

THE HIGHER LAW. By Harold R. McKimmon. (The Gillick Press, Berkeley, California.)

This is an address delivered before the Conference of Federal Judges of the Ninth Circuit, at San Francisco, September 3rd, 1946. It has been printed at the request of a number of the judges, in order that, because of its extreme importance, it should be made available to persons not attending the Conference.

Undoubtedly the lecture deserves a wide circulation, and should be read and re-read by all who are in any way occupied either with the law or social reform. The opening words of the lecture indicate sufficiently the lines on which it proceeds. 'It is a paradox that at a time when this country is beset with many fears, the most fearful of all is something of which this country is generally unaware. It is the fact that while this country is traditionally democratic, the prevailing teaching of its political and legal philosophers is essentially anti-democratic and totalitarian. This is so because this teaching denies three essential elements of democracy and thereby affirms three essential elements of totalitarianism. It denies that there is a moral law which is inherent in human nature and which is therefore immutable and to which all man-made laws to be valid must conform. It denies that by virtue of this law man possesses certain rights which are inherent and inalienable and therefore superior to the authority of the state. It denies that the purpose of government is to secure these inherent and inalienable rights. It asserts that because there are no immutable principles of human conduct, there is no ultimate standard of justice and the lawmaker is responsible to nothing but his own unfettered will. It asserts that since there are no natural rights, all man's rights come to him from the state, and what the state grants, the state may take away. It asserts that since man possesses no natural, inherent rights, the purpose of man is to serve the state'.

The truth of the above statements is undeniable, but is substantiated fully by the utterances or writings of professors, lawyers, and judges in the courts. It is stated for instance that in a textbook on jurisprudence, *The Elements of Jurisprudence* by Thomas Erskine Holland, it is taught 'that the source of the validity, as well as of the obligatory character of law is the force which is lent to it by the state'. This is the type of philosophy which permeates the whole of our legal theory and politics.

Then follows an outline of the principles of natural law, from which arises an awareness of right and wrong. A brief account is given of the long and illustrious history of this basic doctrine, as found in Greek and Latin literature. From Greece and the Stoics, the doctrine became incorporated into the Roman Law, the result of which is felt today. It was perpetuated by the later-Roman jurists, by Gaius, in the second century, Ulpian in the third, Justinian in the sixth, and by Gratian the canonist in the twelfth. A parallel movement of thought and religious influence is noted in the early Christian fathers.

In the middle ages there was the great contribution of St Thomas Aquinas, who wrote that the rational creature, being subject to divine providence, has a share of Eternal Reason. Therefore all man-made laws must conform to the law of nature. The same doctrine is embodied in the writings of such English jurists as Bracton, Fortescue, Coke, Blackstone, and Pollock.

In order to maintain the inalienable rights of the individual as a person, it is essential to recognise that there is a moral power higher than the state. Without the sure foundations of the natural law and the law of God, there is no basis upon which to build justice and liberty in society, and there is no hope but a relapse into tyranny.

AMBROSE FARRELL, O.P.

A FREE HOUSE: or The Artist as Craftsman: being the writings of Walter Richard Sickert edited by Osbert Sitwell. (Macmillan; 25s.)

This is a rich and glittering book; it is also a disconcerting one: disconcerting, not boring, as an active and intelligent child whose curiosity exceeds his power of concentration can be a trial in a picture gallery or a museum where his attention is constantly drawn to objects about which he asks questions we are not competent to answer.

The book opens with an entertaining *Short Sketch of Walter Richard Sickert* which may or may not form part of that third part of Sir Osbert Sitwell's Autobiography at present said to be struggling through what is so depressingly known as 'the binder's bottle-neck'. Whether we are to meet it again is yet to be seen; here at any rate it stands for our delight today: it gives an animated account of life in literary and artistic London during the interval between the Great and the Greater Wars; it is spiced with Sickert's quoted and Sitwell's authentic wit, and it is illustrated by two of the best reproductions of the artist's drawings in the book, with the anecdotes proper to their inclusion.

But this Introduction does not fully introduce. The reader who does not know a great deal about Sickert already will not be any the wiser after reading it: nor will Sickert's own account of his father, Oswald Adalbert and his grandfather Johann Jurgen Sickert given as the first extract from the extensive volume of his writings, enlighten him. He will gather that Sickert was a great painter; but it will seem, as his enchanted attention is held for over three hundred pages of extracts from *The New Age*, *The Daily Telegraph*, *The Fortnightly Review* and other periodicals, that he was chiefly a very great critic and a teacher whose style was sharp with wit and sweet with wisdom.