makes this error, and distorts the nature of the book which is essentially analytic of legal problems in contracts to make wills. It is not in the how-to-do vein of many estate planning texts, nor does it list and evaluate the respective merits of possible alternatives to contracts to make wills such as annuities, trusts, or inter vivos transfers in return for a promise of support for life (even perhaps with a security interest in the promisee). Much of the current literature on estate planning is concerned with tax aspects, which are not touched in the present book. This is regrettable for contracts to make wills raise difficult questions under the federal income and estate taxes as well as under state inheritance taxes.[10]

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GENERAL PRINCIPLES OF LAW. By Giorgio Del Vecchio. Translated by Felix Forte. Introduction by Roscoe Pound. Boston University Press, 1956. Pp. x, 111. $3.50.

There must first be a word of honor for the translator. This book is very largely his as well as the author's, because the translator has so brilliantly made the author's actual thought available to the English reader. This illustration occurs to me. In his own philosophy of law, Professor Del Vecchio has as a test the *sentimonto justicia,* but he means *sentimonto* in the Italian sense of sympathetic understanding, and not the English sense of concept. The Italian *sentimonto* is not a term of rigid analysis like our concept. It is a term of reverent understanding, that takes its content from the idea of sympathetic interpretation and generous loyalty, somewhat in the sense of the Spanish *simpatico.* In Spanish, a true friend, or even a fair-minded person of any kind, considers everything *simpatico.* Thus *simpatico* becomes not a generous extra favor of friendship, it becomes a minimum duty which puts you at fault if you

10. Some possible questions under the federal tax laws are: Is the receipt of the property by the promisee income or instead a bequest or devise under INT. REV. CODE of 1954, § 102?; If income, how are the expenses of performance by the promisee to be treated?; What will be the basis in the hands of the promise, cost or value at date of decedent's death?; and Is there a deductible claim under INT. REV. CODE of 1954, §2053(c), for the federal estate tax?

The Indiana Inheritance Tax includes transfers, "if made in payment of a claim against the estate of a deceased person arising from a contract or antenuptial agreement made by him and payable by its terms by will or contract at or after his death." IND. ANN. STAT. §7-2401 (1953). See Comment, *Applicability of Inheritance Taxation to Contracts to Devise or Bequeath,* 37 YALE L.J. 108 (1927).

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fail to use it. Thus we see at once that Del Vecchio meant this *simpatico* element when he spoke of *sentimonto justicia,* and our word concept was totally inadequate.

In cases of much more delicate interpretation than this, throughout his wise and brilliant translation, Judge Forte gives the reader Del Vecchio's true meaning as well as it could be done when there is a change from one language to another.

Dean Pound's introduction is not only a brililant introduction to the subject of natural law, but like Judge Forte's translation, it really is a necessary part of Del Vecchio's book itself. This little volume contains all three, translation, introduction and text, and all three should be considered in understanding Del Vecchio's thought. For one thing, Dean Pound puts Del Vecchio's thought in such a kindly and reasonable perspective, that he helps to win friends for Del Vecchio himself. The last paragraph of Pound's introduction lists some of the different approaches to natural law with moderation and honor for each:

> Although my own preference is for the radical empiricism of William James and the instrumentalism of John Dewey, I realize that many feel the need of a firm metaphysical anchorage in something absolute and eternal and fear that, in the quest of a philosophical doctrine helping to practical solutions of practical problems of the legal order as a practical activity, the law will be left too much at large and so between the Scylla of a hard and fast doctrine holding back adjustment of law in all its senses to the inevitable changes in the life it is to govern, and the Charybdis of a trial and error empiricism guided by an endeavor to secure the most of human expectation with the least friction and waste, which may conceivably decay in action to a justice without law, will prefer Scylla as the lesser risk. Stammler saw the way through in natural law with a changing or some say a growing content. Del Vecchio sees it in a natural law universal in its essential content and variable only in its particular application. Gény's Neo-Scholasticism finds it in social life as a moral phenomenon, so that there is an ideal view of changing life. I fear we all today sail nearer Charybdis, whatever we profess.

As I see it, Del Vecchio is anxious to objectify legal ideals, and he does this by taking the Thomistic view of the five relationships, and saying that the basic sides of these relationships are fixed absolutely and eternally by rules of natural law which can be found through the active

reason (including ethics) and stated in specific terms of what the rule is in those relationships. Then he says that deductions from these rules are open to interpretation. But he does not pursue the Thomistic theory in detail. Indeed, discussion of natural law by all thinkers in recent years, has seemed to be less belligerent and rigid (if I may use these terms) than it used to be. Perhaps Del Vecchio trenches mainly on the fact that there is a relationship, and hence there is a basic need to have dependable legal rules covering the relationship. He thinks this element of dependability is necessary for liberty as well as for continuity, and that it is untruthful as well as unwise to disregard it. Thus many natural law thinkers under the canon law feel that the English decided *Baxter v. Baxter*[1] wrongly. In this case the House of Lords held that a wife who refused intercourse to a husband, unless he used preventive measures that would preclude offspring, had not given him cause for separation and that this was not a violation of the contract of marriage. The general principle is often stated, that sexual relations are implied in the contract of marriage, but not the duty to bear children. The Scholastic view is that the children must never be prevented in the sexual act itself, on the ground that children are the chief end of marriage, and hence can never be excluded. The decided cases for the most part in nearly all countries hold that while children are the chief object of marriage, they need not always be sought, regardless of all circumstances. The difference seems to turn on whether a literal, inviolable rule can be deduced from a natural law principle.

While often used under the canon law, and indeed used by Del Vecchio although his particular ideal of law is not in Thomistic terms, the canon law does not require adherence to natural law as a matter of dogma. For instance, Professor Anton-Hermann Chroust of Notre Dame University Law School is thought not to be an adherent of natural law in the Scholastic sense.[2]

I hesitate to comment on other differences, for fear of extending this review into an article or even a book in itself. The subject of the natural law has been a matter of vast scholarship. A point of departure I might suggest is that we talk in terms of what lawyers *do,* rather than the complete and detailed *system* that they profess.

Could we not say then that there could be a process for deciding cases that would include these three elements: (1) thought about and honor of, human relationships; (2) use of active conscience especially

1. Baxter v. Baxter [1948] A.C. 274 (1947).
2. Chroust, *On the Natural Law,* in INTERPRETATIONS OF MODERN LEGAL PHILOSOPHIES 80 & n. 24 and 25 (Sayre ed. 1947).

in judging; and (3) realization that relationships are facts, but are subject to moral interpretation.

Perhaps some would say that natural law can be found by the active (moral) reason, but not in the sense of giving an absolute rule, but only in the sense of finding a good solution for the particular case.

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