adversary system of procedure in Anglo-Saxon courts as contrasted with the inquisitorial system in continental courts. Anonymous members of the group prepared a concise statement of the positive law doctrines involved or of the respective statutes and their background. This material was mimeographed and mailed to the members in advance of the meeting. It was also furnished to Fr. Farrell, who then spent hours of preparation in isolating the natural law principles involved and in applying them to test the natural morality of the positive law in question. Once again, the method was almost exclusively group discussion with leads furnished by Fr. Farrell in the form of basic questions. In each case, fairly definite group conclusions were reached, and each discussion was a real eye-opener for all the men. Corporation lawyers were stunned at the conclusion they reached that the natural moral law required a relevant, sufficient reason for firing or for refusing to hire a man; all were impressed with the moral merit of the adversary system of procedure; Fr. Farrell was startled at the menacing potential abuses in administrative law, to which most of the group had become inured.

The current series by unanimous request is continuing the litany of specific applications. The first meeting, one of the best the group has ever held, explored the natural morality of the essential factor of consideration in the law of contracts. The law of evidence will be scrutinized, and the current international

Materials for Discussion of Proposed
Illinois F.E.P.C. Act

The proposed F. E. P. C. Act in Illinois affects (1) all persons having six or more employees; (2) employment agencies; (3) labor unions. It exempts religious, fraternal, sectarian educational, and charitable organizations;employers of agricultual labor and of domestic servants in homes.

In general the Act prohibits employers from discriminating in the hiring of qualified job applicants and on the job against employees because of their color, religion, or ancestry. Employment agencies are required to refrain from discriminatory practices in the classification and referral of job applicants. Labor unions are forbidden to discriminate against any person or to limit or classify their memberships in any way which would deprive such person of employment opportunities or equal treatment on the job because of color, religion, and ancestry.

Except when deemed material to job performance by the Commission, the Act specifically outlaws: (1) eliciting information regarding color, religion, and ancestry; (2) keeping records containing such information; (3) using job application forms calling for such information; (4) printing or publishing discriminatory advertisements relating to employment or membership; (5) using employee referral sources with reason to believe that such sources discriminate.

Upon a charge of unfair employment practice being filed by an aggrieved individual, or on its own initiative, the Commission investigates. If discrimination exists, the Commission endeavors to eliminate it by confidential conference and conciliation. If conference and conciliation fail, there is a public hearing before the Commission. The hearing follows administrative rather than judicial procedure and results in either a dismissal or cease and desist order with a possible mandate to hire, reinstate, upgrade, etc. The Commission may enforce its orders through courts by injunction or other proper relief and its orders are subject to review under the Administrative Review Act. The powers of the Commission include issuance of reports of investigations and development of anti-discrimination education programs.

Main arguments of the opponents of F. E. P. C. before the Illinois Legislative committee were that this Act is an unnecessary limitation of freedom of speech and freedom to choose employees; that it endangers civil rights of employer's privacy and private property by adding an additional investigative and administrative bureau in a vain attempt to cure an evil which can only be cured by education and understanding; that it is a unilateral proposal which disregards feelings of employers, his employees and customers sponsored by a few non-producers and non-employers; that it places an instrument in the hands of professional agitators to oppress honest employers; that for these reasons tensions and antagonisms are provoked which impede rather than further improvement in employer-employee relationship; that the objective of the Act is worthy but should be sought through education and experience; that morals cannot be legislated; that the proposal would establish and seek to enforce a high moral standard; that there is no legal obligation to employ whomever applies for work and consequently no corresponding right; that the Act would create a tax burden and is another step to kill off free enterprise; that Communists could employ the Act to further their conspiracy against free enterprise because associations may complain to the Commission; that the prohibitions against inquiring as to place of birth and military service would facilitate employment of Communists; that it places the free enterprise system at stake; that management not public officers are competent to hire private employees; that the Act may result in proportional racial employment which is discriminatory, forcing employment on a set basis; that the experience under the New York Act shows there is no wide-spread discrimination in employment, and that the public health, safety, and morals is certainly not threatened; and that though the Illinois non-white population is but 5 per cent, non-white employment is available in half of the industries and comprises over 10 per cent industrial employment.

The main arguments of the proponents of F. E. P. C. before the Illinois legislative committee were that discrimination in employment-evidenced by the facts that over one half of the Illinois public and private employment agency job orders are discriminatory, that non-whites are virtually barred from white collar or managerial positions, that the average annual income of the negro is half that of the white, and other examples - is a threat to public health, welfare, safety and morals; that this undemocratic denial of civil rights blights the lives of many individuals, is harmful to the community and creates the conditions on which Communism breeds; that the aim of the Act is to divest future employment of discrimination and prevent discrimination on the job, not to unseat any present employees, nor establish a

sources of recruitment, the employment application blank, the job specifications, the procedure for hiring, promotion and dismissal, and the wage paid in an effort to permanently bring the whole employment pattern into line with the law; and that though change is apparent, progress under the Act will be slow because few in discriminated groups are qualified for the newly opened positions. Because the Act proposed in Illinois was patterned after the New York Act the following New York Commission rulings are of interest: 1. a. Prior to employment, no questions, oral or written may be asked prospective employees about race, creed, etc. b. After employment such questions may be asked but answers may not be used as a basis for discriminatory practices. (The proposed Illinois Act forbids such questioning either before or after employment without Commission consent. This is different from New York's Act.) 2. Intent is not required. Good Faith is no excuse. 3. Direct or indirect questions which probably disclose these things and which are not obviously necessary otherwise are stricken. Outside this sphere, the employer is free as far as the Commission is concerned to ask any questions he desires. 4. Medical, Group Insurance, and Surety Bond applications containing prohibited inquiries must be filled out after, not prior, to employment. 5. Bona fide occupational qualifications: Inquiries must be material to job performance. Traditional practices, preferences of customers, employees, employers, or maintenance of a specific prejudicial atmosphere are no exceptions.

NOTES OF THE DISCUSSION OF THE PROPOSED ILLINOIS F. E. P. C. ACT

1. Applicable moral absolute (universal) principles:
   - A. Man has a duty to live; hence, he has a right to live, and that means to live in a manner compatible with his human nature. Since man must work to live, he has a right to work. In the industrial era, the right to work is the right to a job. Man's right to a job means that there is somewhere the corresponding duty to furnish the job opportunity.
   - B. An employer has a right to hire and fire arising from his right to administer his private property. He also has a right to freedom of choice and to freedom of speech, and a right to be let alone (i.e. immunity from unnecessary governmental interference).
   - C. A non-essential private good must yield to the common good.
2. Pertinent moral applied judgments:
   - A. The crystallized social or economic inferiority of any social group breeds group conflicts which pose serious threats of grave injury to the public welfare.
   - B. The state cannot be the proper agency to enforce the highest moral standards.
   - C. Restrictive legislation and restrictive administrative procedures endanger the civil rights of all, invade the employer's rights, and promote regimentation with consequent resentment. But they may also operate to remove even greater private economic and social restrictions, in which case there is a net gain in freedom.
3. Prudential considerations: will the law in practice upset the common good?
   - A. Is it necessary (i.e. advisable)?
   - B. Is it enforceable?
   - C. Should it be a matter of State or of Federal concern?
   - D. At the present time, would it contribute to the trend toward totalitarianism?
4. Specific application of principles:
   - A. There must be a correlative duty to man's right to a job:
     - a. The government has a positive duty to manage the economy so that job opportunities are available. Government-created jobs (boon-doggling) and government doles, even as cushions, are not the answer; except on a temporary emergency basis, they are not means suited to man's right to live in a manner compatible with his human nature, because they are derogatory of human dignity and self-respect.
     - b. No private employer is under any positive duty to create job opportunities or to hire any specific applicant for an available job.
     - c. But every private employer is under a negative duty not to refuse to create job opportunities and not to refuse to hire a specific applicant (who needs a job) for an available job and not to fire a current employee FOR AN IRRELEVENT OR INSUFFICIENT REASON. And normally, race, color, and religion are irrelevant or insufficient reasons. This duty is a reasonable negative limitation on the right to hire and fire, dictated by the common good.
     - d. [illegible]

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