

PAPER PROPOSAL

This paper argues that Catholic legal education must be overtly theological. It contends that to be authentically Christian, legal scholarship must draw from some understanding of how Christianity relates to the modern nation state. And, this is inescapably theological because it requires that judgments be rendered on such basic matters as the meaning of the “Lordship of Jesus Christ” and “God’s judgment of Israel.” Unfortunately, however, little attention is being given by Christian legal educators to the voluminous debates about the right relationship between Christian beliefs and modern culture. Particularly relevant for Catholics today are twentieth century debates on the relationship between nature and grace. In these debates, scholastic Thomists argued for a hierarchical separation of nature and grace, which resulted in a dualistic understanding in which the fallen world (*seacularum*) was seen as an autonomous and graceless natural realm. Since they viewed the State as natural (a graceless secular community), they separated political and social theory from theology. In assuming a putatively neutral “natural” reason, they were led to theological strategies that sought to accommodate modern philosophy or to correlate Christian doctrine with modern ideas. These strategies continue today on the political right in New Natural Law (Griesez, Finnis, George) and on the left in liberation theology (Gutierrez, Segundo).

The debate was joined by the theological movement known as *nouvelle theologie* that asserted an alternative understanding of nature and grace. A formative voice at the Second Vatican Council, this movement was associated with thinkers like Henri de Lubac, Yves Congar, and Hans Urs von Balthasar. Following de Lubac’s lead, they looked back to the Fathers of the Church, particularly St. Augustine, to argue that nature is always and already infused with grace, and so “natural” and “supernatural,” rather than being distinct types of creation, are only different degrees in the intensity of grace. De Lubac further argued that the stark separation of nature and grace is a thoroughly modern development which is intrinsically hostile to Christianity. While early in the century the status of *nouvelle theologie* remained in doubt, it emerged from the Second Vatican Council as a vital strand of contemporary Catholic theology, which was been furthered by both John Paul the Great (who elevated de Lubac to Cardinal) and Benedict XVI (who was involved with von Balthasar in the founding of the journal *Communio*). Today, some indebted to de Lubac (e.g., Milbank et al, O’Donovan, Hauerwas) now argue that the task for theology in the modern world is neither accommodation nor correlation with modernity but rather a critical re-appropriation of Christian thought. This is not a nostalgic return to an idealized past, but an attempt to critically retrieve Christian insights that were too hastily driven from the field by the rushing armies of Enlightenment *philosophes*. Their goal is to hold in creative tension the sometimes competing goals of *resourcement* and *aggiornamento*.

It is unfortunate that Catholic legal education has been largely unaware of these developments because many legal issues of interest to Catholics turn on complex theological analyses of modern culture. Highly sophisticated and subtle conceptions of creation, gift, and human fulfillment are among the vistas that Christian thought offers to the world. And, these insights are trenchant for a number of contemporary issues. For example, the concept of *communio* holds potential for highly nuanced alternatives to liberal and communitarian philosophies, and therefore for providing an evaluative and critical stance for assessing an alternative political theory that does not rely on tepid hopes for an Athenian counter-Enlightenment (MacIntyre and Nussbaum). This paper calls on Catholic legal educators to learn more about developments in theology, and to strive for more informed and more complex engagements with their faith.