

# Fordham Urban Law Journal

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Volume 30 | Number 1

Article 17

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2002

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### Recommended Citation

John D. Feerick, *Response to Avery Cardinal Dulles*, 30 Fordham Urb. L.J. 291 (2002).

Available at: <https://ir.lawnet.fordham.edu/ulj/vol30/iss1/17>

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## Response to Avery Cardinal Dulles

### **Cover Page Footnote**

Leonard Manning Professor of Law, Fordham University School of Law; Dean, Fordham University School of Law, 1982-2002.

## RESPONSE TO AVERY CARDINAL DULLES

*John D. Feerick\**

I thank you, Your Eminence, on behalf of Fordham Law School, for your presence tonight and for your powerful, challenging lecture. Words cannot express sufficiently my gratitude to you for accepting our invitation to speak about Catholic social teaching and American legal practice.<sup>1</sup> Your lecture inaugurates Fordham Law School's Catholic Lawyers' Program of our new Institute on Religion, Law, and Lawyers' Work, lodged in the Stein Center of Law and Ethics. Our appreciation to you and admiration for you run very deep.

As I shared with you last week at the opening of the photographic exhibit of your installation as Cardinal, when I first mentioned to my wife, Emalie, that I was invited to comment on your remarks, she stated: "How presumptuous of you to comment on the remarks of a Cardinal on Catholic teaching." I, therefore, tread with caution and in the spirit of the dialogue Your Eminence has encouraged.

I have given considerable thought to your remarks, which you kindly shared with me last month. I have struggled with how I might respond in a meaningful way. In fact, I have read your lecture at least a dozen times and have found something new and challenging each time I have done so. At its core is a bold and energetic social justice agenda, calling upon us to feel the pain of the poor and marginalized, and to respond with love and concrete measures.

I find the principles outlined at the core of Catholic social justice teaching to be beyond ethical challenge: the intrinsic worth of every person; the importance of collaborating for the good of all; the need to treat each other as members of an extended family with a special solicitude for those in greatest need; the importance for individuals and small groups to be free of totalitarianism; and respect for the world's environment so as to preserve it for future generations.

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\* Leonard Manning Professor of Law, Fordham University School of Law; Dean, Fordham University School of Law, 1982-2002.

1. Avery Cardinal Dulles, *Catholic Social Teaching and American Legal Practice*, 30 *FORDHAM URB. L.J.* 277, 277-89 (2002).

These fundamental principles are cherished by people of other faiths as well, and find expression in significant ways in our country's founding documents, our jurisprudence, and in lawyer conduct codes. Recently, and tragically, we bore witness to the wanton destruction that can occur when individuals and groups have no regard for human life, human freedoms, or human society.

The message of your remarks is appealing, inspiring, and irresistible. The great challenge, as you pointed out, is in the application of these principles to the concrete. The principles are sometimes in tension with each other, and the perspectives of people often differ on how the principles are best applied. The law seeks to reconcile these tensions and differences. It represents the application of these sometimes conflicting principles to, at times, vexing situations. What is the common good, and who defines it, have been and continue to be issues of great importance in the shaping of our nation.

Your point about government not associating itself with a particular religion and allowing wide freedom of worship is certainly reflected in our Constitution and jurisprudence, as is the right for religious expression to be part of the conversations in the public square.<sup>2</sup> Such speech may be divisive, but its place has been recognized by our courts.<sup>3</sup> The Supreme Court has noted that a "free-speech clause without religion would be Hamlet without the prince."<sup>4</sup> Catholic social teaching rejects intolerance of other religions.<sup>5</sup> The absence of tolerance and its dire consequences are abundantly demonstrated in recent events, and can be seen in the recent arrest of human rights workers who were accused of preaching Christianity in Afghanistan, and the severe penalties to which they may be subject.<sup>6</sup>

Where to draw the line between government entanglement in religion and indirect state support of religion in the allocation of public resources has been the subject of varying opinions by our

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2. See U.S. CONST. amend. I; *Widmer v. Vincent*, 454 U.S. 263, 268 (1981) (holding that a state university may not close its facilities, which are generally open, to a student group desiring to use the facilities for religious discussion).

3. *Id.*

4. *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (holding that allowing a group to place a cross in a designated public forum did not violate the First Amendment).

5. See Christopher T. Carlson, *Church and State: Consistency of the Catholic Church's Social Teaching*, 35 CATH. LAW. 339, 357-58 (1994) (noting that tolerance is a traditional Catholic thought).

6. See Celia W. Dugger, *Judge Vows Aid Workers' Trial Will Be Fair*, N.Y. TIMES, Oct. 1, 2001, at A12.

Supreme Court. A current majority appears disposed to support forms of assistance to students and parents in religious contexts so long as all groups enjoy such benefits.<sup>7</sup>

The slope between appropriate support and inappropriate entanglement is a slippery one. Too much entanglement involves the risk of making more difficult the development of the human community as an extended family, but too little perhaps imports a negative message about the importance of religion. In discussing this subject with a Jewish friend of mine the other day, he commented that he would be troubled if the public schools his children attended freely encouraged prayer and other religious activities practiced by a majority of students or faculty. He said that the social pressure in that situation would be enormous, and would interfere with his attempts to structure a home and family within his own faith. What happens, he asked, when all faiths at a school want to practice fully and freely in the classroom? I have some sense of the divisiveness that can result in a school context where many faiths are practiced by students and faculty, if certain religions are pressed in a classroom setting. On the other hand, much is possible within a school context through programs and activities outside the classroom which speak to the religious beliefs and practices of students and faculty.

The remarks of Your Eminence expound in a wonderful way the moral role of lawyers, their obligation to justice, and their obligation to do pro bono work. We need to feel these missions passionately if we are to be faithful to the rhetoric of our Constitutional structure, professional ideals, and verbal exhortations, and, to that end, I find Catholic social teaching enormously helpful and supportive, reminding us of our calling as lawyers. There is a need for improvement in our legal structure, however. Recent studies indicate that seventy to ninety percent of the legal needs of low-income people are not being met, with only one out of four having access to a lawyer.<sup>8</sup> According to Professor Deborah Rhode, who is visiting at our school this fall, even though one half of American lawyers involve themselves in supporting pro bono work, the average

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7. See generally *Zelman v. Simmons-Harris*, 122 S. Ct. 2460, 2467 (2002) (holding that a school voucher program which provided funding for students in private religious schools did not violate the First Amendment).

8. ABA Standing Comm. on Lawyers' Public Service Responsibility, Report to the House of Delegates 6-7 (Feb. 1993).

contribution is less than one half hour per week.<sup>9</sup> A study done for the American Bar Association concluded, "that the civil justice system of the United States is fundamentally disconnected from the lives of millions of Americans."<sup>10</sup> Clearly, considerably more is required of the legal profession in responding to the needs of the poor. In this regard, the Catholic social teaching's emphasis on the treatment of the poor and the powerless is an exceedingly important perspective and reinforcement of a central part of the mission of the legal profession to provide access to justice for all.

The Church's emphasis on justice speaks to another ethical imperative of the legal profession. The Model Code of Professional Responsibility is clear:

[R]ules of law are deficient if they are not just and responsive to the needs of society. If a lawyer believes that the existence or absence of a rule of law . . . causes or contributes to an unjust result, the lawyer should endeavor by lawful means to obtain appropriate changes in the law.<sup>11</sup>

For the legal profession, in other words, a good lawyer is not simply one who uncritiquely upholds the law. Part of the mission of the profession is to evaluate and critique the legal system to ensure that it contributes to a just society. How well we act on this imperative is another matter.

Your Eminence made reference to the Church's condemnation of racism and the Church's not having taken an official position on the subject of affirmative action.<sup>12</sup> To the credit of American legal education, the applicable standards for accreditation of law schools demand a diversity plan and our major bar associations have urged lawyers to embrace affirmative action, especially law firms and corporate law departments who employ so many members of the profession. What is at stake here is basic human dignity and the elimination of the stereotypes, assumptions, and other badges of prejudice directed against people of color and other minorities. The case for creativity and energy in diversity matters is an imperative of social justice at this time in the history of the United States' legal profession.

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9. Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 *FORDHAM L. REV.* 2415, 2415 (1999) (analyzing factors which may motivate lawyers and law students to engaged in pro bono work).

10. ALBERT B. CANTRIL, *AGENDA FOR ACCESS: THE AMERICAN PEOPLE AND CIVIL JUSTICE 2* (1996).

11. MODEL CODE OF PROF'L RESPONSIBILITY CANON 8 (1980).

12. Dulles, *supra* note 1, at 285.

Turning to the challenge of the Catholic social agenda for law schools, especially schools like Fordham, I quite agree with the notion that discussion of justice and what is just and what the law ought to be needs to be an important part of the mission of legal education. It is at Fordham, as well as at other schools. The doctrines and rules of law are dissected in class discussions through an examination of decided cases and, more specifically, in the discussion of the facts and law involved in such cases. The dissemination of legal knowledge in the American law school classroom involves, and ought to involve, an active engagement by professor and student in understanding the reasoning behind court decisions and discussing the wisdom and justice of such decisions. Obviously, some classes fall short in their justice-focus and, to be sure, there is much more that can be done in classes where there is already a good deal of discussion of the justice of decisions. Professor Russell Pearce of our faculty has noted that drawing a connection between justice and faith in the classroom faces significant challenges.<sup>13</sup> He has observed that, "the prevailing ideologies of professionalism and of legal academia urge that lawyers and law professors exclude aspects of oneself, including faith, from the role of lawyer and law professor."<sup>14</sup> Many at Fordham Law School have wondered whether this is right, and as a result, we have decided to establish programs such as the one tonight as a way of promoting dialogue and debate. Our new Institute on Religion, Law, and Lawyers' Work, which is the first of its kind in the country, builds on a number of national inter-faith conferences that our school has sponsored over the past several years.

I should add that the language of a law school classroom is largely secular in nature in recognition of the fact that many faiths are present at the school and that this characteristic is reflected in the language of the law, which is largely devoid of religious words and references. At the same time, the values expressed by law have been shaped and nurtured by faith-based moral codes. And, while a judge, as you note, is obligated to follow the principles of the law and not implement his own notions of law, there is enormous discretion in the interpretation of the law and deciding what is just in the circumstances presented.<sup>15</sup> There is nothing in my ex-

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13. Russell G. Pearce, *The Jewish Lawyer's Question*, 27 TEX. TECH L. REV. 1259, 1261 (1996) (analyzing how a Jewish lawyer may integrate his religious beliefs into his professional role).

14. *Id.*

15. Dulles, *supra* note 1, at 285.

perience of forty years at the Bar that indicates to me that a judge does not bring to the role the totality of her experiences and influences.

Having spoken about the challenges of introducing faith-based justice discussions in the classroom, I need to highlight the approach of our school in dealing with issues of social justice without introducing the divisiveness that could accompany faith-based discussions in a multi-faith, pluralistic classroom.

We have a Public Interest Resource Center,<sup>16</sup> which encourages individuals and student groups to provide legal and non-legal public service to people in need. The Center involves approximately five to six hundred students each year who help welfare recipients, the unemployed, immigrants, residents of public housing, and survivors of domestic violence.

Our Stein Center on Law and Ethics<sup>17</sup> involves the training of twenty-five students in each class to become public service leaders. They take a special public interest ethics curriculum, are required to spend a summer in a public service setting, and host round tables for the entire student body on public interest subjects involving the poor, victims of discrimination, and other vulnerable segments of society.

The Joseph Crowley Human Rights Program<sup>18</sup> involves another group of students in the study of human rights problems. Throughout the year, they host brown-bag luncheons and other forums on human rights. The students also go on a foreign mission each year and publish a report on their investigation. The Crowley Program also helps other students find placements with human rights organizations.

Finally, the law school's clinical program provides hundreds of students with opportunities to perform public service through representing clients in clinics dealing with community economic development, welfare rights, civil rights, housing rights, special education, social security, disability, domestic violence, and externships in the public sector.

And now let me end by expressing the hope that tonight's discussion involving theology and law will be the beginning of many such

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16. For more information, see the Public Interest Resource Center's website, at <http://law.fordham.edu/pirc.htm> (last visited Oct. 21, 2002).

17. For more information, see the Stein Center on Law and Ethics's website, at <http://law.fordham.edu/stein.htm> (last visited Oct. 21, 2002).

18. For more information, see the Joseph Crowley Human Rights Program's website, at <http://law.fordham.edu/crowley.htm> (last visited Oct. 21, 2002).



conversations, and will extend to learning about the social justice views of other faiths and stimulate similar discussions in law schools throughout the United States. I also hope that this lecture will lead to greater dialogue on social justice subjects between pastors and bishops and Catholic lawyers. I sense that Catholic social justice teaching may not be well known by Catholic members of my profession. My daughter, Rosemary, a graduate of the Jesuit School of Theology at Berkeley, passed along a comment made by one of her professors—that the Catholic Church's social justice teaching is its best kept secret. That cannot be said here at Fordham Law School, at least after tonight's lecture - thanks to you, Your Eminence.

