

Boston College Law School Faculty Papers

Boston College Law School

Year 2008

Conversation in Aid of a “Conspiracy”
for Truth: A Candid Discussion about
Jesuit Law Schools, Justice, and
Engaging the Catholic Intellectual
Tradition

Gregory A. Kalscheur SJ
Boston College Law School, gregory.kalscheur.1@bc.edu

Conversation in Aid of a “Conspiracy” for Truth: A Candid Discussion about Jesuit Law Schools, Justice, and Engaging the Catholic Intellectual Tradition

Gregory A. Kalscheur, S.J.*

TABLE OF CONTENTS

I. INTRODUCTION	559
II. THE JUST MAN JUSTICES.....	564
III. JUSTICE, THE CATHOLIC INTELLECTUAL TRADITION, AND THE JESUIT STYLE: THE INTEGRAL DYNAMISM OF “OUR WAY OF PROCEEDING”	571

I. INTRODUCTION

Professor John M. Breen concludes his provocative article by issuing a call to the Society of Jesus.¹ He calls on the Society to provide leadership in the effort to fashion a new kind of law school—

[one that] invites [students] to imagine a legal order built on the premises of the dignity of the human person and the common good that emerge from an engagement with the Catholic intellectual tradition. . . .

. . . Will the Society recover its roots? Will its members show the boldness that once typified all of their apostolic work . . . ? The call has been issued. What will be their answer?²

I do not purport to speak for the entire Society of Jesus, but, as one Jesuit ministering as a faculty member at a Jesuit law school, I am grateful for the opportunity to share a few reflections of my own regarding the important questions that Professor Breen has raised. I agree with what I take to be his most basic point. Once one cuts through the embattled tone that will certainly deter a great many readers from bothering to engage its thesis at all, his article calls for a candid

*. Associate Professor, Boston College Law School. LL.M. 2003, Columbia Law School; J.D. 1988, Michigan Law School; S.T.L. 2002, M.Div. 2001, Weston Jesuit School of Theology; A.B. 1985, Georgetown University. Over the last several years, I have had the opportunity to organize faculty colloquia at the Boston College Law School regarding the Jesuit mission of the law school, and I serve as the co-chair of the Catholic Intellectual Tradition subcommittee of Boston College’s Church in the 21st Century Center. I am grateful for the many rich conversations regarding the theme of these reflections that have taken place in both of those forums.

1. John M. Breen, *The Air in the Balloon: Further Notes on Catholic and Jesuit Identity in Legal Education*, 43 GONZ. L. REV. 41, 75 (2007).

2. *Id.*

discussion of how Jesuit Catholic law schools could actually go about embodying a characteristic that should be at the heart of their mission: a commitment to engage the Catholic intellectual tradition in the intellectual life of the law school. I welcome and wholeheartedly endorse Professor Breen's call for a candid discussion of that question and I agree that law schools that wish to be taken seriously as Jesuit law schools must be places where engagement with the Catholic intellectual tradition is part of the air that gives life to the academic mission of the institution. I agree that a commitment to inquiry engaged with the Catholic intellectual tradition cannot simply be an extrinsic add-on to a legal education that is otherwise indistinguishable from that available at the many law schools that provide a fine professional education to their students. Instead, the way in which the Jesuit law school lives out its distinctive mission must be an intrinsic characteristic of the teaching and scholarship carried out at such a law school. As Professor Breen properly acknowledges, this understanding of the Jesuit Catholic law school calls for building something new—rather than reclaiming an idealized past that never really existed³—so perhaps his proclamations of failure irrefutably demonstrated are misplaced.⁴ Can something that has not yet really been tried fairly be said to have failed? Nonetheless, Professor Breen's call for candid discussion about this issue is timely, welcome, and important.

The title of my reflections draws on Professor Breen's intriguing suggestion that we might describe a Catholic university as a "conspiracy" for truth.⁵ He draws this use of the word "conspiracy" from the Jesuit theologian John Courtney Murray. Murray noted that the word "conspiracy" literally means a "unison, concord, unanimity in opinion and feeling, a 'breathing together.'"⁶ Professor Breen notes that "[t]hose who breathe together unite in action 'for a common end about which there is agreement.'"⁷ Building on this understanding of "conspiracy," Breen describes the sort of "conspiracy" that defines a Catholic university:

The common end of a university is the education of its students and the search for truth. The "conspiracy" of an authentic Catholic university can be found in

3. The project of today's Jesuit universities and their law schools is not to try to recover "a golden age of Catholic higher education" that never existed. See MICHAEL J. BUCKLEY, S.J., *THE CATHOLIC UNIVERSITY AS PROMISE AND PROJECT: REFLECTIONS IN A JESUIT IDIOM* 45 (1998). Instead, as Michael Buckley explains, what is needed is "a much more sophisticated retrieval of what was promising in the early inspiration, practices, faith and culture of [Catholic universities], whether in the curriculum or the concerns or the atmospheric culture of the university." *Id.* at 47. What is required today is "a transposition of fundamental aspiration into a vastly different settlement, to 'redeem the unread vision in the higher dream.'" *Id.* (quoting T.S. ELLIOT, *Ash Wednesday, IV*, in *THE COMPLETE POEMS AND PLAYS 1909-1950*, at 64 (1952)).

4. See, e.g., Breen, *supra* note 1, at 42-44, 70-72.

5. *Id.* at 57-58.

6. JOHN COURTNEY MURRAY, S.J., *WE HOLD THESE TRUTHS: CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION 22* (1960).

7. Breen, *supra* note 1, at 57 (quoting MURRAY, *supra* note 6, at 22).

2007/08] JESUIT LEGAL EDUCATION: ENGAGING TRADITION 561

that its faculty and students all breathe the air of the Catholic intellectual tradition. It is not essential that faculty share a unanimity of opinion with respect to the truth of what that tradition proposes on every conceivable subject. . . . What is essential is that faculty members acknowledge the centrality of the tradition in the life of the university.⁸

It is worth remembering that Murray's discussion of the notion of "conspiracy" is situated in a wider discussion of the challenges presented by the reality of pluralism in society. After first describing the distinguishing characteristic of a society that is properly "civil" as "that exercise of reason which is argument,"⁹ Murray notes that authentic argument can be difficult under conditions of pluralism. Participants in the conversation may not share a "common universe of discourse," which may cause argument to devolve into "sheer confusion."¹⁰ The reality is that "there are a number of [interacting] *conspiracies* [in] American society," and public conversation must somehow embrace different universes of discourse rooted in diverse intellectual foundations and historical experiences.¹¹ Murray recognized that the challenge facing pluralistic American society is how to make the various conspiracies among us "conspire into one conspiracy that will be American society—civil, just, free, peaceful, one."¹²

Murray also acknowledged just how difficult it will be to draw diverse conspiracies into a larger conspiracy united in acting toward a common end.¹³ Murray asked, "Can this problem be solved?"¹⁴ He answered, "My own expectations are modest and minimal."¹⁵ We might learn from Murray's modest expectations regarding the extent to which multiple conspiracies can be drawn into a larger common purpose. The contemporary American Jesuit law school is, as it should be, a richly pluralistic intellectual environment. In a context characterized by diverse interacting "conspiracies," Murray stated:

[O]ne will cherish only modest expectations with regard to the solution of the problem of religious pluralism and civic unity. Utopianism is a Christian heresy . . . ; but it is a heresy nonetheless. We cannot hope to make American society the perfect conspiracy based on a unanimous consensus. But we could do at

8. *Id.*

9. MURRAY, *supra* note 6, at 7.

10. *Id.* at 16.

11. *Id.* at 22 (emphasis added).

12. *Id.* at 23.

13. *Id.*

14. *Id.*

15. *Id.*

least two things. . . . We could lay down our arms . . . and we could take up argument.¹⁶

The same might be said of the contemporary American Jesuit law school. Professor Breen properly recognizes that: “It is not essential that faculty share a unanimity of opinion with respect to the truth of what [the] tradition proposes on every conceivable subject.”¹⁷ But I wonder if he is perhaps improperly utopian in his expectations as to what “the ‘conspiracy’ of Catholic higher education demands”¹⁸ of teachers and institutions, and I fear that he fails to recognize the extent to which a dynamism of argument and inquiry is truly the heart of the Catholic intellectual tradition.

My reflections will suggest two points in the hope of furthering the discussion Professor Breen desires. First, we need to look more carefully at what might be meant by references to the “Catholic intellectual tradition,” and then explore what engagement with the tradition might actually look like in the contemporary Jesuit law school. Second, we need to recognize that the tone and style of engagement that one adopts with respect to this issue is critical. We need to invite our colleagues into a genuine conversation about two central issues: (1) what this unfolding, as-yet-unfinished project of the Catholic intellectual tradition is really about; and (2) why the participation of a diverse community of scholars in this project is central to realizing a richer and more life-giving intellectual environment in the Jesuit Catholic law school (richer and more life-giving *as a law school*, precisely because it is a *Jesuit Catholic law school*). The inescapable reality is that for many of our colleagues entering into this conversation is difficult, unfamiliar, and threatening. Unless we who desire to promote a deeper engagement with the Catholic intellectual tradition are willing to do the hard work of finding ways to invite our colleagues into a candid conversation about these issues—and authentic conversation involves listening as well as speaking and further demands serious attention to our colleagues questions and concerns¹⁹—

16. *Id.*

17. Breen, *supra* note 1, at 57.

18. *Id.*

19. Theologian David Tracy describes authentic conversation in this way:

Conversation in its primary form is an exploration of possibilities in the search for truth. In following the track of any question, we must allow for difference and otherness. At the same time, as the question takes over, we notice that to attend to the other as other, the different as different, is also to understand the different *as possible*.

DAVID TRACY, PLURALITY AND AMBIGUITY: HERMENEUTICS, RELIGION, HOPE 20 (1987). As David Hollenbach explains, “[m]oving toward such a shared common vision [of the good life] . . . will take intellectual work.” DAVID HOLLENBACH, S.J., THE COMMON GOOD AND CHRISTIAN ETHICS 137 (2002). Hollenbach uses the term “intellectual solidarity” to describe this “common pursuit of a shared vision of the good life.” *Id.* “[I]t can occur only in an active dialogue of mutual listening and speaking across the boundaries of religion and culture.” *Id.*; see also Gregory A. Kalschur, S.J., *Law School as a Culture of Conversation: Re-imagining Legal Education as a Process of Conversion to*

2007/08] JESUIT LEGAL EDUCATION: ENGAGING TRADITION 563

the Jesuit Catholic identity and mission of the law school is unlikely to be understood as the intrinsic dynamism that breathes life into a distinctive intellectual community. Without these conversations, it will be difficult to see our law schools as animated by a breathing together—a “conspiracy”—in pursuit of truth. These challenging conversations have to take place in the midst of our daily living together as faculty colleagues in our particular law school communities. Calling on “the Society of Jesus” to somehow make things right from the top down ignores the basic facts of university governance. More importantly, in the absence of a deeper understanding of what might be distinctive in the mission of a Jesuit law school—a deeper understanding that is actually shared among faculty members at a given institution—a solution experienced as imposed from the top down is not likely to be effective over the long term.

I reject Professor Breen’s stark conclusion that Jesuit legal education must be characterized as an “abysmal failure” as *Jesuit* education.²⁰ His conclusion is rooted in a mistaken understanding of what the Jesuit commitment to higher education as an apostolate is about. Two key dimensions to the mistaken understanding give rise to Professor Breen’s flawed conclusion. First, it is a mistake to reduce what is essential in the Jesuit mission to a single focus on either justice or a static conception of the Catholic intellectual tradition, without recognizing that both Ignatian spirituality and a proper understanding of the Catholic intellectual tradition give rise to a more comprehensive way of proceeding. Professor Breen improperly reduced his consideration of what is necessary for a law school to manifest fidelity to its Jesuit identity to a single criterion and framed that one criterion far too narrowly.

Second, it is a mistake to reduce justice and engagement with the Catholic intellectual tradition to a set of concepts to be thought about, rather than as virtues to be lived. Consider this passage from a poem by the Jesuit poet, Gerard Manley Hopkins:

*I say more: the just man justices;
Keeps grace: that keeps all his goings graces;
Acts in God’s eye what in God’s eye he is –
Christ. For Christ plays in ten thousand places,*

the Demands of Authentic Conversation, 28 LOY. U. CHI. L.J. 333, 358-66 (1996) (describing the demands of authentic conversation).

20. John M. Breen, *Justice and Jesuit Legal Education: A Critique*, 36 LOY. U. CHI. L.J. 383, 402 (2005). Professor Breen draws this conclusion from the failure of any Jesuit law school to encourage its students to think seriously about questions of justice by requiring them to complete a course in moral theory and jurisprudence. *Id.* at 401. “[I]f Jesuit identity requires the promotion of justice, and the promotion of justice demands that students give serious thought as to the meaning of the term, then at present Jesuit legal education must be judged an abysmal failure, not as *legal* education, but as *Jesuit* education.” *Id.* at 402. In the absence of a required course, “it is difficult to see how the occasional mention of justice in standard doctrinal courses could serve as a meaningful substitute for a thorough examination of the subject.” *Id.* at 403.

*Lovely in limbs, and lovely in eyes not his
To the Father through the features of men's faces.*²¹

As Hopkins' poem reminds us, "the just man justices." Justice as a verb is a virtue that shapes a way of living; it is not simply a philosophical concept to be analyzed in a jurisprudence course, important though such analysis undoubtedly is. Moreover, the Catholic intellectual tradition is a way of proceeding, a distinctive intellectual dynamism, not a body of doctrine.²² The Catholic tradition of virtue ethics understands the moral virtues—including the virtue of justice—as matters of character. A virtue is a rightly ordered love involving an integration of head and heart, of intellect and affect. In other words, a virtue is a quality of character that disposes a person habitually to see the world in certain ways and to respond to the world in certain ways. Concern for virtue should prompt us to ask, "What sort of person am I becoming as I engage the law school curriculum as a whole?"

II. THE JUST MAN JUSTICES

Let me expand a bit on how I think this understanding of justice as a virtue should shape our discussion of what it might mean for engagement with the Catholic intellectual tradition to animate the life of the law school. I will begin by setting out my understanding of the characteristic features of the Catholic intellectual tradition, which include a commitment to justice and the common good.²³

The theological foundation for the Catholic intellectual tradition is the revelation of God's wisdom in Jesus Christ, the one in whom God worked the personal union of the divine and the human. This revelation gives rise to a conviction that reality is purposeful and imbued with meaning and that reality's purpose and meaning are summed up in the unity of all things with God patterned on the unity between the divine and the human embodied in Christ.²⁴ Rooted in this theological vision, the

21. GERARD MANLEY HOPKINS, S.J., *As kingfishers catch fire*, in THE OXFORD AUTHORS: GERARD MANLEY HOPKINS 129 (Catherine Phillips ed., 1986).

22. See Anthony J. Cernera & Oliver J. Morgan, *The Catholic Intellectual Tradition: Some Characteristics, Implications, and Future Directions*, in EXAMINING THE CATHOLIC INTELLECTUAL TRADITION 199, 202-03 (Anthony J. Cernera & Oliver J. Morgan eds., 2000) (characterizing the Catholic intellectual tradition as a distinctive way of doing things, a way of thinking that is deeply connected to a way of living).

23. My understanding of the Catholic intellectual tradition draws on conversations that I have had with colleagues at Boston College in my role as co-chair of the Catholic Intellectual Tradition subcommittee of Boston College's Church in the 21st Century Center. For further discussion of our efforts to promote engagement with the Catholic intellectual tradition at Boston College, see James F. Keenan, S.J., *Pursuing the Catholic Intellectual Traditions at Boston College*, CONNECTIONS, Oct. 2007, at 5, 5, 11, available at <http://office.ajcunet.edu/connections>.

24. See BUCKLEY, *supra* note 3, at 17-19. As Buckley states, "[t]he Catholic university [and the Catholic intellectual tradition that animates it] takes its historical beginnings and its articulated

Catholic intellectual tradition is characterized by a two-fold intellectual dynamism that drives toward an inherent unity: (1) the intrinsically religious intellectual dynamism of *all human inquiry* toward ultimate questions of meaning, coherence, and truth, and (2) the intrinsically intellectual religious dynamism of faith seeking to understand itself and its relationship to every dimension of human life.²⁵

This incarnational world-view and the intellectual dynamism that it animates collectively ground a tradition of inquiry that brings together the following ensemble of characteristics:

1. The conviction that faith and reason are mutually illuminating and are united in the search for truth, and that people of faith must devote themselves to building a world characterized by “an uncompromising . . . commitment to the truth”; a world in which truth is explored and revered “in whatever way it discloses itself.”²⁶
2. A sacramental vision of reality in which *all disciplines* hold the potential to reveal the sacred. Thus, the pursuit of truth in any discipline is a holy activity.²⁷
3. A dynamism toward intellectual integration and an expansive wholeness (the *katholikos*) combined with an appreciation for the integrity and legitimate autonomy of individual disciplines.²⁸

purpose, then, in the unity of all things with God, a unity whose principal instantiation and pattern is found in Christ.” *Id.* at 19.

25. *Id.* at 15-16. Buckley explains that “[t]he inherent integrity both of the full faith-experience moving towards intelligence and of finite intelligence moving toward its satisfaction in transcendent completion—this mutual entailment—is what a Catholic university must affirm and embody, however halting and imperfect its attempts.” *Id.* at 16; *see also* DAVID GRANFIELD, *THE INNER EXPERIENCE OF LAW: A JURISPRUDENCE OF SUBJECTIVITY* 217 (1988) (“Asking questions about law leads to questions about its ultimate ground [I]f [men and women] ask relevant questions, they will sooner or later have questions about God. They may not all get the same answers, but they will at least share a common concern.”).

26. BUCKLEY, *supra* note 3, at 37. Buckley explains that the tradition’s “openness to the real” and uncompromising commitment to truth demand that science and theology must continue to ask their questions, even when they seem to contradict one another:

[B]oth [must] continue their inquiries or experiments, their discussions and reconsiderations without impediment or mutual condemnation, as Cardinal Newman wrote, “with full faith in the consistency of that multiform truth, which they share between them, in a generous confidence that they will be ultimately consistent, one and all, in their combined results, though there may be momentary collisions, awkward appearances, and many forebodings and prophecies of contrariety.”

Id. at 37-38.

27. *See, e.g.*, Michael J. Himes, “*Finding God in All Things*”: *A Sacramental Worldview and Its Effects*, in *AS LEAVEN IN THE WORLD: CATHOLIC PERSPECTIVES ON FAITH, VOCATION, AND THE INTELLECTUAL LIFE* 91, 99-102 (Thomas M. Landy ed., 2001).

28. *See* Cernera & Morgan, *supra* note 22, at 218 (“Since the truth is whole, there is also a

4. A resistance to reductionism and an openness to the analogical imagination (a tendency to see things in terms of both/and rather than in terms of either/or).²⁹
5. A reverence for the dignity of the human person (created in the image of God and called to fullness of life in Christ) that includes a commitment to the solidarity of the human family and a commitment to justice and the common good.

The Catholic intellectual tradition, animated and nourished by this two-fold dynamism, has produced a body of wisdom that has from the beginning developed in dialogue with the full range of human cultures and intellectual traditions. This body of wisdom will continue to develop as the dialogue of inquiry, teaching, and learning goes forward in the future. The Catholic intellectual tradition needs to learn from those of other faiths and intellectual traditions so that all can together develop a deeper understanding of what it is to be human.³⁰ In other words, the Catholic intellectual tradition is a dynamic, living, ongoing, not-yet-completed conversation and is not properly understood as a static body of knowledge.

The tradition develops as the accumulated wisdom is handed on, criticized, reworked, and reappropriated in response to new questions prompted by new experiences. As a conversation across time, with variant strands and a range of contested positions, people from all traditions can participate in the intellectual exchange animated by the Catholic intellectual tradition, learning from one another

fundamental unity and interconnectedness of knowledge.”); *id.* at 218-19 (contrasting *universalis*, which has a connotation of a bounded unity (and can suggest exclusion of those outside the boundary), with *katholikos*: “*Katholikos* . . . means throughout-the-whole. It suggests permeation, a leaven within a larger whole that expands as the larger whole expands.”); SECOND VATICAN ECUMENICAL COUNCIL, GAUDIUM ET SPES: PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD ¶ 36 (1965), available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html (on the legitimate autonomy of methodical investigation in every branch of learning); *id.* at ¶¶ 40, 44 (on the Church’s need to learn from the world).

29. See TERRENCE W. TILLEY, INVENTING CATHOLIC TRADITION 125-34 (2000) (discussing the role of the analogical imagination within the Catholic intellectual tradition); see also Benedict XVI, *Meeting with Clergy*, 37 ORIGINS 182, 189 (Aug. 30, 2007) (“Catholicism, somewhat simplistically, has always been considered the religion of the great *et et*: not of great forms of exclusivism but of synthesis. The exact meaning of Catholic is ‘synthesis.’”).

30. As theologian John McDade explains:

Christian thought depends for its account of the humanum on what comes to light in extra-Christian experiences. The inculturated Gospel . . . needs . . . a richer account of humanness than it has at the moment, an account developed outside its boundaries in extra-Christian contexts; and it approaches it with a sense that the truthfulness that comes to expression there is shaped by God’s antecedent action as Creator and Inspirer.

John McDade, S.J., *The Jesuit Mission and Dialogue with Culture*, in JESUIT EDUCATION 21: CONFERENCE PROCEEDINGS ON THE FUTURE OF JESUIT HIGHER EDUCATION 56, 61 (Martin R. Tripole, S.J. ed., 2000).

2007/08] JESUIT LEGAL EDUCATION: ENGAGING TRADITION 567

and contributing in a range of different ways to the conversation that gives life to the tradition. David Hollenbach has suggested that this sort of engaged conversation is sustained by one of the distinctive resources of the Catholic intellectual tradition, the virtue of intellectual solidarity.³¹ Hollenbach characterizes intellectual solidarity in this way:

[T]aking other persons, societies, and cultures seriously enough to engage them in conversation and debate about what makes life worth living, including what will make for the good of the city and the globe. Such a spirit goes beyond tolerant non-interference with the beliefs and life-styles of those who are different. To be sure, intellectual solidarity recognizes and respects these differences. But it differs from pure tolerance by seeking positive engagement with the other through both listening and speaking. It is rooted in the hope that understanding might replace incomprehension and that perhaps even agreement could result. Where such engaged conversation about the good life begins and develops, a community of freedom begins to exist.³²

Intellectual solidarity and justice might be understood as the cardinal virtues at the heart of the Jesuit law school. If we understand justice as a virtue embodied in the lives of people engaged in an ongoing dynamic conversation characterized by intellectual solidarity, we can see that the Jesuit law school does not promote justice and the common good solely, or even most effectively, by demanding that students learn about justice from a Catholic perspective as one component of a new required course.³³ Instead, justice within the context of the Jesuit mission—including the Jesuit mission in education—is better understood as *a way of living* that promotes the common good. To be just is to strive to give flesh to God's love in the concrete circumstances of everyday living in human society.

Thus, Professor Breen is right to argue that when considering the relationship of justice and the Catholic intellectual tradition to the evolving project of Jesuit legal education, we should not start by thinking about these questions as an extrinsic addition to the curriculum.³⁴ Instead we should remember that Jesuits became involved with education—including university education—because of a desire to form a certain kind of person committed to serving the common good of society.

John O'Malley argues that the first Jesuits moved into education as a major apostolic commitment to shape students and society through education.³⁵ Schools

31. See HOLLENBACH, *supra* note 19, at 137.

32. David Hollenbach, S.J., Address at Loyola University Chicago: The Catholic University and the Common Good (Nov. 6, 2007), available at http://www.luc.edu/ccih/hollenbach_talk.shtml.

33. See Breen, *supra* note 20, at 401-02.

34. See Breen, *supra* note 1, at 43-44.

35. See John W. O'Malley, S.J., *How the First Jesuits Became Involved in Education*, in THE JESUIT RATIO STUDIORUM: 400TH ANNIVERSARY PERSPECTIVES 56, 56-74 (Vincent J. Duminuco, S.J. ed., 2000).

were understood as an apostolic venue where Jesuits could pursue their mission of “helping souls” by combining the intellectual rigor of the medieval university with the formational ideals of the Renaissance humanists, for whom the purpose of education was to form people of good character committed to the common good of society.³⁶

The Jesuit commitment to justice within the context of an education engaged with the Catholic intellectual tradition must be understood in light of this foundational understanding of education as a Jesuit apostolate. Michael Buckley, for example, argues that an orientation toward social justice should be understood as the contemporary articulation of the “single, continuous purpose” of the university throughout history to contribute to the humanistic development of its students.³⁷ Attention to justice is “essential to an integral humanism whether in general, professional, or higher education.” Buckley explains that,

[the] concern that human beings live lives of human decency and possibility is the contemporary embodiment of what has been so long a slogan within the humanities, a slogan now rearticulated against a consumer society and an indifferent power structure: *Res sacra homo*—a human being is a sacred thing. A responsiveness to human sorrow and to exploitation and a consequent passion for social justice are simply part of what it means to be a human being. This attention to justice is a progressive embodiment of a humanism.³⁸

Understood in this way, a Jesuit law school’s commitment to justice must be seen as a commitment to influencing the sort of people our students become. Do students leave our law schools more responsive to the needs of humanity or less so? What sorts of human beings do our students become during their time in our law schools? Do the students we educate come to *embody* a commitment to justice? “[T]he just man justifies,” he does not simply analyze justice, and if we want to form students whose lives embody “justice” as a verb, attentiveness to the sacredness of humanity and concern for who our students are becoming may need to be a concern throughout

36. See *id.*; see also Peter-Hans Kolvenbach, S.J., Superior Gen. of the Soc’y of Jesus, Address to the International Meeting of Jesuit Higher Education: The Jesuit University in the Light of the Ignatian Charism (May 27, 2001), available at www.sjweb.info/documents/phk/university_en.doc (identifying four reasons why the Society of Jesus entered into the ministry of higher education: 1) “to give students advantages for practical living”; 2) “to contribute to the right government of public affairs” (understood as a commitment to forming leaders concerned with the common good and the promotion of justice); 3) “to give ornament, splendor and perfection to the rational nature of humanity” (confidently affirming the necessary complementarity of reason and faith); and 4) “to be a bulwark of religion, and to guide man most surely and easily to the achievement of his last end” (understanding the human person as a creature of God whose ultimate destiny is beyond the human)).

37. Michael Buckley, S.J., *The University and the Concern for Justice: The Search for a New Humanism*, 57 THOUGHT 219, 233 (1982).

38. *Id.* at 230.

2007/08] JESUIT LEGAL EDUCATION: ENGAGING TRADITION 569

the curriculum, not simply in one required class.³⁹ Ideally, the Jesuit law school should strive to form lawyers who are people whose lives are animated by a certain kind of spirit; the graduate of a Jesuit law school should be a certain kind of person who acts in specific ways, whose life embodies a certain “Jesuit style.”⁴⁰

This is obviously much easier said than done, but I think this is truly where our primary attention needs to be focused in our concern for justice and engagement with the Catholic intellectual tradition. How might an understanding of justice and intellectual solidarity as virtues take root throughout the curriculum and throughout the life of the law school? Let me suggest a few examples of how we might begin to think about this question.

At the beginning of the 2005-2006 academic year, I was invited by the dean of Boston College Law School to give a talk about the Jesuit tradition in education during orientation. I tried to introduce the incoming first-year students to this idea of a life that embodies justice by beginning my talk by asking all of the students to take out a sheet of paper and write down two questions: First, what are the hopes and desires of my heart that have called me to enter law school? Second, who am I becoming as a person as I enter more deeply into the life of the law? I began my talk about the tradition of Jesuit education in that way because it is my conviction that this tradition at its best hopes to keep us faithful and attentive to those questions: faithful and attentive to the desires that call us forward, faithful and attentive to the truth of who we are as people, faithful and attentive to whom that truth and those desires are calling us to become as people.

I think this same conviction is reflected in an interesting way in the Boston College Law School Mission Statement. The statement contains the following key paragraph:

Boston College and its law school are rooted in the Jesuit tradition of service to God and others. In that tradition, we believe that the purpose of higher education is both the search for knowledge, and the preparation of women and men who are moved to a constructive, responsible, and loving use of their knowledge. The Law School recognizes its commitment to social and economic justice, and strives to advance this commitment both through its curricular offerings and in the extracurricular projects it supports. We encourage our students to develop their own individual commitment to others and to explore those themes that are central to the Jesuit tradition: the dignity of the human person, the advancement of the common good and compassion for the poor. We seek to train a diverse student body not merely to be good lawyers, but to be

39. See HOPKINS, *supra* note 21, at 129.

40. Cf. O'Malley, *supra* note 35, at 68 (noting that, while in many ways the early Jesuit schools conformed to the contemporary consensus as to what constituted a good education, the Jesuit schools began to embody some features that were special—if not unique—that allows one to speak of the school as “developing their own Jesuit style”).

lawyers who lead good lives, and who will be prepared to seek and to find meaningful work in service to others that will enrich their communities.⁴¹

Training good lawyers to lead good lives might be another way of saying what I have called upon Hopkins' poem to say: Boston College Law School's mission is to form lawyers for whom "justice" is a verb. A law school community that truly breathed together in the pursuit of *that* mission, united in action toward *that* common end, would be a success as a Jesuit and Catholic law school.

If we are to take that mission seriously, we all have to take seriously the two questions that I posed to our incoming first-year students. If the law school hopes to prepare women and men who are moved to a constructive, responsible, and loving use of their knowledge, then we have to take seriously the hopes and desires that brought the students to us, as well as the hopes and desires that move their hearts as they encounter the human realities that lie at the heart of the legal enterprise. And if we hope to educate not just good lawyers, but lawyers who lead good lives, then all of us have to continually ask ourselves what kinds of people we are becoming as we immerse ourselves in the study and teaching and practice of the law.

If sensitivity to justice is to be part of the entire curriculum, these are questions that we need to try to attend to in all of our classes, not just in a jurisprudence course that includes exposure to the Catholic intellectual tradition. In teaching civil procedure, for example, I try to begin the course by encouraging students to do two things which I believe are relevant to the question of justice as I have been discussing it in these reflections. First, I express my hope that we can pay attention to the human reality underlying the cases and the human implications of the way in which cases are resolved. Second, I urge students to try to imagine what sort of people they might become as they use the different procedural tools that we are studying, and to imagine how their use of those tools shapes the world in which we are living.

With these questions in mind, we start the course by reading *The Buffalo Creek Disaster*,⁴² both for the picture it presents of the litigation process and more importantly, so we can see how people whose lives are torn apart by a mining disaster can use the tools of the law to try to rebuild some semblance of order. Reading this book focuses our attention on the stark human reality faced by the plaintiffs and their ability to make use of the power of the law, while also revealing the limits of the kind of relief provided by the law.

When reviewing the available remedies in the civil process, the casebook I have chosen to use allows us to combine discussion of injunctions and contempt with the case of *Walker v. City of Birmingham*⁴³ and Martin Luther King's *Letter from the*

41. Boston College Law School – Mission Statement, <http://www.bc.edu/schools/law/about/history/mission.html> (last visited Feb. 26, 2008).

42. GERALD M. STERN, *THE BUFFALO CREEK DISASTER* (1976).

43. 388 U.S. 307 (1967).

Birmingham City Jail.⁴⁴ I do not spend time on this material in the opening days of the civil procedure course in order to focus on the collateral bar rule. Instead, I find this material valuable because it exposes students to King's use of natural law theory to question one's obligation to obey an unjust law. I cannot spend much time on natural law in the first-year civil procedure course, but at least I have tried to raise the question of the justice of legal rules through a focused discussion of a particularly vivid example.

In all honesty, I must confess that I find it difficult to raise such questions consistently throughout the civil procedure course—at times the struggle simply to teach students to analyze cases and to help students understand summary judgment, personal jurisdiction, or the *Erie* doctrine⁴⁵ overwhelms my commitment to keeping alive awareness of the human issues underlying the cases. But I think that the continual struggle to develop sensitivity to those human issues through the way in which we talk about the cases *throughout the curriculum* may in the end bring the promotion of justice powerfully into the curriculum. Indeed, it might do so more powerfully than would the addition of one course explicitly dedicated to the question of justice (even assuming that a faculty could be persuaded to add the kind of required course that Professor Breen suggests to the existing curriculum).⁴⁶ Can we read the cases and teach the law throughout the curriculum in ways that are open to recognizing that “a human being is a sacred thing”? That may be the true challenge for those of us who desire to create a law school community characterized by an intellectual solidarity that really does breathe together in pursuit of a legal education striving toward truth, justice, and the common good.

III. JUSTICE, THE CATHOLIC INTELLECTUAL TRADITION, AND THE JESUIT STYLE: THE INTEGRAL DYNAMISM OF “OUR WAY OF PROCEEDING”

As I noted at the outset, Professor Breen's critique also misses the mark because it reduces the distinctive character of authentic Jesuit legal education to one, perhaps desirable, but not sufficient⁴⁷ element: a required course in jurisprudence which includes engagement with the Catholic intellectual tradition.⁴⁸ Drawing on the resources of the tradition of Ignatian spirituality that give life to the enterprise of

44. Martin Luther King, Jr., *Letter from the Birmingham City Jail*, in STEPHEN N. SUBRIN, ET AL., *CIVIL PROCEDURE: DOCTRINE, PRACTICE, AND CONTEXT* 149, 149-57 (2d ed. 2004).

45. See *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938).

46. See Breen, *supra* note 20, at 401-02.

47. See *id.* at 411 n.119 (“I have not argued, nor do I mean to suggest, that requiring a course in which students are made to think seriously about justice in a classroom setting is *sufficient* to satisfy the demand that a Jesuit law school must work to promote justice. I do mean to argue that requiring such an experience is a *necessary* component of Jesuit legal education.”).

48. See *id.* at 411 (“A Jesuit law school that does not require its students to engage in a rigorous examination of justice that includes serious engagement with the Catholic intellectual tradition will offer a legal education that is ‘distinctive’ in only marginal ways, if at all.”).

Jesuit education, I hope to expand the conversation and offer a few reflections on the evolving project of Jesuit legal education in light of a more comprehensive understanding of Jesuit mission.

I certainly agree that a course like that proposed by Breen could be a welcome approach for a Jesuit law school to use in striving to embody its mission more authentically. I do not agree, however, that the presence or absence of such a course can alone serve as the basis on which to judge whether a particular Jesuit law school is faithful to the aspirations that the Society of Jesus has articulated for Jesuit ministries, including Jesuit universities.

What such a reductionistic approach refuses to acknowledge is that the distinctive characteristics of Jesuit education are better understood as an ensemble of conditions constituting a distinctive educational style or culture,⁴⁹ rather than a checklist of essential substantive components which must be present in some uniform way in order for the enterprise to be authentically Jesuit.⁵⁰ The promotion of justice undeniably has a central integrating role to play in this ensemble of conditions. Yet any attempt to evaluate an institution's fidelity to authentic Jesuit mission by reducing the analysis to a focus on the academic promotion of justice in isolation from the larger cultural whole serves only to distort the analysis.⁵¹

Professor Breen, for example, appropriately points toward the Society's reaffirmation of the promotion of justice as the integrating factor of *all* Jesuit ministries during its Thirty-Fourth General Congregation ("GC 34").⁵² The

49. I am using "style" here in the sense articulated by John O'Malley—style as the ultimate expression of meaning. "Style in this sense is not an ornament, nor a superficial affectation, but expression of deepest personality. It is the ultimate expression of meaning. *Le style, c'est l'homme même*. My style—how I behave—expresses what I am in my truest and deepest self." JOHN W. O'MALLEY, S.J., *Vatican II: Did Anything Happen?*, 67 THEOLOGICAL STUD. 3, 30-31 (2006); see also JOHN W. O'MALLEY, S.J., *FOUR CULTURES OF THE WEST 2* (2004) (noting that, as he studied the transition from medieval scholasticism to Renaissance humanism, he "began to see something with startlingly new clarity: *how* things were said was just as important as *what* was said, even though the *how* and the *what* could never be neatly separated").

50. As explained by Father Kolvenbach, the Superior General of the Society of Jesus, Ignatian education "rel[ies] on a *cohesive ensemble of directives and counsels* which arise, sometimes from simple good sense, from a conviction drawn from the Christian faith, from long teaching experience, or from a projection of future needs." He acknowledges that "[m]any traits within this Ignatian group [i.e., the cohesive ensemble of directives and counsels] are not original, and they can often be located simply within certain respected pedagogical systems. *But the combination of all these educational aspects preserves something specific*, so much the more as it has proven itself since 1548, and has left its mark within a great number of cultures and civilizations." PETER-HANS KOLVENBACH, S.J., *Contemporary Education in the Spirit of St. Ignatius*, in *THE ROAD FROM LA STORTA: PETER-HANS KOLVENBACH, S.J., ON IGNATIAN SPIRITUALITY* 287 (Carl F. Starkloff, S.J. ed., 2000) (emphasis added).

51. Cf. *supra* note 29 and accompanying text (a resistance to reductionism is characteristic of inquiry shaped by engagement with the Catholic intellectual tradition).

52. A general congregation is "the highest legislative body in the Society [of Jesus] beneath the [P]ope." SAINT IGNATIUS OF LOYOLA, *THE CONSTITUTIONS OF THE SOCIETY OF JESUS* 294 n.1

2007/08] JESUIT LEGAL EDUCATION: ENGAGING TRADITION 573

promotion of justice is not simply one ministry among others; instead, “[t]he integrating principle of [the Jesuit] mission is the inseparable link between faith and the promotion of the justice of [God’s] kingdom.”⁵³ At the same time, GC 34 rejected the isolation of the promotion of justice and the service of faith from two other essential dimensions of Jesuit mission: the evangelization of culture and a dialogic way of proceeding in the world.

Decree 2 of GC 34, entitled *Servants of Christ’s Mission*, articulated the integrated nature of the Jesuit mission in this way: “the aim of our mission (the service of faith) and its integrating principle (faith directed toward the justice of the Kingdom) are dynamically related to the inculturated proclamation of the Gospel and dialogue with other religious traditions as integral dimensions of evangelization.”⁵⁴ The decree concludes by asserting that, “we can now say of our contemporary mission that the faith that does justice is, *inseparably*, the faith that engages other traditions in dialogue, and the faith that evangelizes culture.”⁵⁵

What is striking in this articulation of Jesuit mission is its commitment both to substantive values (including the promotion of justice) and to a way of proceeding characterized by dialogue, openness to the experience of others, and an effort to incarnate the Gospel within a range of cultures (which would include the culture of the law and the law school). This commitment—integrating “[c]ertain attitudes, values, and patterns of behavior”⁵⁶—can be understood as giving life to a distinctive culture, a Jesuit way of proceeding. As GC 34 explains, “[t]he characteristics of our way of proceeding were born in the life of Ignatius and shared by his first companions.”⁵⁷ It is, above all, fidelity to this comprehensive way of proceeding as concretized in the particular context of the contemporary university that ought to serve as the criterion for an institution’s authenticity as a Jesuit law school. It is the spirit that animates an academic community (along with the questions that are given priority within the structure of academic life in the community) that specifies a university community as Catholic and Jesuit.⁵⁸

(George E. Ganss, S.J. trans., 1970). The Thirty-Fourth General Congregation met in Rome from January 5 to March 22, 1995, in order to revise the law of the Society and renew the Society’s mission in light of contemporary challenges and circumstances. See THE DECREES OF GENERAL CONGREGATION THIRTY-FOUR, THE FIFTEENTH OF THE RESTORED SOCIETY AND THE ACCOMPANYING PAPAL AND JESUIT DOCUMENTS, Letter of Promulgation, *reprinted in* DOCUMENTS OF THE THIRTY-FOURTH GENERAL CONGREGATION OF THE SOCIETY OF JESUS at xi (John L. McCarthy, S.J. ed., 1995) [hereinafter 34TH GENERAL CONGREGATION]; *id.* Decree 1, ¶ 1.

53. 34TH GENERAL CONGREGATION, *supra* note 52, Decree 2, ¶ 14.

54. *Id.* ¶ 15.

55. *Id.* ¶ 21.

56. *Id.* Decree 26, ¶ 1.

57. *Id.*

58. BUCKLEY, *supra* note 3, at 142 (explaining that any university engages in academic exchange, but “[t]he only spirit that can further specify any community as Christian is charity, that love of friendship for God and for other human beings that bespeaks the influence and teaching of

Accordingly, it is a profound mistake to reduce what is essential in the Jesuit mission to a single focus on justice, without recognizing the place of justice within a more comprehensive way of proceeding rooted in Ignatian spirituality. The Jesuit law school should be characterized by a culture or style that reflects this Jesuit way of proceeding that flows out of Ignatian spirituality.

In other words, a Jesuit law school should be characterized by a distinctive kind of culture—a distinctive way of proceeding and of making sense of what we are doing. We need to think carefully and creatively about how this culture is reflected across the curriculum and throughout the life of the law school, not simply in one additional required course. I would like to suggest five characteristics of a way of proceeding that is constitutive of this distinctive style or culture:

1. A culture that is humane, both in the quality of relationships that flourish in the community and in the way of proceeding in the classroom.
2. A culture that is faithful to the idea of the university in its fullest and truest sense—a university is a place where the whole universe of authentic human questions are part of the intellectual conversation, including questions of faith.⁵⁹ Thus, the Jesuit law school should be a culture where the Catholic intellectual tradition is at home, and is in critical dialogue with other ways of looking at the world. Moreover, the culture of the Jesuit law school should acknowledge that faith is not extrinsic to the academic enterprise.
3. A culture committed to promoting human dignity, the common good, and the justice of God's kingdom.
4. A culture of dialogue, diversity, and intellectual solidarity. The culture of the Jesuit law school should foster an environment in which a diverse community of people can learn from one another through speaking to each other and through intently listening to one another, in a dialogue that is open to, and respectful of, the experiences of all. This is a dialogue that challenges all the members of the community to have their minds and hearts changed and transformed by what they learn from sharing their lives together.
5. Perhaps most fundamentally, the Jesuit law school should embody a culture of discernment, vocation, and sacramentality. A key component

Christ"). A university is Catholic in spirit to the degree that its activities are permeated by love—"a love found in the concern that human beings share so great a good as that of sacred and profane knowledge, of reason and of revelation and that by their influence, especially teaching, they make this same development possible in others." *Id.*

59. See *id.* at 15-16; GRANFIELD, *supra* note 25, at 217; see also Joshua Mitchell, *Of Answers Ruled Out: Religion in Academic Life*, *ACADEME*, Nov.-Dec. 1996, at 29, 29-32 (arguing that there must be a place in the life of the university for the deeper religious questions that are part of the human situation).

2007/08] JESUIT LEGAL EDUCATION: ENGAGING TRADITION 575

of Jesuit ministry in every apostolic context is the formation of people for lives of wholeness, integrity, and freedom. Ignatian spirituality is a spirituality of holy desires—God’s will is to be discerned through attention to the deepest yearnings of the person’s heart. The Jesuit law school should help people to pay attention to those desires, especially the way in which those desires brought students and faculty to the law school. The Jesuit law school should help people to understand a life in the law as “a vocation to justice and love,”⁶⁰ not simply a career or an intellectual project that can be separated from the rest of one’s life. We should strive to help people experience the law as a deeply human activity that intrinsically involves a search for meaning and value.⁶¹ We should also strive to foster an understanding of daily life, including daily life as a law student, a lawyer or a law professor, as a sacramental experience—life in the law can be a place where God’s presence and action in the world can be encountered and experienced.⁶²

I concluded my orientation talk to the incoming students at Boston College Law School with the following words:

Some of you may have come here to Boston College Law School after having studied at Jesuit colleges and high schools. You may already feel at home in the world of Jesuit education, and you may have come to this law school in part to experience legal education given life by that tradition. Others of you may not have known before today much about who Jesuits are or why we care deeply about education, or you may not have given a great deal of thought to Boston College’s Jesuit character in deciding to come here to law school. I suspect that everyone in the room today

60. See Christopher F. Mooney, S.J., *Law: A Vocation to Justice and Love*, in *THE PROFESSIONS IN ETHICAL CONTEXT: VOCATIONS TO JUSTICE AND LOVE* (Francis A. Eigo, O.S.A. ed., 1986); see also Jerry Organ, *From Those to Whom Much Has Been Given, Much is Expected: Vocation, Catholic Social Teaching, and the Culture of a Catholic Law School*, 1 *J. CATH. SOC. THOUGHT* 361 (2004). At Boston College Law School we have developed a retreat program, known as the Sidebar retreat, in an effort to introduce students to the basic dynamics of Ignatian discernment. Since the fall of 2004, we have offered the retreat once each semester.

61. See Kalschur, *supra* note 19, at 334-42, 366-71.

62. See Gregory A. Kalschur, S.J., *Ignatian Spirituality and the Life of the Lawyer: Finding God in All Things – Even in the Ordinary Practice of the Law*, 46 *J. CATH. LEG. STUD.* 7 (2007). Education rooted in the sacramental principle affirms that “anything that awakens, enlivens, and expands the imagination, opens the vision, and enriches the sensitivity of any human being is a religious act. Although we may not use this language, education is or can be training in sacramental beholding.” Himes, *supra* note 27, at 100. The sacramental worldview grounds the conviction that “any and every field of study is ultimately religious in nature [because] everything rests on grace and humanity is shared with God in Christ.” *Id.* at 102.

probably falls somewhere along that broad spectrum. But wherever it is you might find yourself on that spectrum this morning, I am convinced that you bring much needed gifts and insights and experiences to the Boston College Law School community. Whatever your own tradition, whatever your own convictions, whatever your own questions, I am convinced that your presence here this morning is a gift to this community.

One of the characteristics of the Jesuit way of proceeding is an openness to, and a reverence for, each member of the community; an openness to and reverence for all of the gifts that each of you are and that each of you bring. We all have much to learn from one another. In the words of philosopher Alasdair MacIntyre, a living tradition (as opposed to a dead traditionalism), is an argument or a conversation extended over time about the goods at stake in the life of the tradition. A living tradition is a not-yet-completed story that draws from the past in order to give life to the future.⁶³ Today, you are all becoming a part of the not-yet-completed story of this law school. This morning each of one of you is entering into the conversation that is the living tradition of Jesuit education as it is embodied in this law school. Let me join everyone else you've heard from this morning in welcoming you to that conversation. I look forward to learning a great deal from you over the next three years.

If Jesuit law schools are to become conspiracies for truth in any real sense—in the rich sense intended by Murray in his use of the word “conspiracy”—then I think we have to take the same sort of conversational approach with our faculty colleagues. Proclamations of failure and demands that the Society of Jesus set things right simply are not helpful. We each need to engage in the hard work of helping our colleagues to see how a law school in which the Catholic intellectual tradition plays a central animating role will in fact enrich and enable a search for truth and justice marked by intellectual solidarity in which the voices of all traditions can speak and learn from one another and from which no questions—including questions of faith—are excluded.

63. See ALASDAIR MACINTYRE, *AFTER VIRTUE* 206-07 (1981); see also JAROSLAV PELIKAN, *THE VINDICATION OF TRADITION* 65 (1984) (“Tradition is the living faith of the dead, traditionalism is the dead faith of the living.”).