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## BRINGING THE MESSIAH THROUGH LAW: LEGAL EDUCATION AT THE JESUIT SCHOOLS

DANIEL J. MORRISSEY\*

“[J]ustice . . . involves giving to the people what belongs to the people and struggling to uproot injustice and exploitation, and to establish a new earth, wherein the life of the new human may be possible.”

Ignacio Ellacuria, S.J.<sup>1</sup>

### I. INTRODUCTION: MESSIANIC EXPECTATIONS

In the year of his untimely death, Robert M. Cover,<sup>2</sup> the Chancellor Kent Professor of Law and Legal History at Yale, wrote an essay<sup>3</sup> describing what

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\* Dean and Professor of Law, Gonzaga University School of Law; A.B. Georgetown University 1971; J.D. Georgetown University 1974. This piece is dedicated to Fathers Bernard Coughlin, S.J. and Frank Costello, S.J., who by their lives' work have exemplified the best in the tradition of Jesuit education. The author would also like to thank Elizabeth Thweatt and Susan Harmon for their invaluable assistance in the preparation of this article. My thanks also to Fr. Robert Spitzer, S.J. and Stephen Freedman for their support for this project.

1. Religious Task Force on Central America and Mexico, *Ignacio Ellacuria S.J.*, at <http://www.rtfcam.org/martyrs/UCA/ellacuria.htm> (last visited Oct. 30, 2003). Ignacio Ellacuria (1930-1989) was a Spanish born Jesuit priest and Rector of Jose Simeon Canas Central American University in El Salvador. He had a fierce commitment to human rights and was openly critical of El Salvador's military, which was using repressive tactics to suppress its enemies. Along with several others of his community, he was brutally murdered on November 16, 1989. Boston College, *Father Ignacio Ellacuria (1930-1989): A Tribute*, at <http://www.bc.edu/offices/ahana/about/history/ellacuria/> (last modified Sept. 8, 2003).

2. See Symposium, *Tributes to Robert M. Cover*, 96 YALE L.J. 1699 (1987) [hereinafter *Tributes to Robert M. Cover*], for a series of tributes to Robert Cover (1943-1986) by his colleagues. As one distinguished commentator has stated, “[I]like the words of most prophets, Robert Cover's work resists generalities.” Peter Margulies, *The Violence of Law and Violence Against Women*, 8 CARDOZO STUD. L. & LITERATURE 179, 179 (1996). However, another observer sought to crystallize Cover's thought with this remark: “[T]he purpose of law is to change the world that is into the one that the law imagines ought to be . . .” Susan P. Koniak, *When Law Risks Madness*, 8 CARDOZO STUD. L. & LITERATURE 65, 65 (1996). Cover was the author of two books, *JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS* (1975), for which he was awarded the prestigious Ames Prize by Harvard Law School, and *THE STRUCTURE OF PROCEDURE* (1979) (co-authored by Owen M. Fiss). See also *Robert M. Cover Dies, Legal Scholar at Yale*, N.Y. TIMES, Jul. 20, 1986, § 1, at 22. His essays are published in *NARRATIVE, VIOLENCE, AND THE LAW* (Martha Minow et al. eds., The University of Michigan Press 1992),

he called “an act of supreme juridical *chutzpah* . . . .”<sup>4</sup> In 1538, a group of rabbis gathered in Safed, the Galilee, and attempted to reconstitute an order of judges originally established by Moses that had died out during the latter part of the Roman Empire. Their avowed purpose was to hasten the coming of the messianic age, that glorious era of peace and justice foretold by the Hebrew prophets. Specifically, the rabbis hoped that their actions would fulfill the promise made by Isaiah, “I will restore your judges as at the first and your counselors as at the beginning. Afterward you shall be called the city of righteousness, the faithful city.”<sup>5</sup>

The event at Safed came just decades after the Jews were exiled from Spain where their civilization had flourished for centuries. In the wake of that tragedy, Safed had become the site of renewed messianic expectations that gave rise to the rabbis’ project.<sup>6</sup> Many of them also believed that only the restored order of Mosaic judges could impose the punishments necessary to purge many Jews of their guilt for perfidious conversions to Christianity during the years in Spain preceding the exile.<sup>7</sup> Without such expiation, those penitents would be cut off from the Jewish community when the Messiah came.<sup>8</sup>

Cover tells us that not much is known of the process that led to the rabbis’ ambitious undertaking. Yet he says, “we can guess that there must have been an intense interpersonal atmosphere of moral energy and collegial pride to produce such an act. . . .”<sup>9</sup> Twenty-five men ultimately signed the document restoring the judicial order and conferring its powers on one of their most esteemed members. This “Act of Safed,” however, met opposition from the leading rabbis in Jerusalem and Egypt who ruled that no authority existed for

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which contains a fine preface by Aviam Saifer. There have been two memorial symposia in Cover’s honor. The first was Milner S. Ball, *Law and Prophets, Bridges and Judges*, 7 J.L. & RELIGION 1 (1989). The second, Stephen Wizner, *Repairing the World Through Law: A Reflection on Robert Cover’s Social Activism*, 8 CARDOZO STUD. L. & LITERATURE 1 (1996), was published on the tenth anniversary of his death. In addition, a public interest retreat is held every year in his honor by the Society of American Law Teachers. Jorge Baron, *From the Cover Retreat*, SALT EQUALIZER April 2002, at 7.

3. Robert M. Cover, *Bringing the Messiah Through Law: A Case Study*, in RELIGION, MORALITY AND THE LAW: NOMOS XXX 201 (J. Roland Pennock & John W. Chapman eds., 1988).

4. *Id.* at 208.

5. *Isaiah* 1:26.

6. See JAMES A. MICHENER, *THE SOURCE* 637-725 (1965) for a fictional account of life in Safed during that period when hope for the immanent coming of the Messiah had reached a fever pitch.

7. *See id.*

8. *See id.*

9. Cover, *supra* note 3, at 208.

such a restoration according to the accepted canons of Jewish law.<sup>10</sup> The bold legal experiment thus failed, and the rabbis of Safed turned to mystical practices to achieve their ends. Cover ruefully concludes that their redemptive “hope and vision . . . could no longer be grasped through law.”<sup>11</sup> Nonetheless, the Yale scholar presented this episode of what he calls “legal apocalypticism”<sup>12</sup> as an example of his belief that law can be a transformative enterprise of the highest order. As one of his colleagues eulogized, “[t]he confluence of religion, law, and politics in this, Bob’s last scholarly project, was a summation of his vision of law as a sacred art, a bridge from reality to a new world.”<sup>13</sup>

The Safed story thus represents the culmination of Cover’s efforts to link law to the deepest meanings of life. “History and literature,” he wrote, “cannot escape their location in a normative universe, nor can prescription, even when embodied in a legal text, escape its origin and its end in experience, in the narratives that are the trajectories plotted upon material reality by our imaginations.”<sup>14</sup> That insight has inspired this article, an effort that Cover himself invited when he referred to “other religious traditions in which law and Messianism draw from a common culture of narrative literature.”<sup>15</sup> This article tells the story of another group of religious and scholarly men, the Jesuits.<sup>16</sup> Like the rabbis of Safed, they believe that human agency is an essential factor in bringing about God’s beneficent plan for humanity.<sup>17</sup>

Although law has not been the principal endeavor of most members of the Society of Jesus, their tradition has produced great social philosophers who, like the devout sages of Safed, have believed that the world can be remade through law.<sup>18</sup> But in a more immediate and practical sense, American Jesuits have impacted our legal culture. Fourteen American law schools are affiliated with Jesuit universities,<sup>19</sup> by far the largest number connected with any one religious group.

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10. *Id.* at 209-10.

11. *Id.* at 210.

12. *Id.* at 203.

13. *Tributes to Robert M. Cover*, *supra* note 2, at 1710.

14. Robert M. Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4, 5 (1983).

15. Cover, *supra* note 3, at 203.

16. *See infra* notes 20-55 and accompanying text.

17. *See infra* notes 88-90 and accompanying text.

18. *See infra* notes 71-109, 217-21 and accompanying text.

19. The Jesuit law schools in America with their dates of founding are: Georgetown (1870), Creighton (1904), Fordham (1905), Marquette (1908), St. Louis University, (1908, which had established a short-lived law school in 1843), Loyola-Chicago (1908), Santa Clara (1911), Detroit (now Detroit-Mercy) (1912), University of San Francisco (1912), Gonzaga (1912), Loyola-New Orleans (1914), Loyola-Los Angeles (1920), and Boston College (1929). Steven M. Barkan, *Jesuit Legal Education: Focusing the Vision*, 74 MARQ. L. REV. 99, 102 n.21 (1991). *See also Legal Education in the Jesuit Tradition, A Guide to Prospective Law Students*, at

With homage to Robert Cover, this article will examine how the Jesuit narrative has shaped their *nomos*, and how the history and traditions of this unique group have informed their world vision. It will then address the value of continuing to convey it, at least in part, to those who now study law at Jesuit universities.

## II. DEVELOPMENT AND HISTORY

### A. *Jesuit Beginnings*

In 1540, two years after the events at Safed, the Society of Jesus officially came into existence.<sup>20</sup> Yet, its foundational insights had taken shape some years earlier in a series of inner inspirations experienced by a minor Basque nobleman who would later be known as Ignatius Loyola.<sup>21</sup> After a youth spent as a somewhat rakish courtier, Loyola had become a soldier, eager for fame.<sup>22</sup> But while he was forced to endure a lengthy convalescence after his leg was shattered in battle, Loyola experienced a change of heart.<sup>23</sup> This initial change seems to have been brought about by Loyola's reflections on certain pietistic sentiments then conventional in his Spanish Catholic culture. As a consequence he embraced an ascetic lifestyle and went through some emotional turmoil. But then came a profound insight.<sup>24</sup> While he sat by a stream outside Barcelona and watched its water flow, Loyola achieved what he would later describe in his autobiography as a "lucidity of understanding,"<sup>25</sup> a decisive moment where his intellectual comprehension led to a sense of sublime spiritual satisfaction.

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<http://64.225.216.155/resources/uslawschools.html> (last updated Aug.7 1997) (including Seattle, which was acquired from University of Puget Sound in 1994).

20. The official authorizing document was the Papal Bull *Regimini militantis Ecclesiae* issued by Pope Paul III on September 27, 1540. JAMES BRODRICK, S.J., *THE ORIGINS OF THE JESUITS* 80 (1986).

21. See JOHN W. O'MALLEY, *THE FIRST JESUITS* 23-50 (1993); JEAN LACOUTURE, *JESUITS, A MULTIBIOGRAPHY* 3-34 (Jeremy Leggatt trans., Counterpoint 1995) (describing Loyola's early life). See also J.C.H. AVELING, *THE JESUITS* 49-93 (1981); WILLIAM V. BANGERT, S.J., *A HISTORY OF THE SOCIETY OF JESUS* 3-45, (2d ed. 1986); MANFRED BARTHEL, *THE JESUITS: HISTORY & LEGEND OF THE SOCIETY OF JESUS* 19-44 (1982); BRODRICK, *supra* note 20, at 1-33; MALACHI MARTIN, *THE JESUITS: THE SOCIETY OF JESUS AND THE BETRAYAL OF THE ROMAN CATHOLIC CHURCH* 145-71 (1987).

22. O'MALLEY, *supra* note 21, at 23.

23. See *id.* at 24.

24. *Id.*

25. See LACOUTURE, *supra* note 21, at 19-20 (citing IGNATIUS OF LOYOLA, *A PILGRIM'S JOURNEY: THE AUTOBIOGRAPHY OF IGNATIUS OF LOYOLA* (Joseph N. Tylanda trans., The Liturgical Press 1991)).

For Loyola it was an ecstatic experience of both religious faith and secular learning that “fused the sacred with the profane.”<sup>26</sup> The conviction was so powerful that Loyola sensed it came directly from God. He later stated that, “he would believe what it contained ‘even if there were no Scriptures’ that taught the same thing.”<sup>27</sup> In time, the event would achieve a mythic significance, with historians of religion ranking it among the most renowned events where humans have claimed an encounter with the Divine presence.<sup>28</sup> Whatever its provenance, Loyola’s enlightenment provided the cornerstone of his famed treatise, the *Spiritual Exercises*,<sup>29</sup> and the guiding philosophy of the religious order that he would found.

While Loyola’s startling notions set the tone for what would become the Jesuits’ famed version of humanistic Christianity, they were also most congenial with the spirit of his age.<sup>30</sup> The Renaissance was flourishing, and Loyola’s wanderings led him to Paris where he pursued a lengthy course of studies at the University of Paris, alongside such intellectually diverse contemporaries as Rabelais, Calvin, and Erasmus.<sup>31</sup>

In this scholarly ferment, Loyola gathered companions from the academic elite and began sharing his ideas with them about how one could achieve a certain peace, as he had, by focusing on the discernment of God’s will.<sup>32</sup> It was a new and highly personalized approach to Catholicism, with special attention on how an individual’s feelings could lead him to a new religious understanding. In the end, an awareness of God’s love and mercy would result in each person making some type of active commitment for others.<sup>33</sup>

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26. *Id.*

27. See O’MALLEY, *supra* note 21, at 25 (quoting IGNATIUS OF LOYOLA, *supra* note 25, at 38-39).

28. See HUSTON SMITH, WHY RELIGION MATTERS: THE FATE OF THE HUMAN SPIRIT IN AN AGE OF DISBELIEF 29 (2001).

29. See O’MALLEY, *supra* note 21, at 37-50. In describing the *Spiritual Exercises*, the author stated:

Following their full course would be prescribed for all novices who joined the order. They would help the individual tap his inner resources for the motivation that lifelong commitment entailed, and they provided clear yet flexible principles for his own spiritual journey and the journey of those he wanted ‘to help.’ No previous religious order had a document like it.

*Id.* at 37.

30. *Id.* at 14.

31. See *id.* at 28-29; LACOUTURE, *supra* note 21, at 35-51. John Knox, another “giant of the Reformation” was also studying in Paris at that time. Like Loyola, he came to believe that an individual could communicate directly with God. But unlike Loyola, that idea led him to break from the Catholic Church and found the Presbyterian Church of Scotland. ARTHUR HERMAN, HOW THE SCOTS INVENTED THE MODERN WORLD 13-18 (2001).

32. BANGERT, *supra* note 21, at 14-16.

33. O’MALLEY, *supra* note 21, at 28-32.

From the prototypical applications of Loyola's *Spiritual Exercises*, his new religious order began to take form. When it was eventually recognized by the Catholic Church, his congregation bore the hallmarks of modern times. Unlike the contemplative and mendicant orders of the Middle Ages, Loyola's men had no commitment to formal group prayer.<sup>34</sup> In addition, the notion of inner inspiration inherent in the *Spiritual Exercises* smacked of the heresies of Luther and others then sweeping much of Europe.<sup>35</sup> It was also considered odd that Loyola insisted that his order be called the Society of Jesus, as if he and his companions alone, above all others in the Church, were the most faithful followers of Christ.<sup>36</sup> Yet, there was no mistaking their ultimate loyalty to Catholicism because of an additional vow that they took putting themselves at the disposal of the Pope "regarding missions."<sup>37</sup>

If anything, the Jesuits would come to look like "super-Catholics" because of their commitment to experiencing God's presence everywhere.<sup>38</sup> This Jesuit "worldliness" contrasted with the neoplatonic spirit that had characterized much of early medieval Christianity<sup>39</sup> and was experiencing a strong revival in the turn that the Reformation Fathers were making away from the scholastic tradition back toward the more anti-humanistic Christianity of St. Augustine.<sup>40</sup>

34. *Id.* at 53.

35. *Id.* at 27. Loyola came under early fire because of such suspicions, and at one point had to spend forty-two days in prison before getting a favorable verdict on his orthodoxy from the Inquisition at Toledo. *Id.*

Such confinement was typical in the "Golden Century" of Spanish history. Miguel Cervantes (1547-1616) was imprisoned by the Inquisition but used the time profitably to write *Don Quixote*. New Advent, *Miguel de Cervantes Saavedra*, at <http://www.newadvent.org/cathen/03543a.htm> (last updated Sept. 15, 2003).

36. O'MALLEY, *supra* note 21, at 69.

37. *Id.* at 298-301.

38. *Id.* at 45. Speaking of the final portion of the *Spiritual Exercises*, O'Malley wrote, "The basic idea of the meditation is that God is active in all life's circumstances, which are expressions of his love and care." *Id.* Two recently published cookbooks are a latter day manifestation of this Jesuit "worldliness." See RICK CURRY, S.J., *THE SECRETS OF JESUIT BREADMAKING: RECIPES AND TRADITIONS FROM JESUIT BAKERS AROUND THE WORLD* (1995); RICK CURRY, S.J., *THE SECRETS OF JESUIT SOUPMAKING: A YEAR OF OUR SOUPS* (2002).

39. As Lacouture aptly stated:

Throughout Loyola's life, the forces of modernity would sporadically but steadily push back medieval tradition. Everything binding him to the Middle Ages—aristocratic truculence, feudal tribalism, belief based on fear—would gradually give way before the thrust of inner and outer forces, the quest for knowledge, the awareness of freedom. The urge to seize the world in both hands. And at the end of it all (but not without reservations and setbacks) the worldwide triumph of humanism. [sic]

LACOUTURE, *supra* note 21, at 4-5.

40. Although some Jesuits saw their origins as a providential response to the Reformation, the Society's relationship to that movement was more complex. See O'MALLEY, *supra* note 21, at 16-17, 70-71. *But see* LACOUTURE, *supra* note 21, at 102 (discussing the Jesuits' 400 year

Loyola reinforced his secularizing slant on Christianity with the persistent admonition to his comrades that they “find[] God in all things”<sup>41</sup> and his very anti-monastic advice that they consider the world as their house.<sup>42</sup> But it was with their faith in the salvific force of education that the early Jesuits made their most radical move to merge our temporal existence with the realm of the sacred. At first, Loyola and his colleagues appeared disposed to any work that the Church might assign them “to help souls.”<sup>43</sup> But education quickly burst forth as a “super-category,”<sup>44</sup> subsuming all their other ministries. This special mission was most congenial to Loyola and his companions. From their formative experiences at the University of Paris,<sup>45</sup> they had come to understand how learning was intrinsically connected to the religious faith that they lived and wished to share with others.<sup>46</sup>

During Loyola’s lifetime, the Jesuits were already instructing lay students.<sup>47</sup> Those efforts were encouraged by Pope Paul III, who had established them as a means of exposing the errors of the Lutherans.<sup>48</sup> Soon the Jesuits were enthusiastically opening colleges all over Europe.<sup>49</sup>

While a good deal of this activity appears to have been motivated by counter-Reformation zeal, the founding Jesuits’ dedication to education was inspired by much more than a mere passion for proselytizing. The humanistic spirit of the age linked learning, particularly in classical literature, to a life of virtue and public service.<sup>50</sup> From a scriptural perspective, Isaiah’s “city of righteousness” had found a Jesuit analog in such civic republican ideals.

But from another aspect, the Jesuits’ early commitment to higher learning can be seen as very much in accord with the elevated social status from which a number of the first Jesuits came.<sup>51</sup> In that era, literary and professional

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struggle to broaden the theory of salvation beyond the narrow confines laid out by St. Augustine and his Reformation followers).

41. Loyola put this important injunction directly in the *Constitutions*, the governing document for the Order that he wrote with his early associates. O’MALLEY, *supra* note 21, at 46. Another commentator has called the dictum “. . . one of the basic intuitions of his brilliant creative spirit . . .” BANGERT, *supra* note 21, at 49.

42. Loyola’s close associate, Jeronimo Nadal, was even more emphatic, stating repeatedly, “We are not monks . . . . The world is our house.” O’MALLEY, *supra* note 21, at 68.

43. *See id.* at 18 (discussing how “[b]y ‘soul’ Jesuits meant the whole person”).

44. *Id.* at 200.

45. LACOUTURE, *supra* note 21, at 35-39.

46. O’MALLEY, *supra* note 21, at 201.

47. *Id.* These schools had at first been set up to instruct the men Loyola had admitted into his order. But leading European families were so impressed by the Jesuit training that they asked that their children be taught there as well. BANGERT, *supra* note 21, at 26.

48. O’MALLEY, *supra* note 21, at 204.

49. *Id.* at 201-08. By 1580, the Jesuits were operating 144 colleges. BANGERT, *supra* note 21, at 46.

50. O’MALLEY, *supra* note 21, at 208.

51. *Id.* at 209.



education was crucial to maintaining one's standing in the European upper class.<sup>52</sup> Quite naturally then, the Jesuits became allies of the wealthy and powerful who in turn provided financial support for their new schools.<sup>53</sup>

As a consequence, the Jesuits, early in their existence, became committed to high culture in the European aristocratic tradition. They quickly developed an educational philosophy to justify this approach called the *Ratio Studendi*, written in 1564 by a Spanish professor of philosophy named Benito Pereira.<sup>54</sup> Learning in the classics would give a young person an elevated view of human nature and lead to a positive formation of that individual's mind and character.<sup>55</sup>

### B. Foundational Missions and Attitudes

The new sense of meaning that Loyola and his band of scholars found through their lengthy period of self-discovery led them to an existential commitment to put themselves at the disposal of the Catholic Church "to help souls."<sup>56</sup> But soon those high-bred educators, those men of new insight and a new age, were carrying out their Christian mission in a way radically different from the past.<sup>57</sup>

Archetypical was the approach of one of Loyola's closest associates, Francis Xavier.<sup>58</sup> Following Portuguese colonialists to Asia, he began as a conventional proselytizer, believing that only "conquering the Gentiles" and converting them from idolatry would make them fit for salvation.<sup>59</sup> Yet his intellectual depth quickly led Xavier to a more liberal perspective. After early

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52. *Id.* at 211. Loyola, however, decreed that the schools were to be "for everybody, poor and rich," and with one or two notable exceptions, that was the case. *Id.*

53. *Id.*

54. *Id.* at 214. *See generally* THE JESUITS: CULTURES, SCIENCES, AND THE ARTS 1540-1773 (John W. O'Malley, S.J., et al. eds., University of Toronto Press 1999) (containing a fine collection of essays on the contributions that the Jesuits made to the arts and sciences of early modern Europe).

55. *See* O'MALLEY, *supra* note 21, at 214. O'Malley commented about how the early Jesuit humanistic curriculum fostered the concept of "human dignity." "That theme accorded with the benign relationship between human nature and grace that the Jesuits espoused and, hence, fitted in a generic way with the positive view of human nature that, at least in theory, undergirded Jesuit enthusiasm for education in the humanistic mode." *Id.*

56. *See supra* note 43 and accompanying text.

57. *See* AVELING, *supra* note 21, at 144-88 (summarizing these missions).

58. BRODRICK, *supra* note 20, at 1. The author stated:

The early history of the Society of Jesus is very largely the history of two Basque gentlemen, Ignatius Loyola and Francis Xavier. It was Xavier's good fortune to labour far away from the contentions of Europe, and to die young, so the world, Protestant and Catholic alike, has agreed to overlook the fact of his having been a Jesuit and to love him as a man.

*Id.*

59. LACOUTURE, *supra* note 21, at 100.

friendships with Asians, his attitude changed. As one biographer graphically put it, he went from “critical aloofness to a spirit of inquiry and experimentation, from initial dialogue to a willingness for exchange, [and] from a spirit of scrutiny to a concern for equity and truth.”<sup>60</sup>

This early Jesuit move from a parochial commitment to medieval Christianity to a new, pan-cultural Catholicism was even more evident in the next generation. It was epitomized by a renowned scientist, Mateo Ricci. He had been a student of Robert Bellarmine, a Jesuit theologian who advocated “an enlightened Christianity, of tolerance and joy.”<sup>61</sup> When sent on a mission to China in the seventeenth century, Ricci attempted to merge Christianity with Confucian wisdom, assimilating himself into the Chinese culture and living the life of a mandarin.<sup>62</sup>

Later in the century came an even more pointed example of this intrepid and adventurous spirit. In the newly discovered lands of South America, Jesuit missionaries integrated themselves among the indigenous peoples and established base communities.<sup>63</sup> These took the nature of quasi-utopian societies and were set up in direct opposition to the prevalent colonial policies of slavery and enclosure.<sup>64</sup> Even though opposition from the ruling European states ultimately forced their dissolution, the Jesuits had once again demonstrated their commitment to a very broad vision of divinity that accepted the religious ideals of other people as closely compatible with Christianity.<sup>65</sup>

The Jesuits’ unconventional approach, however, bred distrust and outright enmity among many Christians. As would be expected, they gained a highly negative reputation among Protestants because they forcefully opposed the

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60. *Id.* at 104.

61. *Id.* at 183. *See also infra* notes 71-79 and accompanying text.

62. LACOUTURE, *supra* note 21, at 177-226.

63. *Id.* at 227-260.

64. Several movies have been made about this experiment. The most well-known is *The Mission* by the Englishman Roland Joffe which was nominated for an Academy Award for “Best Picture” in the late 1980s. *Id.* at 258.

65. On the question of whether the Jesuit missions just represented another attempt to “civilize” the “barbarians,” Lacouture wrote, “. . . the basic question remains the ability of the more dynamic or ‘advanced’ civilization to take the ‘Other’ and his values into account.” LACOUTURE, *supra* note 21, at 260. He concluded that the Jesuits did this admirably well until “[t]hey were doomed by the hateful example they provided to European monarchies of ‘another’ way of treating different cultures.” *Id.* at 260. In the same vein, a recent piece of science fiction described how a charismatic Jesuit led a future mission to a newly discovered extraterrestrial culture:

The Jesuit scientists went [to Rakhat] to learn, not to proselytize. They went so that they might come to know and love God’s other children. They went for the reason [that] Jesuits have always gone to the farthest frontiers of human exploration. They went . . . for the greater glory of God.

MARY DORIA RUSSELL, *THE SPARROW* 3 (1996).

Reformation.<sup>66</sup> Yet among many Catholics as well, the novel nature of the new order aroused suspicion. Their notion of rigorous discipline harkened to the monastic tradition, yet their activity in the larger society was quite foreign to the other-worldliness of the contemplative life.<sup>67</sup> And in their casuistic reasoning, anything seemed permitted if it was done “for the greater glory of God.”<sup>68</sup>

For instance, King Louis XIV’s Jesuit confessor advised him that by banishing his mistress during the Easter season he could be absolved of his sins of adultery and free to receive Holy Communion. However, the confessor gave that counsel knowing that the King always renewed his illicit liaison after fulfilling his sacramental obligation. The greater evil, the confessor apparently reasoned, would be to permanently estrange Louis from Catholicism and have the Church lose France as it had England during the reign of Henry VIII.<sup>69</sup>

But the Jesuits’ involvement in politics and worldly affairs was consistent with their strong belief in an eminent Divine presence.<sup>70</sup> And it was this most Catholic notion that produced some of their foundational work in political and legal thought.

### C. *Early Jesuit Social Philosophy*

Sixteenth century Jesuit thinkers such as Francisco Suarez, Luis de Molina, and Robert Bellarmine,<sup>71</sup> have been hailed as the founders of modern constitutionalism and democratic theory.<sup>72</sup> They have also been singled out as

66. Typical is the left-handed compliment of John Wesley who wrote of Ignatius Loyola as “[s]urely one of the greatest men that ever engaged in the support of so bad a cause.” AVELING, *supra* note 21, at 49. See O’MALLEY, *supra* note 21, at 272-83 (commenting on the Jesuits’ famed work to refute the Reformation that they saw primarily as a “pastoral problem”). However, O’Malley noted, “although the Society of Jesus would have had a much different history, it would have come into being even if the Reformation had not happened, and it cannot be defined primarily in relationship to it.” *Id.* at 17.

67. As Lacouture has noted, “. . . the very word ‘Jesuit’ [had] accompanying connotations of cold, negative, sinister intent.” LACOUTURE, *supra* note 21, at 348.

68. Lacouture has characterized this duality and the distrust it engendered as, “[m]onastic but mobile, regimented but free-ranging, eyes gazing heavenward but hands on the wheel, everything for God but all things to all men . . . Where did they stop? Where would they meddle next?” *Id.* at 349.

69. *Id.* at 356. See generally, AVELING, *supra* note 21, at 189-251 (discussing “Jesuit intrigue” during their so-called triumphant years when, as confessors to the crown heads of Europe, they became the gray eminencies of European politics).

70. See *supra* notes 41-42 and accompanying text.

71. See *supra* note 61 and accompanying text.

72. QUENTIN SKINNER, 2 THE FOUNDATIONS OF MODERN POLITICAL THOUGHT: THE AGE OF REFORMATION 174 (1978).

the first philosophers to advance the social contract theory of government and to adduce its implications for a just society.<sup>73</sup>

Those Jesuits were part of a movement in early modern thought to revive scholastic philosophy, and they gave particular focus to its social and legal implications.<sup>74</sup> Such action went hand in hand with their efforts to refute Reformation thinking. For instance, the total corpus of Bellarmine's work constitutes perhaps the most comprehensive repudiation of Lutheran theology.<sup>75</sup> His hierarchical views on ecclesiology therefore, do not fit so well into the more ecumenical framework that the Catholic Church has developed since the Second Vatican Council.<sup>76</sup>

Yet, in their political and legal works, those early Jesuit theorists crystallized ideas about human dignity and equality that formed the cornerstone of liberal legal theory. They developed these notions in response to a key belief held by the Reformation Fathers that humans are inherently sinful, and therefore unable to make laws that promote a just society.<sup>77</sup>

Bellarmino and Suarez both reacted strongly against that assertion. Bellarmine called it a "widespread and dangerous belief" that "there cannot be any inherent justice in the soul of man."<sup>78</sup> Suarez said it was "the root and basis of all the other heresies."<sup>79</sup>

Following from that pessimistic Protestant outlook, all legitimate political authority had to be imposed on humans directly by God.<sup>80</sup> Just as only the grace of God could save humans in their personal lives, only a divinely sanctioned ruler, a "godly prince,"<sup>81</sup> could have a legitimate warrant to legislate in their secular affairs. No civil power could therefore remain in the hands of faithless rulers. Their laws were not binding in conscience and did not have to be obeyed.<sup>82</sup>

In contrast, the Jesuit thinkers reached back to the natural law jurisprudence of St. Thomas Aquinas<sup>83</sup> to affirm the genuine goodness of civic

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73. *Id.* See also FREDERICK COPLESTON, S.J., 3 A HISTORY OF PHILOSOPHY: OCKHAM TO SUÁREZ 348-52 (1952) (offering further refinements on that general proposition).

74. See SKINNER, *supra* note 72, at 135-73. See generally COPLESTON, *supra* note 73, at 335-52.

75. SKINNER, *supra* note 72, at 137.

76. See generally, AVERY DULLES, S.J., MODELS OF THE CHURCH 129-44 (1978).

77. SKINNER, *supra* note 72, at 139.

78. *Id.*

79. *Id.* at 140.

80. *Id.*

81. *Id.*

82. SKINNER, *supra* note 72, at 140.

83. BASIC WRITINGS OF SAINT THOMAS AQUINAS 774 (Anton C. Pegis ed. 1945). See generally ST THOMAS AQUINAS, 13 SUMMA THEOLOGICÆ 87-95 (Edmund Hill trans., Blackfriars 1964). For the author's own updated take on natural law jurisprudence, see Daniel J. Morrissey, *Moral Truth and the Law: A New Look at an Old Link*, 47 SMU L. REV. 61 (1993).

life. This philosophy affirms that through reason, God has given all humans the ability to lead moral lives, both in their personal and communal conditions.<sup>84</sup> And although God has created humans as social beings, no direct Divine warrant is needed for our political institutions.<sup>85</sup> Humans, on their own, can make laws to promote a just order.<sup>86</sup>

For such optimism about the human conditions, Jesuit thinkers like Suarez and Molina found themselves on the defensive from another order of Catholic priests, the Dominicans, who saw the Jesuits as denigrating the Divine direction of all events.<sup>87</sup> Yet the Jesuits, rooted in the Scriptural tradition and the thought of ancient philosophers like the Stoics, pressed on with their humanistic vision stressing the inherent freedom and equality of every individual.<sup>88</sup> Using the heuristic construct of a state of nature, Suarez asserted that in such a primordial setting, the dignity of each person gave no one more power than anyone else.<sup>89</sup> Or, as Molina put it with elegant simplicity, there is no inherent right of dominion in human affairs.<sup>90</sup>

This outlook not only went hand in hand with the multicultural attitudes of earlier Jesuits like Xavier and Ricci,<sup>91</sup> but it also predisposed the theorists to oppose the imperialism of European powers. The indigenous peoples of the New World and elsewhere were not Christian and were fair game under the “godly prince” doctrine for immediate subjugation, if not outright enslavement.<sup>92</sup> Yet the Jesuits and other enlightened Catholic thinkers of the Colonial period fought for what we would now call their rights to dignity and self-determination.<sup>93</sup>

Building on the scholastic/Aristotelian tradition, those Jesuits also emphasized the social nature of humans and their obvious need for some type of government to safeguard the common good.<sup>94</sup> Here, a bit of Augustinian pessimism,<sup>95</sup> or at least some hard-found Hobbesian realism, tempered their upbeat thought.<sup>96</sup> After all, in the Western Christian tradition, humans are

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84. SKINNER, *supra* note 72, at 148.

85. *Id.* at 154.

86. *Id.* at 151.

87. *See generally* COPLESTON, *supra* note 73, at 342-46.

88. Molina was particularly forceful on this point. *See generally* BANGERT, *supra* note 21, at 115-16.

89. SKINNER, *supra* note 72, at 156.

90. *Id.*

91. *See supra* notes 58-62 and accompanying text.

92. SKINNER, *supra* note 72, at 142.

93. *Id.* at 170-71.

94. *Id.* at 157-58.

95. *Id.* at 159-60.

96. As to Molina's similarity to Hobbes, see FRANK BARTHOLOMEW COSTELLO, S.J., THE POLITICAL PHILOSOPHY OF LUIS DE MOLINA, S.J. 30 (1974).

fallen creatures.<sup>97</sup> As Molina put it, “it is nevertheless easy, especially in view of our loss of innocence, to ignore many aspects of morality and to be uncertain of many others.”<sup>98</sup> Thus, Suarez came to the conclusion, “peace and justice can never be maintained without convenient laws.”<sup>99</sup> The state’s essential purpose, according to Molina, is to preserve peace and redress wrong through the coercive power of law.<sup>100</sup>

If they are to thrive, free and equal individuals must somehow come together to form the political and legal system in which they must dwell.<sup>101</sup> And it was the genius of those Jesuit thinkers to propose that this be done, at least suppositiously, by human agreement.<sup>102</sup> In this fashion, the contract theory of government was born, rooting the legitimacy of civil power in some type of consent by the governed.<sup>103</sup> The Jesuits’ answer to the divine despotism urged by the Reformation was constitutional democracy.<sup>104</sup>

In his famed *Second Treatise*, John Locke would ultimately spin this out into a quasi-secular analog<sup>105</sup>— to be copied in the Declaration of Independence, much of it word for word, by that paragon of the Enlightenment, Thomas Jefferson. In our time, the social contract theory pioneered by the Renaissance Jesuits still provides the linchpin for the participatory democracy of such preeminent modern thinkers as John Rawls<sup>106</sup> and Robert Dahl,<sup>107</sup> as well as the equal protection jurisprudence of so much of progressive legal thought, from feminism<sup>108</sup> to critical theory.<sup>109</sup>

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97. *Id.* at 28-29.

98. SKINNER, *supra* note 72, at 160.

99. *Id.*

100. COSTELLO, *supra* note 96, at 32-33.

101. SKINNER, *supra* note 72, at 159.

102. COPLESTON, *supra* note 73, at 395-97.

103. SKINNER, *supra* note 72, at 162-64. One Reformation leader, John Knox, and his followers in Scotland, came to a similar conclusion about popular sovereignty. HERMAN, *supra* note 31, at 18.

104. SKINNER, *supra* note 72, at 165.

105. *Id.* at 174.

106. *See generally* JOHN RAWLS, A THEORY OF JUSTICE (1971).

107. *See generally* ROBERT A. DAHL, HOW DEMOCRATIC IS THE AMERICAN CONSTITUTION? (2001); ROBERT A. DAHL & BRUCE STINEBRICKNER, MODERN POLITICAL ANALYSIS (6th ed. 2003).

108. *See generally* ROBERT L. HAYMAN, JR., NANCY LEVIT & RICHARD DELGADO, JURISPRUDENCE CLASSICAL AND CONTEMPORARY: FROM NATURAL LAW TO POSTMODERNISM 538-612 (2d. ed. 2002).

109. *Id.* at 402-60. *See also id.* at 613-99 (discussing an important off-shoot of that movement, the Critical Race Theory).

*D. Eighteenth and Nineteenth Century Setbacks*

The adventurous undertakings of the early Jesuits generated considerable adverse reaction from contemporary conservative forces, both in the church and in the larger society.<sup>110</sup> Vatican officials condemned the cultural assimilation practiced by Matteo Ricci and his successors in China as an adulteration of Christianity and ordered them stopped.<sup>111</sup> The experimental missions set up by the Jesuits in Latin America, and run as utopian communities by the indigenous peoples, were suppressed and seized by colonial governments.<sup>112</sup>

In Europe itself, opposition to the Jesuits grew hand in hand with the increasing power and influence of its members.<sup>113</sup> In important countries like France and Spain, the Jesuits' international and multicultural tendencies made them the natural enemies of nationalistic forces.<sup>114</sup> Further, the Jesuits' early and forceful opposition to a well-connected puritanical sect in France, the Jansenists, also put them on the defensive among many leading figures there.<sup>115</sup>

With their historic liberalism,<sup>116</sup> the Jesuits should have been natural allies to the burgeoning Enlightenment thinking of the eighteenth century.<sup>117</sup> Many of the leaders of that progressive intellectual movement had been trained in their colleges.<sup>118</sup> Yet, the Jesuits' traditional loyalty to the papacy tied them to what was perceived as an oppressive, inquisitional power from abroad,<sup>119</sup> and made them fair game for ridicule and infamy from reform-minded thinkers such as the Philosophes.<sup>120</sup>

The combined force of these factors led various powerful governments who were occupying papal territory to demand that Pope Clement XIV

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110. See LACOUTURE, *supra* note 21, at 261.

111. *Id.* at 226. See also GARRY WILLS, WHY I AM A CATHOLIC 184 (2002).

112. See WILLS, *supra* note 111, at 184; *supra* note 65 and accompanying text.

113. LACOUTURE, *supra* note 21, at 261.

114. *Id.* at 264; WILLS, *supra* note 111, at 184.

115. See generally AVELING, *supra* note 21, at 263-65; LACOUTURE, *supra* note 21, at 264. Pascal caustically pronounced this Jansenistic judgment on the Jesuits, stating, "The Jesuits have tried to combine God and the world, and have only earned the contempt of God and the world." AVELING, *supra* note 21, at 252.

116. See AVELING, *supra* note 21, at 266-67.

117. LACOUTURE, *supra* note 21, at 264.

118. *Id.* at 263. Descartes and Voltaire are two prime examples.

119. AVELING, *supra* note 21, at 271-73.

120. Lacouture stated cogently, "The key [to this opposition] was not 'philosophical,' but political." LACOUTURE, *supra* note 21, at 264. Personalities may also have had something to do with engendering ill-will toward the Jesuits. Diderot, the renowned encyclopedist famously remarked, "You may find every imaginable kind of Jesuit, including an atheist, but you will never find one who is humble." BARTHEL, *supra* note 21, at 45.

suppress the Jesuits.<sup>121</sup> After some resistance, he ultimately acquiesced in 1773.<sup>122</sup> The entire network of Jesuit schools and missions worldwide was shut down,<sup>123</sup> and the Jesuit order went underground for more than thirty years.<sup>124</sup> In the interim, of course, Europe underwent the tumultuous era of the French Revolution and Napoleonic wars.<sup>125</sup>

In 1814, the Society was revived and became part of the “world restored,”<sup>126</sup> linked unfortunately to conservative forces of the nineteenth century that looked back fondly to the ancient regime of monarchical Europe.<sup>127</sup> Progressive thinkers of the day, even on our side of the Atlantic, were not pleased. Thomas Jefferson, now in retirement, wrote to his old friend John Adams, “[I]ike you, I disapprove of the restoration of the Jesuits, which seems to portend a backward step from light into darkness.”<sup>128</sup>

As the Catholic Church in Europe spent the nineteenth century in a virulent reaction to the French Revolution, the Jesuits followed suit.<sup>129</sup> One leading Jesuit historian called it “a century of exile,” as the Jesuits became “boxed into the corner of identification with a political order rapidly passing from the face of Europe.”<sup>130</sup> Among the more deplorable actions of the Jesuits during this period was their lock-step support of Pope Pius IX’s notoriously ill-liberal Syllabus of Errors,<sup>131</sup> and the publication of anti-Semitic canards in one of their leading journals during the Dreyfus affair that questioned the patriotism of French Jews.<sup>132</sup> This time was also a low point for Jesuit education. A system that was once characterized by free-wheeling inquiry and robust disputation, now became a rather rote exercise in the passive absorption of received knowledge.<sup>133</sup>

121. BANGERT, *supra* note 21, at 394-95. *See also* WILLS, *supra* note 111, at 184-85.

122. WILLS, *supra* note 111, at 185.

123. BANGERT, *supra* note 21, at 400-01.

124. In America, the ex-Jesuits were held together by the leadership of John Carroll, “a man of vision who not only sensed a great future for the young United States of America but also divined, because of the freedom it enjoyed, a vigorous Church.” *Id.* at 407. Among Carroll’s many accomplishments was the founding of the first Catholic college in the United States, Georgetown, in 1789, which he placed in the hands of fellow ex-Jesuits. *Id.*

125. *See generally* WILLS, *supra* note 111, at 186-89; BANGERT, *supra* note 21, at 430.

126. Pope Pius VII, “[a]s part of his effort toward the religious reconstruction of the continent, in turmoil and chaos after the collapse of the Napoleonic Empire, . . . determined to restore the Society throughout the world.” BANGERT, *supra* note 21, at 428.

127. *Id.* at 432.

128. BARTHEL, *supra* note 21, at 235.

129. PETER MCDONOUGH, *MEN ASTUTELY TRAINED, A HISTORY OF THE JESUITS IN THE AMERICAN CENTURY 4* (1992).

130. BANGERT, *supra* note 21, at 432.

131. BARTHEL, *supra* note 21, at 247. *See also* WILLS, *supra* note 111, at 195-97.

132. BARTHEL, *supra* note 21, at 242.

133. *Id.* at 246.



*E. The Jesuits in America*

The American experience was, in general, a happy exception to this dismal period in Jesuit history.<sup>134</sup> At first, the Society's restoration here occasioned little enthusiasm among our nation's leading citizens who knew of the Jesuits' ideological rigidity in Europe. Jefferson's critical comments to Adams, mentioned previously, were sent in responsive agreement with these sentiments written to him by his presidential predecessor. Wrote Adams, "I do not like the Resurrection of the Jesuits. They have a General now in Russia, in correspondence with the Jesuits in the U.S. who are more numerous than every body knows. Shall we not have swarms of them here?"<sup>135</sup>

But as it happened, the Jesuits' great success in nineteenth century America was due in no small part to the open society that Adams, Jefferson, and the other founders of our nation had established. Free in the new land from the sectarian and anticlerical struggles that beset many countries in Europe during the nineteenth century,<sup>136</sup> the Jesuits here were able to take a more pragmatic, constructive approach to their work, particularly in the field of education.<sup>137</sup>

As Catholics came in large numbers to America, the Jesuits were busy setting up numerous schools to meet the educational needs of the new immigrants.<sup>138</sup> Perhaps typical of how the Jesuits' friendly, practical approach impressed many in the new land were the comments of Edgar Allan Poe in 1846 about some Jesuits he had met who were founding a college in New York City. "Poe liked the Jesuits, as he told a friend, because they were 'highly cultivated gentlemen and scholars, they smoked and they drank, and played cards, and never said a word about religion.'"<sup>139</sup>

In the decades preceding the Civil War, Georgetown, founded in 1789, had become a thriving institution of higher education.<sup>140</sup> Regrettably, it was the exception among most of the early Jesuit colleges. Well into the late nineteenth century, a large number of the schools were decidedly mediocre institutions, under-funded and intellectually isolated from the rest of American higher education.<sup>141</sup> For instance, until 1896, the Jesuits' official records did

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134. BANGERT, *supra* note 21, at 433.

135. *Id.* at 478.

136. *Id.* at 433.

137. MCDONOUGH, *supra* note 129, at 13.

138. As one commentator described them, "These colleges became colonies of order, culture, and religion amid the restive and unsettled conditions of a people engaged in the mammoth task of creating new American cities." BANGERT, *supra* note 21, at 485.

139. RAYMOND A. SCHROTH, S.J., *FORDHAM: A HISTORY AND MEMOIR* 24 (2002).

140. ROBERT EMMETT CURRAN, S.J., *1 THE BICENTENNIAL HISTORY OF GEORGETOWN UNIVERSITY: FROM ACADEMY TO UNIVERSITY, 1789-1889*, at 107 (1993).

141. SCHROTH, *supra* note 139, at 109. "American Catholic higher education in the nineteenth century had very little to do with Catholic respect for the intellectual life." *Id.* It existed as either preliminary education for seminary life, as a mission center or as "a Catholic

not separate high school from college students at all of their schools, listing fewer than 2,000 nationwide in the latter category.<sup>142</sup>

Such a situation was understandable, however, because the Jesuit schools served a beleaguered immigrant community, struggling to gain acceptance and well-being in a new land. As one commentator succinctly described those operations, “it was with the utmost scarcity of money and physical resources that the presidents and their staffs started and kept those institutions running. The wealthy American Catholic was rare.”<sup>143</sup>

Yet change was coming. Following its European leadership, the American Jesuit community moved into the twentieth century with an educational philosophy that was officially conservative. Their true spirit however has been more aptly characterized as “progressive authoritarian.”<sup>144</sup> That oxymoron summed up the cross-fertilization that was occurring in the twenty or so colleges that the Jesuits had founded across the continent. They were bringing a European tradition to home-grown American institutions and gradually adapting it to the democratic nature of the new land.<sup>145</sup>

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house of study and discipline where boys and young men might live in a controlled environment and thus cultivate moral and religious virtue.” *Id.* (summarizing these conclusions by Edward J. Power of Boston College).

142. WILLIAM J. MCGUCKEN, S.J., PH.D., *THE JESUITS AND EDUCATION* 122 (1932).

143. BANGERT, *supra* note 21, at 492.

144. MCDONOUGH, *supra* note 129, at 13. Many of the Jesuits coming to America in the nineteenth century may actually have been fleeing the ultra-conservative Catholic Church in Europe for the more broad-minded horizons of the New World. No place might this have been more apparent than in the American Jesuits’ most adventurous undertaking—their missions to the Indians of the western plains and beyond. The intrepid pathfinder there was Pierre-Jean De Smet, who “dreamed of recreating the Jesuit settlements of Paraguay—as much to preserve the language and customs of the Indians as to evangelize.” LACOUTURE, *supra* note 21, at 373. When proposing such a mission, he received “disapproving sniffs” from his superiors in Rome. *Id.* See also WILFRED P. SCHOENBERG, S.J., *PATHS TO THE NORTHWEST: A JESUIT HISTORY OF THE OREGON PROVINCE* (1982). Schoenberg described one leading Jesuit recruited by De Smet from the Italian aristocracy, Anthony Ravalli, as “the epitome of gentility—a sensitive, disciplined man, who had an enormous capacity for compassion.” *Id.* at 38.

145. One student at such a Jesuit college in the early twentieth century who would gain great fame in the entertainment industry in the 1930s and 40s was the young Bing Crosby. In his memoir, Crosby describes the Jesuits, who taught him at Gonzaga, as powerful and manly, and credits them with imparting to him “virility and devoutness, mixed with the habit of facing whatever fate set in my path, squarely, with a cold blue eye.” GARY GIDDINS, *BING CROSBY: A POCKETFUL OF DREAMS, THE EARLY YEARS, 1903-1940*, at 55 (2001). According to Giddins, Crosby drew on the “liberal inquiries of the Jesuits” in creating his Academy Award-winning character, Father O’Malley (*Going My Way, The Bells of St. Mary’s*), who was a paradigm of “scholastic progressiveness.” *Id.* The year 2003 is the centennial of Crosby’s birth. Because of his importance in twentieth Century American culture, his life inspires scholarly comment. At a recent symposium, Professor David E. White of St. John Fisher College made these comments on Crosby’s famous character of Father O’Malley who was inspired by turn-of-the-century American Jesuits:

## III. THE LAW SCHOOLS

A. *The Early Years*

The divergence from their European counterparts played right into the strength of their schools in the New World. America might have abolished the hereditary aristocracy of Europe, but a new kind of nobility was arising to take its place. As a renowned Jesuit historian aptly stated, “Alexis de Tocqueville noticed from the start the tendency of American lawyers to play leading roles in public life, so it was natural for Catholics to establish law schools as a route to the public mainstream.”<sup>146</sup>

Through the mid-nineteenth century, a large majority of American lawyers were trained in the apprenticeship tradition that our country had inherited from England.<sup>147</sup> During that time, some universities had made attempts to establish law schools, but most were “moribund institutions, little better than ‘trade schools.’”<sup>148</sup> Among the nascent Jesuit institutions, the college at St. Louis was the first to set up a law school in 1842, lasting only five years.<sup>149</sup>

In the period after the Civil War, a new, more academic approach to legal education began to take hold.<sup>150</sup> Following that trend, Georgetown established a law school in 1870<sup>151</sup> and seized on its location in the nation’s capital to tap some of the country’s leading jurists as its early faculty, among them the noted legal reformer and Supreme Court Justice, Stephen Field.<sup>152</sup> All classes were scheduled to start in the late-afternoon to accommodate federal workers.<sup>153</sup>

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Father O’Malley seems to be the embodiment of what William James called the religion of healthy-mindedness. This attitude is characterized by high spirits, optimism and a general denial or disregard for the tragic aspects of life . . .

What most viewers of “Going My Way” and “The Bells of St. Mary’s” see as the happy-go-lucky, oh-so-charming Bing Crosby is actually a type of the Catholic saint, or of the religious person generally, who has been brought to a state of (somewhat subdued) ecstasy by first totally surrendering the personal will to the divine will, but secondly by cultivating an extremely vivid and personal sense of the divine presence.

*Deconstructing Der Bingle: The Crooner As Cheese Product*, N.Y. TIMES, Dec. 15, 2002, § 4, at 7.

146. SCHROTH, *supra* note 139, at 123. For interesting comments on the centrality of law in America from the earliest days of the Republic, see LAWRENCE M. FRIEDMAN, *LAW IN AMERICA: A SHORT HISTORY* 165 (2002).

147. FRIEDMAN, *supra* note 146, at 165. See also ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, at 1 (1983).

148. STEPHEN B. PRESSER & JAMIL S. ZAINALDIN, *JURISPRUDENCE IN AMERICAN HISTORY: CASES AND MATERIALS* 734 (4th ed. 2000).

149. John E. Dunsford, *St. Louis—Pioneer Catholic Law School*, 3 CATH. LAW. 237 (1957).

150. PRESSER & ZAINALDIN, *supra* note 148, at 728-34.

151. CURRAN, *supra* note 140, at 272.

152. *Id.* at 318.

153. *Id.* at 272.

Charles James, Georgetown's first dean, counted two of the Jesuits' strong suits, interdisciplinary learning and ethical formation, as foundational aspects of his school's program.<sup>154</sup> In an address to his first class, Dean James reminded the students that learning the law included "a study of history, of the forms and political operation of governments, [and] of the condition of nations and their peculiar productions."<sup>155</sup> Alluding to the growing wealth of America's new industrial class that expected lawyers to serve its interests, Dean James admonished his graduates of their higher responsibilities, and stated that "a lawyer's work will always be as respectable as it always has been, so long as the lawyer has 'the learning that befits his duty, the culture that befits his time, and the integrity that befits a man.'"<sup>156</sup>

However, the practical aspects of legal education were also paramount considerations at the new Jesuit schools. Among the foremost was the perception of anti-Catholic and anti-immigrant prejudice. For instance, in the early 1900s, leading Jesuits at St. Ignatius College in San Francisco (now University of San Francisco (USF)) were convinced that it was the policy of the Protestant-dominated state university in California to systematically exclude the graduates of Catholic institutions from their professional schools.<sup>157</sup> Concomitant with that impression was the important need for access to legal education as a vehicle for Catholic upward-mobility. By 1912, the year that three Jesuit colleges on the West Coast, USF, Santa Clara, and Gonzaga, were establishing law schools,<sup>158</sup> Fordham Law School was already bragging about its 80% bar passage rate.<sup>159</sup> With its large population base, that New York Jesuit university had almost 1500 students enrolled in its law school by 1925.<sup>160</sup>

The founding of the Jesuit law school in San Francisco perhaps best exemplified the strong ties such institutions had to their immigrant Catholic constituents, in that case, Irish-Americans. As that community's power began to move from labor unions to the business and professional classes, its leaders saw legal education as a key to enhancing the group's social and economic status.<sup>161</sup> Consequently, the founders and early students of USF bred an intense dedication to their school. That commitment passed down through the

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154. *Id.* at 273.

155. *Id.* at 274.

156. CURRAN, *supra* note 140, at 276.

157. ERIC ABRAHAMSON, THE UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW: A HISTORY 1912-1987, at 15-16 (1987).

158. *See supra* note 19 and accompanying text.

159. SCHROTH, *supra* note 139, at 123.

160. *Id.* at 142.

161. ABRAHAMSON, *supra* note 157, at 25.

generations and helped many a graduate find legal work in the municipal government of San Francisco.<sup>162</sup>

For all their practical success though, in producing successful alumni through the first part of the twentieth century, few of the law schools at Jesuit universities achieved academic renown.<sup>163</sup> They were almost all part-time programs for working students and even Georgetown did not hire its first full-time faculty member until 1921.<sup>164</sup> In addition, the early Jesuit law schools were typically under-resourced. For instance, Fordham's law school moved four times in the first part of the twentieth century,<sup>165</sup> and USF's law school was housed in the post-earthquake years in a drafty old building affectionately known as the "shirt factory."<sup>166</sup> For years, Gonzaga's law school met in the evening in classrooms that were occupied during the day by college and high school students.<sup>167</sup> The law schools, in effect, served as "cash-cows" supporting their universities' less remunerative undergraduate programs, where the large majority of Jesuits taught their classical curriculum.<sup>168</sup>

### B. *Jesuit Jurisprudence*

Except for such financial implications, the Jesuit presence at their law schools was often minimal,<sup>169</sup> with just one Jesuit usually assigned there in an oversight capacity under the title of "Regent." For instance, Father James Linden, a young philosophy professor, was appointed Regent at Gonzaga in 1932 and served in that capacity for more than thirty years.<sup>170</sup> Father Linden specialized in apologetics, the intellectual defense of the Catholic faith, and also taught jurisprudence at the law school.<sup>171</sup> It is not hard to imagine how,

162. *Id.* at 20.

163. *See* STEVENS, *supra* note 147, at 92-130 (discussion of the lengthy battles that were fought on the accreditation of these part time schools). Often, these battles entailed a not-too-subtle bias against the recent immigrants who made up a large portion of their student bodies. *See* JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 97-101 (1976).

164. CURRAN, *supra* note 140, at 275.

165. SCHROTH, *supra* note 139, at 111.

166. ABRAHAMSON, *supra* note 157, at 29-30, 34.

167. WILFRED P. SCHOENBERG, S.J., *GONZAGA UNIVERSITY: SEVENTY-FIVE YEARS 1887-1962*, at 223-24 (1963).

168. MCDONOUGH, *supra* note 129, at 37.

169. *Id.*

170. SCHOENBERG, *supra* note 167, at 359, 529.

171. *Id.* at 359. Father Linden wrote his own paperback text for the Legal Philosophy course he taught at Gonzaga. James V. Linden, S.J., *Jurisprudence* (1948) (unpublished manuscript, on file with the Gonzaga University Law Library). Father Linden was also a "radio priest" broadcasting short-wave around the west. SCHOENBERG, *supra* note 167, at 391. His renown was such that he attracted United States Vice President Alben Barkley to the law school's annual major social function in 1950. *Id.* at 529. Among his other accomplishments, Linden established a "labor school" at Gonzaga. *Id.* at 559. *See also infra* note 199 and accompanying text.

for a pre-war Jesuit like Fr. Linden, the two tasks would go hand in hand in a country where Catholics still found themselves in a minority position.

At other Jesuit law schools, the Jesuit's ethical and interdisciplinary approach to law was also not forgotten, even in those early years when the practical success of their graduates was of supreme importance. For instance, in the pre-war period, students at Marquette Law School were required to take a jurisprudence course that presented legal obligations in the broader context of an individual's moral and social obligations.<sup>172</sup> It was for such an outlook, in fact, that American Jesuit legal scholarship first made its mark at a time when many of the leading figures in American jurisprudence would have called such thinking reactionary.

In the first decades of the last century, the distinguished jurist and Supreme Court Justice Oliver Wendell Holmes<sup>173</sup> had introduced a new approach to legal thinking that came to be known as legal realism.<sup>174</sup> The movement sprung from pragmatism, that most indigenous of American philosophies that had been gathering strength for several decades in the late nineteenth and early twentieth centuries.<sup>175</sup> Just as pragmatic philosophers like William James<sup>176</sup> and John Dewey<sup>177</sup> eschewed theory and called for an experimental attitude toward all knowledge, the legal realists stressed a functional, results-oriented approach to law.<sup>178</sup> At times they even seemed irrational in their ambivalence about the role of values in social and legal thought.<sup>179</sup> Holmes himself was an avowed atheist,<sup>180</sup> and made no secret of his wish that any connection to morality be stripped away from legal reasoning.<sup>181</sup>

But despite such skeptical rhetoric, the legal realists were hardly neutral on the important social and political issues of their day. Many were active

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172. Robert F. Boden, *The Milwaukee Law School 1892-1928*, at 28 (1965) (unpublished manuscript, on file with the Marquette University Law Library).

173. Holmes, by most accounts, was the dominant figure in American law in the twentieth century. See PRESSER & ZAINALDIN, *supra* note 148, at 739-51. Holmes's great work is *THE COMMON LAW* (1946). A good summary of his ideas can be found in his famous law school address, OLIVER WENDELL HOLMES, *The Path of the Law*, in COLLECTED LEGAL PAPERS 167 (1920) [hereinafter HOLMES, *The Path of the Law*].

174. MORTON J. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW 1870-1960: THE CRISIS OF LEGAL ORTHODOXY* 109-10, 127 (1992).

175. See generally, Thomas C. Grey, *Holmes and Legal Pragmatism*, 41 STAN. L. REV. 787 (1989). For the author's own take on that school, see Daniel J. Morrissey, *Pragmatism and the Politics of Meaning*, 43 DRAKE L. REV. 615 (1995).

176. Morrissey, *supra* note 175, at 622-25.

177. *Id.* at 625-29.

178. See, e.g., HOLMES, *The Path of the Law*, *supra* note 173. Holmes defined law as nothing more than being able to predict what a court will do. *Id.* at 167.

179. See PRESSER & ZAINALDIN, *supra* note 148, at 780-808.

180. OLIVER WENDELL HOLMES, JR., *TOUCHED WITH FIRE: CIVIL WAR LETTERS AND DIARY OF OLIVER WENDELL HOLMES, JR.* 27-29 (Mark De Wolfe Howe ed., 1946).

181. See HOLMES, *The Path of the Law*, *supra* note 173, at 170-71.

reformers, very much in support of Progressive Era and New Deal initiatives that would improve conditions for the large majority of Americans who were suffering from inequities brought on by the newly industrialized economy.<sup>182</sup> As such, much of their work went to questioning a prevailing legal theory that made contract and property rights sacrosanct.<sup>183</sup>

But in the pre-war community of legal scholarship when Holmes's influence was paramount, Jesuit theorists provided the only credible challenge to some of the darker aspects of his skeptical pragmatism.<sup>184</sup> Writing of Holmes's foundational outlook, Father Paul Gregg, a professor at Creighton Law School, observed, "[o]bjective reason is cast off as the norm of right and wrong, and subjective desires are put in its place. Inalienable human rights and absolute principles of law are denied."<sup>185</sup>

But it was the critique of Holmes's thought by Father Francis Lucey, the Jesuit Regent at Georgetown, that gained the widest audience among legal scholars.<sup>186</sup> He gave the legal realists their due for "clamor[ing] . . . for reformation of a hardened, narrow-minded process of judicial interpretation and legislation."<sup>187</sup> Lucey also kept alive insights from the great tradition of Renaissance Jesuit thought. Experimentation was welcome to establish new policies that would further enhance our social and individual natures. However, if a just social order was to be sustained, any resulting positive law had to be rooted in certain baseline principles of human dignity.<sup>188</sup>

### C. *Revival of the Jesuit Humanistic Spirit*

While Jesuits in America were starting law schools to meet the pragmatic needs of their immigrant communities for upward mobility,<sup>189</sup> a whole new spirit was taking root in their European counterparts that would ultimately turn Catholicism away from its reactionary attitudes.<sup>190</sup> It began around the turn of the last century in a community of French Jesuits exiled to England for their academic training by the anti-clericalism of their homeland. The group was, in the words of one commentator, "a phalanx of bold, inventive Jesuits . . . avid

182. Morrissey, *supra* note 83, at 72.

183. Holmes set the pace with his famed dissent in *Lochner v. New York*, 198 U.S. 45, 75 (1905). "[A] Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of *laissez faire*." *Id.*

184. PRESSER & ZAINALDIN, *supra* note 148, at 808.

185. Paul L. Gregg, S.J., *The Pragmatism of Mr. Justice Holmes*, 31 GEO. L.J. 262, 294 (1943).

186. *See supra* note 184 and accompanying text.

187. Francis J. Lucey, S.J., *Natural Law and American Legal Realism: Their Respective Contributions to a Theory of Law in a Democratic Society*, 30 GEO. L.J. 493, 521 (1942).

188. *Id.* at 531.

189. *See supra* notes 150-72 and accompanying text.

190. *See supra* notes 126-33 and accompanying text.

for knowledge and freedom of expression, profoundly aware of the impotence and blindness of the Church whose energies they longed to release.”<sup>191</sup>

From that group came a number of intellectual leaders who would guide Catholicism to its long overdue rendezvous with the modern world. Chief among them was the esteemed paleontologist and mystic, Pierre Teilhard de Chardin.<sup>192</sup> Motivated by a profound optimism about the human condition, he strove to reconcile contemporary science and Christianity.<sup>193</sup> Another contemporary Jesuit who would lead in a rediscovery of the tradition of critical Catholic thinking was the theologian Henri de Lubac. Like Teilhard, he helped revive the original Jesuit commitment to secular affairs. His attitude was exemplified by bold statements, such as, “[m]odern man has begun to understand that in the immensity of things he is not and cannot be just a spectator . . . . He knows that this World as such has a future, and that it is he who builds [it].”<sup>194</sup>

In the immediate post-war era, this progressive spirit continued among many European Jesuits in both thought and action. Some, sensing how the urban proletariat had become alienated from a religious tradition that no longer spoke to their real needs, formed a “worker-priest” movement. They took jobs in factories and lived among the ordinary people in European cities, holding religious ceremonies in the humblest of surroundings.<sup>195</sup>

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191. LACOUTURE, *supra* note 21, at 407.

192. *Id.* at 404-37.

193. Thanks to the internet and other aspects of the contemporary technological revolution, Teilhard and his way of thought are enjoying a renaissance. An observer of the American scene, Tom Wolfe writes glowingly of the “stunning prescience” of Teilhard’s coining the neologism “noösphere” to describe a “unified consciousness that would cover the earth like ‘a thinking skin.’” TOM WOLFE, *HOOKING UP* 69 (2000). Wolfe goes on to describe how Louis Rossetto, co-founder of the magazine *Wired*, gave credit to Teilhard for heralding the digital revolution when technology would create “an electronic membrane covering the earth and wiring all humanity together in a single nervous system.” *Id.* at 89. The astute social historian Robert Wright also gives Teilhard extraordinary credit for being “the mid-twentieth-century [sic] prophet of globalization,” with his concept of the noösphere linking human intelligence into a “giant ‘super-organism.’” ROBERT WRIGHT, *NONZERO: THE LOGIC OF HUMAN DESTINY* 235 (2000). While he lauds Teilhard for that and other scientific insights, Wright finds him too optimistic and mystical in his belief that all evolution is leading to “Point Omega[,] . . . the climactic incarnation of God’s love.” *Id.* at 318. For a critical view of Teilhard by a conservative Catholic who views him as the progenitor of change that led to “the distance that now separates the Jesuit outlook both from the original Ignatian ideal and the common faith of the Roman Catholic Church,” see MARTIN, *supra* note 21, at 285-302.

194. LACOUTURE, *supra* note 21, at 410. There is an obvious resonance here with the contemporaneous philosophical movement existentialism, which also called on humans to make their own meaning. See generally JEAN-PAUL SARTRE, *EXISTENTIALISM* (Bernard Frechtman trans., 1947).

195. See BARTHEL, *supra* note 21, at 282-83. When the movement was eventually condemned by the Catholic Church, the Jesuits took it hard. LACOUTURE, *supra* note 21, at 483.



Meanwhile, two other prominent Jesuit theologians reached out beyond the narrow confines of traditional Catholicism. Karl Rahner argued convincingly that every person of good will, regardless of formal religious profession, could be a vehicle for God's grace.<sup>196</sup> Additionally, the Scripture scholar Augustin Bea pioneered a new understanding of how true Christianity was rooted in the Hebrew Scriptures.<sup>197</sup> From such an appreciation would come a rapprochement between Catholicism and Judaism and a long owed condemnation of anti-Semitism by the entire Catholic Church at the Second Vatican Council.<sup>198</sup>

About the same time that their European counterparts were rediscovering their liberal roots, thinking among American Jesuits took a similarly enlightened turn. Many advocated a more socially oriented approach to religion, emphasizing a faith that could be put into action. For instance, in the first decades of the twentieth century, the Jesuits sponsored a series of "labor schools." In evening sessions, working people were taught a variety of practical organizing and leadership skills, along with Catholic ethical and political values.<sup>199</sup> In their magazine of public affairs, *America*, the Jesuit editors expressed a decidedly "left-of-center" outlook that was almost "un-American[]" in its outright support for the rights of working people.<sup>200</sup>

Yet, American Jesuits still placed their highest priority in their colleges and universities. Thanks mainly to an upsurge in enrollment and financial resources from the G.I. Bill, Jesuit institutions enjoyed a substantial improvement in their academic quality in the post-war era.<sup>201</sup> From students there, the Jesuit leadership still hoped to develop an elite Catholic subculture—one sensitized to a more communal, less materialistic value system that might even transform American society into one more along the lines envisioned by classic Catholic thought.<sup>202</sup>

Such idealized notions constituted the dominant philosophy of Jesuit higher-education well into the 1950s.<sup>203</sup> In that system, however, the law schools still did not have pride of place. As one commentator stated, "[t]he

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196. LACOUTURE, *supra* note 21, at 485.

197. *See id.* at 450.

198. *Id.* at 451-58.

199. MCDONOUGH, *supra* note 129, at 309. *See also supra* note 171 and accompanying text.

200. MCDONOUGH, *supra* note 129, at 257.

201. *Id.* at 395.

202. *Id.* at 205-09. McDonough describes this educational goal as the development of "articulate, humanistic conservatives," as "a traditional alternative to . . . 'educational Jacobinism.'" *Id.* at 206-07.

203. *Id.* at 207 (calling this model "a clone of European political Catholicism"). For some thoughtful ideas on the continuing value of Catholic higher education by an eminent Jesuit from a speech he delivered recently at St. Thomas University in Miami, Florida on the occasion of its fortieth anniversary, see Avery Dulles, *The Advantages of a Catholic University*, AMERICA, May 20, 2002, at 19.

professional schools were eminently useful. They provided instructional services to a Catholic clientele in search of upward mobility. But they lacked the cachet of liberal education."<sup>204</sup>

But the Jesuit law schools themselves were suffering from no such lack of self-assurance. In a series of self-descriptions published in the late 1950s, they presented themselves as confident institutions, proud to have come of age and very much integrated into the mainstream of American legal culture.<sup>205</sup> Many cited their commitment to high academic standards<sup>206</sup> and boasted of new, "state of the art" facilities.<sup>207</sup> Almost all pointed with pride to their successful alumni, many of whom had risen to the bench or distinguished themselves in some other form of government service.<sup>208</sup>

Even though none of the schools presented themselves in sectarian terms, there was plenty of evidence in the post-war period of their connection to both the Catholic cultural and intellectual tradition. For instance, a reminiscence of Fordham Law School in the late 1940s rattled off a string of professors, almost all with Irish surnames, and fondly spoke of one as a "reincarnation of a leprechaun."<sup>209</sup> It also approvingly described a required course in jurisprudence, which offered "thinly disguised Jesuit philosophy."<sup>210</sup> Other pieces from the series published in the late 1950s spoke of well-attended retreats and communion breakfasts that focused on topics relating to Catholic moral and legal thought.<sup>211</sup> Almost all evinced their schools' dedication to instilling ethical principles and habits of practice in their graduates.<sup>212</sup>

Each article also reflected in some way an awareness of its school's link to the Jesuit tradition and many contained rather lengthy comments about how their institutions' teaching framework was premised on a natural law jurisprudence that based legal principles on moral norms.<sup>213</sup> One sensed in that

204. MCDONOUGH, *supra* note 129, at 208.

205. *Boston College Law School*, 4 CATH. LAW. 153 (1958); Dunsford, *supra* note 149, at 237; Francis E. Lucey, S.J., *The Story of Georgetown Law School*, 3 CATH. LAW. 129 (1957); Warren P. McKenney, *Santa Clara University College of Law*, 5 CATH. LAW. 61 (1959); William Hughes Mulligan, *The Fiftieth Anniversary of Fordham University School of Law*, 2 CATH. LAW. 207 (1956); John E. North, *Creighton Law School—A Private Institution in the Public Service*, 4 CATH. LAW. 77 (1958); Antonio E. Papale, *The Law School of Loyola University, New Orleans*, 5 CATH. LAW. 219 (1959); Reynolds C. Seitz, *Marquette Law School—Fifty Years of Service to the Profession*, 43 MARQ. L. REV. 1 (1959); Richard A. Vachon, S.J., *The University of San Francisco School of Law*, 6 CATH. LAW. 221 (1960).

206. *See, e.g.*, Lucey, *supra* note 205, at 130; Seitz, *supra* note 205, at 1.

207. *See, e.g.*, Mulligan, *supra* note 205, at 213; Vachon, *supra* note 205, at 222.

208. *See, e.g.*, McKenney, *supra* note 205, at 62; Papale, *supra* note 205, at 223.

209. Lucille P. Buell, *Fordham in the Forties*, 49 FORDHAM L. REV. 32, 33 (1980).

210. *Id.* at 34.

211. *See, e.g.*, Lucey, *supra* note 205, at 135; McKenney, *supra* note 205, at 62.

212. *See, e.g.*, Lucey, *supra* note 205, at 129-30; North, *supra* note 205, at 82.

213. *See, e.g.*, Dunsford, *supra* note 143, at 241; Seitz, *supra* note 205, at 1-2.

approach, however, an uneasy co-existence with the strains of liberalism, positivism, and legal realism then dominant in American legal thought.<sup>214</sup> Such dissonance appeared to chill the schools' otherwise eager moves, which were gaining them acceptance into the country's legal culture.

Once again, however, progressive Jesuit thought was building a bridge that those law schools could use to span that gap. This time it was two American Jesuits, Gustave Wiegel and John Courtney Murray, who put Catholic social thinking more in line with our country's distinct outlook.

Wiegel was a leader of the ecumenical movement, which was gaining considerable force in the post-war era, and he was thus quite critical of a Catholic intellectual tradition that had grown rigid in its "Protestant- and secularist-bashing."<sup>215</sup> Wiegel encouraged the young Jesuits he taught to be open to intellectual currents that the Church, in its earlier defensive posture, had condemned. "Hume, Kant, and Hegel," he wrote, "are not so much 'adversaries' as milestones in the development of philosophy and are to be treated that way."<sup>216</sup>

Murray's influence on twentieth century Catholic thought was even more pronounced.<sup>217</sup> One of the few Catholic priests to teach at Yale up to that time, he was a prominent member of many national committees and think-tanks.<sup>218</sup> His principal project was to demonstrate the common roots of the liberal and natural law traditions and thus to show the compatibility between Catholic philosophy and the American experience.<sup>219</sup> The power of Murray's ideas reached its zenith at the Second Vatican Council called in the early 1960s by Pope John XXIII to update the teachings of the Catholic Church.<sup>220</sup> The Council eventually would affirm two key American propositions that Murray had vigorously espoused for the universal church: freedom of conscience in

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214. A distinguished legal historian has aptly described this "liberal legal culture" of the post-war period in this fashion: "[L]egal liberalism is an inchoate and largely unarticulated concept, but in its essence it fused the social reformist impulse of Progressivism, the relativism and instrumentalism of legal realism and sociological jurisprudence, and the regulatory responsibility of the state associated with the New Deal." KERMIT L. HALL, *THE MAGIC MIRROR: LAW IN AMERICAN HISTORY* 284 (1989).

215. MCDONOUGH, *supra* note 129, at 400.

216. *Id.*

217. *See id.* at 219-39. For a collection of essays on Murray's contribution to American Catholic thought, see JOHN COURTNEY MURRAY AND THE AMERICAN CIVIL CONVERSATION (Robert P. Hunt & Kenneth L. Grasso eds., 1992) [hereinafter JOHN COURTNEY MURRAY].

218. CHARLES R. MORRIS, *AMERICAN CATHOLIC: THE SAINTS AND SINNERS WHO BUILT AMERICA'S MOST POWERFUL CHURCH* 273 (1997).

219. Robert F. Cuervo, *John Courtney Murray and the Public Philosophy*, in JOHN COURTNEY MURRAY, *supra* note 217, at 67.

220. See Daniel J. Morrissey, *The Separation of Church and State: An American-Catholic Perspective*, 47 CATH. U. L. REV. 1, 39-40 (1997).

matters of religion and the appropriateness of separating religious and political authority.<sup>221</sup>

This Jesuit-led liberalizing trend coincided with the election of John Kennedy as America's first Catholic president, heralding the full acceptance of Catholics into the civic life of our country.<sup>222</sup> With those happy events signaling a new spirit of religious pluralism in the land, it seemed the Jesuit law schools could be freed from their earlier defensive posture and fully be integrated into the American legal culture.

#### IV. THE CONTEMPORARY ERA

##### A. *Challenges to the Jesuit-Catholic Identity*

No sooner had the schools gained this widespread academic and professional respectability than, according to certain critics, they began losing their distinctive identity. One wrote, “[d]uring the 1960’s and 1970’s, a pronounced trend towards the secularization of the Catholic law schools began.”<sup>223</sup>

The author focused on three Jesuit law schools as illustrating this trend: Loyola-Chicago, Boston College, and the University of Detroit.<sup>224</sup> He cited a marked decline in the influence of natural law jurisprudence in the curricula of those schools, and a similar falling-off in their religious activity.<sup>225</sup> He also pointed out that their promotional literature had become less self-consciously Catholic. Words such as “ecumenical,” and “eclectic” were now used to discuss their heritage, and the intellectual climate of the schools was described as one where “scholarly pursuits range the entire spectrum of contemporary thought and interest.”<sup>226</sup>

Another commentator even claimed that an “implosion of the Jesuit law school”<sup>227</sup> occurred during that period. At first he attributed it to a general attitude in the legal community of “reliance on 1960s ideas of liberalism” that “[has] caused both real and psychological barriers for Catholic law schools.”<sup>228</sup>

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221. *Id.*

222. JAY P. DOLAN, *THE AMERICAN CATHOLIC EXPERIENCE: A HISTORY FROM COLONIAL TIMES TO THE PRESENT* 421-22 (1992).

223. Leonard J. Nelson, III, *God and Man in the Catholic Law School*, 26 *CATH. LAW.* 127, 127 (1981).

224. *Id.* at 134-39.

225. *Id.* at 138.

226. *Id.* at 138-39 (citing the 1968 University of Detroit Credo and the 1979 Bulletin of the Boston College Law School).

227. Andrew J. Krouse, *Can a Jesuit Law School Survive in a Secular Democracy: Yes, But Only If It Wants To*, 58 (1985) (unpublished manuscript, on file with the Georgetown University Library).

228. *Id.* at 15.

But the ultimate cause of what that critic called “the secularization trend in Jesuit law schools” was, in his view, something more unique to those institutions. It was a “general lack of definition of what a Jesuit law school is supposed to be and a faculty, administration, and student body which is neither Catholic nor committed to being Catholic.”<sup>229</sup> It thus appeared that, at least from some perspectives, the more open attitude of the Jesuit law schools was threatening their very identity.

During the same period, the Jesuits themselves underwent a considerable transformation. As one observer has remarked, it was a time some saw as a “movement” and others as “protracted death throes.”<sup>230</sup> Many younger Jesuits, keenly aware of the brutal poverty gripping much of the world, were impatient with a mere “sacerdotal” role that seemed only to serve the rich and powerful.<sup>231</sup> As a result, from the mid-1960s through the 1970s, under the leadership of another Spaniard of Basque descent, Pedro Arrupe, the Jesuits made working for social justice their highest priority.<sup>232</sup>

To church conservatives, it seemed like the Jesuits were dissolving themselves into a humanitarian agency. In the early 1980s, Pope John Paul II inserted himself directly into the governance of the Jesuits, many believe, to rescue it from secularizing its religious mission.<sup>233</sup> During those years of crisis and reassessment, the Jesuits also suffered a considerable decline in manpower, particularly in America.<sup>234</sup> Their numbers on college and university faculties were hit particularly hard, and the Jesuits were left to wonder what meaningful role they might play on its campuses.<sup>235</sup>

A recent study of the Jesuits who remain finds considerable disaffection from the Catholic Church’s formal leadership.<sup>236</sup> Many are following their own sense of mission, apart from the institutional demands of their Order. The recent sex scandals involving Catholic clergy, and the subsequent cover-ups by some members of the hierarchy,<sup>237</sup> have no doubt exacerbated that malaise.

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229. *Id.* at 58.

230. LACOUTURE, *supra* note 21, at 459.

231. *Id.* at 463-66.

232. *Id.* at 461-66.

233. *Id.* at 468-79.

234. MCDONOUGH, *supra* note 129, at 5. McDonough states, “[m]embership in the international order peaked at over 36,000 men in 1965. By 1990 it had fallen below 25,000. In the United States during the same period membership fell from more than 8,000 to fewer than 5,000.” *Id.* By 2000, American membership in the Society of Jesus had fallen to 3,635. Garry Wills, *Jesuits in Disarray*, N.Y. REVIEW OF BOOKS, Mar. 28, 2002, at 12.

235. See generally PETER MCDONOUGH & EUGENE C. BIANCHI, *PASSIONATE UNCERTAINTY: INSIDE THE AMERICAN JESUITS* (2002).

236. *Id.* at 132-59.

237. See generally Andrew M. Greeley, *The Tipping Point ‘Betrayal’ Details a Stunning Pattern of Clerical Sexual Abuse and Coverup, as One Unsettling Example Follows Another*, BOSTON GLOBE, July 7, 2002, at D3 (reviewing THE INVESTIGATIVE STAFF OF THE BOSTON

### B. *Rethinking the Jesuit Mission*

In the early 1990s, two thoughtful articles appeared that offered fresh reasons for infusing the Jesuit spirit into legal education. Steven Barkan, Professor and later interim Dean at Marquette University, cited the need to instill a renewed sense of values among lawyers and law students as a continuing justification for the distinctive approach of Jesuit law schools.<sup>238</sup> Not only is a religious orientation compatible with legal education, Barkan maintained, but such institutions “send ‘good’ lawyers into the world who are better prepared to confront the difficult moral and ethical problems they will encounter.”<sup>239</sup>

Barkan, not a Catholic himself, observed that “Jesuit law schools show relatively little objective evidence of their religious affiliation.”<sup>240</sup> Yet, that should not be the case. Such institutions, he asserted, ought to be significantly different from other mainstream law schools, and he listed five characteristics that should distinguish them from their secular counterparts.<sup>241</sup>

Barkan drew his first characteristic from a cardinal Jesuit principal that God, the Creator and Lord, can be discovered in many ways, “most especially within the lived experience of each individual person.”<sup>242</sup> From that, he argued, Jesuit legal education must exist in a religious context. However, he was quick to note that full participation in the law school community must not be conditioned upon adherence to particular religious beliefs.<sup>243</sup> Rather, the “religious mission[s] of a law school must be addressed with great care, sensitivity, and subtlety . . . in a way that brings people of various [religious] beliefs together to appreciate their common values and goals.”<sup>244</sup>

Barkan went on to state that a “Jesuit legal education must be value-oriented,”<sup>245</sup> with a commitment to justice premised on the dignity of each person,<sup>246</sup> and a special concern for the poor and disadvantaged.<sup>247</sup> It should also be broad-based, interdisciplinary, and committed to excellence.<sup>248</sup>

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GLOBE, BETRAYAL: THE CRISIS IN THE CATHOLIC CHURCH (2002)); Johanna McGeary, *Can the Church Be Saved?*, TIME, Apr. 1, 2002, at 28-40.

238. Barkan, *supra* note 19, at 100.

239. *Id.*

240. *Id.* at 102-03.

241. *Id.* at 107-08.

242. *Id.* at 109.

243. Barkan, *supra* note 19, at 109.

244. *Id.* at 109-10.

245. *Id.* at 110.

246. *Id.* at 112.

247. *Id.* at 113.

248. Barkan, *supra* note 19, at 115. Similar comments were made earlier by the Jesuit Dean of Seton Hall Law School. He stated:

More generally one should expect the faculty (of a Catholic law school) to have grounding in the humanities, in history and literature, in political and social theory, in

Barkan's views were echoed in a contemporaneous piece by Robert Araujo,<sup>249</sup> a Jesuit himself, who would go on to become my colleague and friend on the faculty at Gonzaga Law School. Father Araujo surveyed materials from various Jesuit law schools and found that many of them perceived their mission in the context of a "faith that does justice in a world where there is so much injustice."<sup>250</sup>

With skillful reflection, he presented that mandate from Biblical, Catholic, and Jesuit sources, and showed how they established that "reconciliation with God demands the reconciliation of people with one another."<sup>251</sup> Further, Father Araujo argued that a Jesuit legal education should sensitize its students that the way law is practiced has moral effects in people's lives. For instance, legal activities undertaken on behalf of wealthy clients can have deleterious results on less fortunate individuals.<sup>252</sup> Yet, even more important than coming to know the sources of injustice, Araujo argued, is that future lawyers understand the importance of friendship and love as the greatest good and work to end discord and promote harmony in society.<sup>253</sup>

While Barkan's and Araujo's pieces were prescriptive, another more recent article was critically descriptive of the current state of the Jesuit law schools vis-à-vis their fidelity to religious orthodoxy.<sup>254</sup> The author, John J. Fitzgerald, profiled six law schools connected to Catholic institutions of higher learning, two of them Jesuit. He found that the non-Jesuit schools such as Ave Maria,

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economics and the sciences. Only a faculty that is broadly and deeply educated, it seems to me, can understand and address the questions of justice underlying the law today.

Daniel A. Degnan, S.J., *Comment, Reflections of a Law Dean*, SETON HALL UNIVERSITY ALUMNI MAGAZINE, Spring 1983, at 1.

249. Robert J. Araujo, S.J., *Legal Education and Jesuit Universities: Mission and Ministry of the Society of Jesus?*, 37 LOY. L. REV. 245 (1991).

250. *Id.* at 250.

251. *Id.* at 263.

252. *Id.* at 271. For another thoughtful piece by a Jesuit active in legal education, see Gregory A. Kalscheur, S.J., *Law School as a Culture of Conversation: Re-Imagining Legal Education as a Process of Conversion to the Demands of Authentic Conversation*, 28 LOY. U. CHI. L.J. 333, 367 (1996). There, the author links his proposal to the great emphasis that the Jesuits' recent decrees place on dialogue. He writes:

Striving to make the law school a culture of authentic conversation through which we can imagine new possibilities for constituting good lives and good communities by encountering the imaginative visions of others is consistent with the Society's recent articulation of a commitment to establishing a culture of dialogue as part of its characteristic way of proceeding.

*Id.*

253. Araujo, *supra* note 249, at 276.

254. John J. Fitzgerald, *Catholic Legal Education: The Inside Story*, CRISIS, Oct. 2002, at 26 [hereinafter Fitzgerald, *The Inside Story*]. The author has published a longer work on the same topic. See John J. Fitzgerald, *Today's Catholic Law Schools in Theory and Practice: Are We Preserving Our Identity?*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 245 (2001).

St. Thomas in Minnesota, Catholic University of America, and Notre Dame, were much more committed to a distinctly Catholic outlook than their two Jesuit counterparts, Georgetown and Boston College.<sup>255</sup> Fitzgerald presented the non-Jesuit schools as taking diverse approaches to their Catholic orientation, but possessing certain common features. Chief among them are well-attended religious services, multiple courses dealing with the Catholic intellectual tradition, and student groups actively committed to causes like the right-to-life movement.<sup>256</sup>

Fitzgerald conceded that Boston College and Georgetown rank academically in the upper echelons of American law schools.<sup>257</sup> He found, however, that by contrast to the non-Jesuit schools, they were places where it was rare to find practicing Catholics on the faculty, or in the student body.<sup>258</sup> Fitzgerald also pointed out that discussion of religious issues was unusual in classes at Boston College and Georgetown, and student organizations and outside speakers who oppose the Catholic Church's teachings on sexual and reproductive issues were given institutional support or recognition.<sup>259</sup> In addition, he chided a Jesuit on the Georgetown law faculty, who had been Dean at Boston College Law School, for having made pro-choice votes in his former position as a United States Congressman.<sup>260</sup>

### C. *Passionate in the Paradox*

What then, is the genius of Jesuit legal education? Do the fourteen law schools at universities still connected with the Jesuits have any common characteristics that distinguish them from the 170 or so other such institutions in our country? If not, are there some distinctive traits that it would be appropriate for Jesuit Law schools to cultivate so that they might reclaim, even in our deeply secular and post-modern society, some sense of a unique identity or mission?

First, all law schools in the United States, Jesuit or not, take as a given certain realities of our shared experience. Chief among them is that America

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255. See Fitzgerald, *The Inside Story*, *supra* note 254, at 26-33.

256. *Id.* at 27, 31.

257. *Id.* at 32.

258. *Id.* at 31-33.

259. *Id.*

260. Fitzgerald, *The Inside Story*, *supra* note 254, at 33. See also, LACOUTURE, *supra* note 21, at 490 (offering these comments on Father Robert Drinan: "An eminent jurist, the author of several works on international law, a professor on the faculty of Georgetown University, Father Drinan was a very visible and active Democrat, whose constituents were not just Irish Catholics but also Protestants and Jews."). When asked to explain his consistent votes in favor of legalizing abortion Drinan responded, "[a]s a Catholic priest I disapprove of abortion. But as a member of Congress elected by a pluralistic society, I am not entitled to impose the views of my coreligionists in such a way." *Id.*



has always been a land of lawyers. Today, there are approximately one million of them.<sup>261</sup> Their principle work is to arrange business matters, but they have their hands in every aspect of our law-saturated society.<sup>262</sup>

As one distinguished legal historian has observed, “[a]n individualistic, consuming, wealthy society; a free market, . . . a society of plural equality—such a society cannot do without an enormous umbrella of law and legal process. Law is the glue that binds the cells of Leviathan’s body; and the body of society itself.”<sup>263</sup> Thus, there seems to be no end to our society’s need for lawyers, nor, correspondingly, to the young people eager to join their ranks. The number of individuals taking the October, 2003 LSATs set a new record.<sup>264</sup>

In the same vein, the American legal profession has always been proud of its pragmatic attitude toward managing business and other human affairs.<sup>265</sup> There is something to be said for such an approach that counts success as the ability to find “workable solutions” to particular legal problems, particularly if you can charge a client a handsome fee for your service. It is hard to see how any American law school can function outside that legal culture. Law is very much part of the American dream and all the ideals of liberty and prosperity wrapped up in that notion. Yet, there is also an ancient tradition, not fully lost even in our time, which demands that law also be rooted in a deeply principled system.<sup>266</sup>

Given the seemingly fundamental contradiction, ethically sensitive lawyers often speak of their inner-conflicts in trying to lead a meaningful and morally satisfying life—particularly at a time when amassing billable hours appears to be the paramount measure of a successful practice.<sup>267</sup> At the threshold of their careers, idealistic law students have yet to come to grips with those dilemmas. In his recent novel of a law professor, Yale faculty member Stephen Carter writes in virtual despair of his students’ fate:

I return to my dreary classroom, populated, it often seems, by undereducated but deeply committed Phi Beta Kappa ideologues . . . all of them our students,

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261. FRIEDMAN, *supra* note 146, at 165.

262. *Id.* at 168.

263. *Id.* at 183.

264. LSAC Report, (newsletter of the Law School Admission Council) (Oct. 2003). The total number of people taking the LSAT in October, 2003 was 53,701, a 2.1% increase from the previous October’s total of 52,604. E-mail from Bruce Wingartner, Law School Admission Council, to Tamara Martinez-Anderson, Assistant Dean and Director of Admissions, Gonzaga University School of Law (Nov. 10, 2003) (copy on file with the *Saint Louis University Law Journal*).

265. See Morrissey, *supra* note 175, at 642.

266. *Id.* at 649.

267. For a great first-person account of such a struggle by a self-professed “Jesuit educated lawyer,” see THOMAS GEOGHEGAN, IN AMERICA’S COURT: HOW A CIVIL LAWYER WHO LIKES TO SETTLE STUMBLED INTO A CRIMINAL TRIAL (2002).

all of them hopelessly young and hopelessly smart and thus hopelessly sure they alone are right, and nearly all of whom, whatever their espoused differences, will soon be espoused to huge corporate law firms, massive profit factories where they will bill clients at ridiculous rates for two thousand hours of work every year, quickly earning twice as much money as the best of their teachers, and at half the age, sacrificing all on the altar of career, moving relentlessly upward, as ideology and family life collapse equally around them, and at last arriving, a decade or two later, cynical and bitter, at their cherished career goals, partnerships, professorships, judgeships, whatever kind of ships they dream of sailing, and then looking around at the angry, empty waters and realizing that they have arrived with nothing, absolutely nothing, and wondering what to do with the rest of their wretched lives.<sup>268</sup>

Yet, the struggles of the legal profession seem minor in comparison to the crisis faced by the Jesuits. A recent study alluded to previously<sup>269</sup> is said to portray their “crack-up”<sup>270</sup> as “the renegade Society of Jesus: papists who hate the Pope, evangelists who have lost the faith.”<sup>271</sup> Pulitzer Prize winning author Gary Wills, a former Jesuit seminarian himself, concluded that those authors “succeed very well in presenting the struggle of an organization deeply challenged at many levels and coping with what seem almost insurmountable problems.”<sup>272</sup> Another renowned authority, however, Cardinal Avery Dulles, a Jesuit himself, is more sanguine in his assessment of the study’s findings. “Some other orders may be more stable, but . . . [t]here is something special about an order that is always prepared to take risks in the hope of accomplishing greater things for Christ . . . [t]he Jesuit enigma never ceases to fascinate and to attract.”<sup>273</sup>

Contemporary writings by the deans of two Jesuit law schools take a similarly upbeat view on how their institutions’ connection to the Society uplifts their mission and provides a response to wrenching observations of legal education like Professor Carter’s. Dean Jeffrey Brand, of the Jewish faith, sees the Jesuit connection as a mandate to educate his students at the University of San Francisco to do justice; a goal, he said, “not often articulated

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268. STEPHEN L. CARTER, *THE EMPEROR OF OCEAN PARK* 109 (2002).

269. See MCDONOUGH, *supra* note 235.

270. Paul Shaughnessy, *Are the Jesuits Catholic?*, WEEKLY STANDARD, June 3, 2002, (reviewing MCDONOUGH & BIANCHI, *supra* note 235, available at <http://www.weeklystandard.com/Content/Public/Articles/000/000/001/295pzsns.asp> (June 6, 2002).

271. *Id.*

272. Wills’s, *supra* note 234, at 13. For Wills’ self-described experience as a Jesuit in training, see WILLS, *supra* note 111, at 21-30.

273. Avery Cardinal Dulles, *The Jesuit Enigma*, FIRST THINGS, Apr. 2002, at 37, 41 (reviewing PETER MCDONOUGH & EUGENE C. BIANCHI, *PASSIONATE UNCERTAINTY: INSIDE THE AMERICAN JESUITS* (2002)).

at law schools around the country.”<sup>274</sup> Further, he lays out a broad vision of how ethical training, service learning, and community involvement can characterize a Jesuit law school. Such ideals can even constitute, he says, a unique statement of the institution’s *raison d’être*.<sup>275</sup> Dean Brand forthrightly acknowledges a series of troubling questions that such a commitment poses, particularly for a private school where students are asked to shoulder almost all of the high cost of their education and where resources can be scarce. Yet, he envisions all kinds of creative ways that such issues can be addressed if real dedication is made to such a mission.<sup>276</sup>

Dean Mack Player of the University of Santa Clara Law School, a self-professed Baptist, also extols the virtues of his Jesuit affiliation. Perhaps from his own religious perspective, he offers a tongue-in-cheek allusion to the vineyards run by the Jesuits in California, asking if a university could be “bad if it not only served wine at official functions, but had its own wine label.”<sup>277</sup> Extending the metaphor, Dean Player goes on by celebrating the Jesuits’ “liberal” view of theology and their social activism that he sees as fitting in quite well with the philosophy of most law schools and their faculties.<sup>278</sup> Like Dean Brand, he sees the Society’s commitment to education for a just society as a “beacon” that will remove ambiguity about the school’s role and mission.<sup>279</sup>

#### V. A VISION FOR A JESUIT LAW SCHOOL

Training competent professionals has always been the principal mission of Jesuit law schools and it goes without saying that it must so remain. In addition, none of the Jesuit law schools have ever been sectarian institutions,

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274. Jeffrey S. Brand, *Jesuit Law Schools and the Pursuit of Justice: Unique Opportunities, Unique Responsibilities*, CONVERSATIONS ON JESUIT HIGHER EDUCATION, Spring 2001, at 28.

275. *Id.* at 29-31. In the same vein, another dean of a Jesuit Law School of the Jewish faith, the late Howard Eisenberg, wrote:

I tell law students on their first day of orientation at Marquette that the primary task of a lawyer is to resolve a client’s problems as quickly, as inexpensively, and with as little acrimony as possible. I tell them that as attorneys we must regard ourselves as a ‘helping’ profession in the most literal sense of that term . . . . We must be prepared to teach students to be good and moral citizens in the fullest sense of those words.

Diane S. Sykes, *In Memoriam Howard B. Eisenberg*, 86 MARQ. L. REV. 325, 344 (2002) (citing Howard B. Eisenberg, *What’s a Nice Jewish Boy Like Me Doing in a Place Like This?*, 86 MARQ. L. REV. 336, 344 (2002)).

276. Brand, *supra* note 274, at 34-35. For the insightful comments of the dean of another Jesuit law school (Boston College) who writes of his struggles with such fiscal issues, see John H. Garvey, *The Business of Running a Law School*, 33 U. TOL. L. REV. 37 (2001).

277. Mack A. Player, *Stranger in a Strange Land: Baptist Dean of a Jesuit Law School*, 33 U. TOL. L. REV. 143, 145 (2001).

278. *Id.*

279. *Id.* at 146.

and such an approach would not only be out of step with the all-inclusive role of law in our society, but also with the broad-minded working philosophy of the Society since the days of Xavier and Ricci.<sup>280</sup> In addition, the Jesuit law schools were consciously designed as avenues of advancement for underrepresented groups in our society.<sup>281</sup> That mission, both altruistic and pragmatic at its inception, should continue to operate, linking the descendants of earlier Catholic immigrants to the desire for upward mobility of other groups who have found our country less than hospitable to their aspirations for a better life. In the Jesuit tradition that reaches out to all humanity, their law schools should also be models for friendship and understanding among women and men from the diversity of cultures that make up our nation.

Yet even today, in its highly-secularized, post-modern iteration, a Jesuit law school remains, in the largest sense, part of a faith community. It is true to the basic belief of Catholic Christianity that the all powerful transcendent Being has lovingly become one of us, joining fully in our joy and suffering.<sup>282</sup>

As Jesuits describe it today, this is a faith that does justice,<sup>283</sup> rooted in Loyola's great insight that an awareness of God's love and mercy, present in every person, has to result in an active commitment for others. In the spirit of Rahner,<sup>284</sup> Wiegel,<sup>285</sup> and Murray,<sup>286</sup> all who are open to this vision should be welcome as faculty or students at Jesuit law schools, regardless of their overt religious profession.

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280. See *supra* notes 58-62 and accompanying text. For a fine piece espousing this broad-minded vision, see Mark A. Sargent, *An Alternative to the Sectarian Vision: The Role of the Dean in an Inclusive Catholic Law School*, 33 U. TOL. L. REV. 171 (2001). Jesuit law schools have also led the way in opportunities for women in legal education. For example, in 1983 Nina S. Appel of Loyola became the first woman dean of a Chicago law school. She has served in that role for almost two decades, providing distinguished leadership in legal education nationwide by, among other things, chairing the American Bar Association's Section on Legal Education. *Loyola Law* 13 (Spring/Summer 1998). Judith Areen of Georgetown is another woman dean of a Jesuit law school with an illustrious tenure. During her fifteen years at the helm, Georgetown has continued in the ranks of our nation's finest law schools, while remaining faithful to its tradition of training ethically sensitive lawyers who understand legal issues in all their interdisciplinary complexity. See *supra* notes 155-56 and accompanying text.

281. See *supra* notes 157-62 and accompanying text.

282. *Philippians* 2:6-8. For an interesting new take by a former Jesuit on this great mystery of God becoming human, see JACK MILES, *CHRIST: A CRISIS IN THE LIFE OF GOD* (2001). One contemporary Jesuit theologian puts this insight succinctly. "Ignatian spirituality, classically rooted in *The Spiritual Exercises* of St. Ignatius of Loyola, is an approach to transcendence rooted in a staunch incarnationalism where wisdom begins in recognition of divine enmeshment with the world . . ." Paul Crowley, S.J., *The Jesuit University and the Search for Transcendence*, CONVERSATIONS ON HIGHER JESUIT EDUCATION, Fall 2002, at 10.

283. See *supra* notes 134-45 and accompanying text.

284. See *supra* note 196 and accompanying text.

285. See *supra* notes 215-16 and accompanying text.

286. See *supra* notes 217-21 and accompanying text.

If faith, as the Scripture tells us, is the assurance of things hoped for,<sup>287</sup> then it is this great, broad-minded trust in the potential for human goodness that Jesuit law schools must somehow keep alive. It would mean aiming to produce a “different type of lawyer,” one for whom the slogan “living greatly in the law” means more than the dead-end careerism so aptly described by Professor Carter. Like another group of Jesuit-educated men and women who jokingly refer to themselves as “ruined for life”<sup>288</sup> such law school graduates would be invigorated by a mission for justice. Father Ellacuria described this mission as a calling to establish a new earth, where a better kind of human life may be possible.<sup>289</sup> The Jesuit’s whole experiential tradition bears that out from its early outreaches to Asia<sup>290</sup> and the South American indigenous communities,<sup>291</sup> to its labor schools<sup>292</sup> and worker-priest activities<sup>293</sup> of the last century.

In the past, such ideals were nourished at mandatory retreats or communion breakfasts, but the Ignatian spirit of discernment can still be present at the schools where even busy law students should be encouraged to find time for such reflection. In addition, life-long habits of such a commitment should be fostered by work in clinical programs that actively advocate the causes of the poor and by requirements that students perform some pro-bono work even while in law school.

It would also be appropriate if, in some required jurisprudence course, the students could be exposed to Jesuit social theory from the great neo-scholastics of the early period<sup>294</sup> to the Society of Jesus’ more current thinkers.<sup>295</sup> In this way, they could understand its foundational impact on our contemporary human rights theory, and be inspired to make our legal system pay more than lip service to the equal dignity of each person.

Other aspects of the Jesuits’ great tradition should inform their law schools. *Ad integram vitam*,<sup>296</sup> the Society’s spirit of developing the whole person, can be a welcome antidote to the narrow instrumentalism so prevalent in today’s legal culture. The rigorous intellectualism of the great Jesuit founders, who saw learning as the key to human perfection in the Divine plan,

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287. *Hebrews* 11:1.

288. See Denise Lardner Carmody, *The Catholicity of the Catholic University*, CONVERSATIONS ON HIGHER JESUIT EDUCATION, Fall 2002, at 4, 5 (attributing the phrase to the self-description of the Jesuit Volunteers, young graduates of Jesuit universities who embark on a mission of social justice).

289. See *supra* note 1 and accompanying text.

290. See *supra* notes 58-62.

291. See *supra* notes 62-65 and accompanying text.

292. See *supra* note 199 and accompanying text.

293. See *supra* note 195 and accompanying text.

294. See *supra* notes 71-109 and accompanying text.

295. See, e.g., *supra* notes 217-21 and accompanying text.

296. See MCGUCKEN, S.J., *supra* note 142, at 158, 162.

can continue to be a guiding spirit to the development of a true community of scholars, open to the good in all ideas.<sup>297</sup> Even the Society's historic fondness for casuistry<sup>298</sup> can be seen as meshing well with the American legal culture of pragmatism,<sup>299</sup> which calls for creative approaches to meeting the inevitable moral dilemmas of legal practice.

Perhaps some graduates of Jesuit law schools might come to share Loyola's great sense of "finding God in all things,"<sup>300</sup> even in the often sordid and confusingly complex matters that require legal resolution. As the prophet Isaiah foretold, when the Messiah comes, the people of all nations will gather in peace and harmony on God's holy mountain.<sup>301</sup> Just because the rabbis of Safed were unsuccessful in using law to hasten that glorious day does not mean that the Jesuit law schools should give up the effort.

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297. For an insightful essay by a renowned sociologist on this point, see Andrew M. Greeley, *The Catholic "Intellectual": An Empirical Investigation*, in EXAMINING THE CATHOLIC INTELLECTUAL TRADITION 179 (Anthony J. Cernera & Oliver J. Morgan eds., 2000). There, the author points to a communal, optimistic attitude that sets Catholic "intellectuals" off from their non-Catholic colleagues. *Id.* at 184-86. For this author's earlier thoughts on how a number of law school subjects can be informed with principles from the Catholic tradition, see Daniel J. Morrissey, *The Catholic Moment in Legal Education*, 78 MARQ. L. REV. 413, 421 (1995).

298. *See supra* notes 69-70 and accompanying text.

299. *See supra* notes 175-77 and accompanying text.

300. *See supra* note 41 and accompanying text.

301. *Isaiah* 25:6-9.

