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## Reflections on the Catholic Intellectual Tradition and the Good Society

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*Fides et Iustitia*

## FOREWORD

# REFLECTIONS ON THE CATHOLIC INTELLECTUAL TRADITION AND THE GOOD SOCIETY

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The principal papers in this edition of the *University of St. Thomas Law Journal* were first presented at a conference organized at the School of Law on April 7–9, 2005, under the auspices of the Terrence J. Murphy Institute for Catholic Thought, Law and Public Policy. The theme of the conference was “The Catholic Intellectual Tradition and the Good Society.”

The Murphy Institute is a collaboration between the University of St. Thomas’s Center for Catholic Studies and its School of Law. It was established in 2003 and is named in memory of the University’s long-time president and chancellor, Msgr. Terrence J. Murphy (1920–2004), and its purpose is to pursue the integration of law and the Catholic intellectual tradition in several dimensions.

Religiously affiliated universities have long made an important contribution to the professional formation of lawyers. During the course of the twentieth century, many of these schools have taken their place among the best programs in the country. This has been a notable achievement—one that has often changed the character of many of these schools.

It was common during the latter half of the twentieth century for American scholars and educators to believe that religious convictions were simply private matters and largely irrelevant to sound professional education. It was thought to be incumbent on professionals of all sorts to avoid religious considerations and viewpoints when examining problems in their areas of expertise. As a consequence, attention to religious intellectual traditions, which was once a distinctive element of education for the professions in many religiously affiliated universities, is now notably absent.

At the same time, however, globalization has reawakened a sense of how important religious traditions are to most of the world’s people. Fur-

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thermore, a notable body of scholarship over the last two decades has helped to restore an appreciation of the contribution made by religious thinkers to the shaping of the modern world. Rather than avoiding the influence of religious thought, these scholars have discovered and demonstrated that these traditions possess a richness that can illuminate a number of contemporary problems.

Catholic thought on law is very ancient. St. Augustine, St. Jerome, and other patristic writers engaged in sophisticated speculation on the natural law. The scholastic writers of the Middle Ages and later times developed a large body of thought about the nature and demands of the natural law, the sanctity of the human person, and the centrality of human and natural rights, properly understood, to the protection of human dignity.

In recent decades, there has also been a general revival of interest in religious insights into the law. The American Association of Law Schools now recognizes a Jewish law section. Protestant writers, from both an evangelical and non-evangelical perspective, have had many important things to say about the law. And other religious traditions, especially Islamic law, are now also taken into account.

One of the principal purposes of the Murphy Institute is to carry forward the project of reappropriating elements of the Catholic intellectual tradition that are relevant to law and public policy, and to apply the results of this project to legal education and issues in church and society.

Fr. Theodore Hesburgh, former president of the University of Notre Dame, once famously said that "universities are where the church does its thinking." This may be so; but outside theology and philosophy, Catholic universities have had relatively little to offer to the church in recent years. Law, economics, psychology, sociology, and the physical sciences are just a few of the disciplines that have contributed little to the resolution of the challenges the church has faced. But this need not be so. The Catholic intellectual tradition, particularly in its moral dimensions, is rich and robust. Its principles can be refreshed and brought to bear on a number of contemporary problems. The Institute is intended to be a forum for the thoughtful integration of Catholic thought and the best of contemporary legal theory. In this way, the Institute can be a place where the church does some of its thinking about contemporary challenges.

In pursuit of this goal, the Institute's activities fall into three general categories: curriculum development, scholarly research, and public policy research.

### *Curriculum Development*

One of the long-term objectives to which the Institute is committed is to effect changes in the way in which law is taught in Catholic universities. The ultimate goal is to support the formation of a curriculum in which new

lawyers are not only educated in the law but are shaped by the Catholic moral tradition as well. This requires more than the encouragement of faculty here and there; it requires efforts to foster the development of new curricular materials.

The Institute is planning a series of conferences focusing on curriculum development, and it also anticipates sponsoring or collaborating in faculty development programs aimed at interested faculty at schools around the country.

### *Scholarly Research*

The Catholic intellectual tradition, both in broad outline and in its specific consideration of issues of law and public policy, is a rich resource. In encouraging and facilitating relevant scholarly research, the Institute seeks to bring into being a community of scholars who can make significant contributions to this tradition. This objective is pursued in two principal ways: organizing conferences and encouraging publication.

A major focus of the Institute's attention is organizing similar conferences and symposia aimed at scholars in legal studies and the Catholic intellectual tradition. Scholarship by its very nature is collaborative. The conditions at religiously affiliated universities today are such that scholars with an interest and expertise in the faith traditions that have shaped their institutions are often isolated among colleagues who see little or no relevance to this intellectual heritage. The conferences and symposia organized or sponsored by the Institute seek to draw such scholars together to discuss particular themes and to overcome this isolation so as to release new energies for scholarship.

A second emphasis is on publication. Conferences provide ready material for publications, but the Institute also encourages special projects that help to recover and make available important elements of the Catholic intellectual tradition relevant to legal studies. In the future, these may include the translation of texts, as well as studies of various aspects of the history of this tradition.

### *Public Policy Research*

We perceive a need for a nonpartisan source of research and reflection on public policies and issues that is grounded in the Catholic tradition. We anticipate that the Institute may be able to provide a resource to serve the local church and others in this manner. This service may include convening scholars to discuss topics, assembling and making available research in particular areas, or responding to special requests.

It was out of this broader context that the Murphy Institute invited scholars from a variety of disciplines to a conference that would examine the implications of the Catholic intellectual tradition for the creation and

maintenance of a good society. The papers published here are a sampling of the presentations made at the conference.

The first of these papers, by John J. Coughlin, O.F.M., Professor of Law at the University of Notre Dame, explores the relationship between Catholic lawyers, the common good of the civil community, and the notion of sacrifice. Coughlin raises questions about the nature of legal practice, whether, for instance, it is more properly considered a business or a profession. And if a profession, whether professional status sometimes demands sacrifice in service of the common good. He also addresses the question of whether lawyers ought to be morally neutral facilitators of legal processes or whether they ought to be morally conscious agents. Finally, he argues that fidelity to the profession of law, while it may require a willingness to embrace sacrifice, also requires the exercise of prudence in pursuit of a balanced life in an often imbalanced world.

The second paper, by David L. Gregory, Professor of Law at St. John's University School of Law in New York, is a reflection on the life of Antoine Frederic Ozanam, founder of the Society of St. Vincent de Paul in 1833. As a young man in Paris, Ozanam earned a doctorate in law but soon turned his life to the practical application of Catholic moral principles to contemporary society. He was a special champion of labor and the rights of workers. His insights into practical economics and politics, shaped by his Catholic convictions, led him to be an early proponent of many public policies we now take for granted. In 1853, at the age of 40, he died, having become, in Gregory's words, "an important role model for those striving to build the good society, coupling academic and intellectual insight with direct, personal action."

The third paper, by Lee J. Strang, Assistant Professor of Law at the Ave Maria School of Law, focuses on the meaning and importance of the idea of the common good for legal and constitutional interpretation. Strang argues that the necessary universality of the law—the fact that it properly deals with kinds of actions rather than particular acts—requires interpretative principles. On the Catholic view, law is oriented toward the common good of the civil society and, therefore, a proper understanding of what this common good is underlies sound judicial decision making at the trial level, as well as constitutional interpretation. He carries this analysis forward to propose a number of interpretative principles.

The fourth paper, by R. Mary Hayden Lemmons, Associate Professor of Philosophy and Catholic Studies at the University of St. Thomas, takes up the question of the tolerance of religious pluralism and whether the Establishment Clause is properly interpreted in practice. Lemmons argues that a judicial tradition that moves beyond a principle of indifference to specific religious practices to embrace a claim that the state should never support religion in general contributes to the creation of a climate of hostility to persons of faith. If genuine tolerance is indeed an element of the common

good, then the courts must return to a more historically accurate position that respects belief and practice.

The fifth paper, by Stephen Rowntree, S.J., Professor of Philosophy at Loyola University of New Orleans, examines some of the principles of liberal political theory and the Catholic social tradition with a view to discovering how each may enrich the other. Rowntree argues that the Catholic tradition can inform liberal political theory by offering a much richer view of the human person and authentic human goods. Liberal political theory, on the other hand, with a deeper appreciation for procedural justice, can shed light on issues that vex the Catholic community. By way of example, he explores the problem of Catholic legislators who vote in favor of abortion rights and the experience of the commission formed by Pope Paul VI to examine the question of artificial contraception. In both cases, Rowntree suggests that an understanding of process and procedural justice could provide valuable insights into the resolution of these issues.

The sixth paper, by Herr Heinz-Gerhard Justenhoven, was not presented at the Murphy Institute's symposium but nevertheless contributes to the scholarly conversation that began there. Herr Justenhoven offers an illuminating exploration of the late John Paul II's peace ethic. Through an in-depth examination of the late Pope's rich thought on peace and the proper role of international law, Herr Justenhoven argues that Pope John Paul II was a compelling advocate for an international public order rooted in a deep respect for fundamental human rights and committed to the protection and promotion of the global common good.

Even where Catholics agree on the level of principle, they may well, and legitimately, disagree on the question of concrete application. Each of the papers in this collection represents a rich tradition of reflection on the relevance of the Catholic intellectual tradition for the resolution of the concrete problems of life in community. Each is an example of thoughtful probing into questions of importance and each deserves a careful reading.