

Volume 59 | Issue 4

Article 3

9-1-2014

Seven Teachers in the Tradition

John T. Noonan Jr.

Follow this and additional works at: https://digitalcommons.law.villanova.edu/vlr

Recommended Citation

John T. Noonan Jr., *Seven Teachers in the Tradition*, 59 Vill. L. Rev. 659 (2014). Available at: https://digitalcommons.law.villanova.edu/vlr/vol59/iss4/3

This Issues in the Third Circuit is brought to you for free and open access by the Journals at Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

SEVEN TEACHERS IN THE TRADITION

John T. Noonan, Jr.*

On this auspicious occasion I should like to acknowledge and commemorate seven persons who gave me a sense of the scope, complexities, and difficulties of the Catholic intellectual tradition—the tradition of attempting to understand, to apply and to develop what is conveyed to believers by the teaching of the Catholic Church.

In 1947, I had graduated in English from Harvard and had pursued English studies at Cambridge University. I had read Étienne Gilson's *The Unity of Philosophical Experience* and known enough Latin to dip into theological manuals. But any formal instruction in Catholicism had ended at seventeen. On this subject—my beliefs as a Catholic—I was scarcely beyond the level of high school. I was actively conscious of the gap between my education in English and my education in the intellectual tradition of the Church.

I was advised by my professors at Harvard that there were three places I might supply this deficiency: Louvain, Toronto, or Washington. Louvain seemed too distant; Toronto, meaning the Institute of Medieval Studies, seemed too narrow. I chose Washington, which meant The Catholic University of America and its School of Philosophy.

There was a difficulty, however. I couldn't enter on a graduate program in philosophy without ever having had a course in philosophy. An alternative suggested itself, inspired no doubt by my experience of tutorials at Cambridge. Why not engage tutors at Catholic University to instruct me in the areas, not just philosophy, that bore on the Catholic intellectual tradition?

Three of these tutors I commemorate today. Two were priests, who would accept no remuneration for their work. One was a layman with a family to support, and I paid him a modest stipend. My father was its source, as he was for my living expenses, so that I devoted all my energies to this new area of study.

With Vincent Smith, I began the reading of the *Summa Theologiae* of Thomas Aquinas. It was like being thrown into a bath of very cold water. I had never read anything like it before. What a way to present an argument, to put the objections first! As the objections were often strongly stated, they caught one's mind and held it.

Smith was a wonderful teacher. He let me assail him with the objections. Never dogmatically, always quietly reasonable, Smith replied. No doubt I was open to persuasion. What struck me most about Smith was that he took philosophical principles seriously. They were not catchwords,

^{*} United States Circuit Judge, United States Court of Appeals for the Ninth Circuit.

not mere academic formulas. They were truths that he had incorporated into his mind, truths by which he lived. He was not simply a professor of philosophy. He was a philosopher. I learned something from the *Summa*. I learned very much more from Vincent Smith.

Commemorating him today, I cannot refrain from recalling my last encounter with him. I had gone on to practice law and he had become a faculty member at St. John's University in New York. For reasons now obscure, the University had discharged thirty-one of its faculty. I was asked by the Association of American University Professors (AAUP) to investigate. I did and found flagrant actions by the administration that led to sanctions by the AAUP. In the course of my investigation, an unexpected witness was Vincent Smith. He was not one of the thirty-one fired faculty. He had resigned to protest the firings. For a man with a family to feed, it was a courageous action, animated by principles that were part of Vincent Smith's being.

Edward Arbez, the second of my tutors, was a Frenchman, born in 1881. At an early age, he had entered on studies for the priesthood, and he had become a Sulpician, or a member of the congregation of St. Sulpice, devoted to the education of priests. He had committed himself to the study of Scripture, surviving although regretting the strictures placed on Catholic exegetes in the exaggerated official reaction to the Modernist heresy. He was a co-founder of the Catholic Biblical Association and a guide to the new era of scriptural scholarship following the encyclical *Divino Afflante Spiritu* in 1943.

I began the study of Scripture with Arbez. I was familiar, of course, with the excerpts from the Gospels and the excerpts from the Epistles read at Mass. Like most Catholics at the time I was not familiar with the Bible as a whole. The Evangelicals put us to shame. The idea of picking up the Bible and reading it had not occurred to me. When I read biblical texts at Sunday Mass, I understood them as they were expounded by the Sunday homilist—then, as now, with a remarkable degree of literalism.

Arbez gently introduced me to a different approach. I do not remember now what I read with him. I do recall that at times I was a ferocious literalist. For example, as to the reference in 1 Kings 10:22 to "ships of Tarshish," I wanted to know if Tarshish was really a seaport. With questions of this sort I probed the texts for literal accuracy. Arbez was never dogmatic, never unresponsive. He led me to new comprehensions of the large variety of communications conveyed by Scripture. The divine breath had breathed on many tongues and pens. The word of God had not dropped from the sky. Scriptural communications came with contexts, histories, stylistic idiosyncrasies, linguistic innovations. You could not pick up the Bible and read it like a newspaper. Scripture was charged.

The third of my teachers at this time was a theologian Edmund Darvil Benard, a priest of the diocese of Springfield, Massachusetts and a graduate of Le Grande Séminarie in Montreal. Benard was deeply conscious of his American identity. He enjoyed singing *The Battle Hymn of the Republic*. In preparing this paper, I discovered that in high school Benard was a runner-up in a national contest of students speaking on the Constitution of the United States. Despite this American identity, he had a Gallic quality, a finesse of feature and of mind, a quickness of intellect, and a resourcefulness in argument that made every argument with him exhilarating.

He taught a course at Catholic University that was, I believe, entitled "Apologetics," and apologetics is what I undertook to study with him. The name, not very common today, suggests apology, but in its Latin root apologia it means "a rational defense" as in Newman's autobiography, Apologia pro Vita Sua. Benard was adept in a rational defense of the doctrines of the Church.

Once more I cast myself as the questioner, the aggressive questioner, more so with him than with the other two because he enjoyed it more. I invited him out at times to dinner. He introduced me to his friend Eugene Burke, a Paulist, and sometimes I went golfing with them. Our friendship continued over the next several years as I settled into the philosophical graduate program at Catholic University.

What stands out in particular memory is a trip I took back to Washington from North Carolina, where I had been visiting John Kennedy (not the president). Benard and Burke had been on vacation, playing golf at Pinehurst. I met them by prearrangement and rode back with them. All the way, or so it seemed to my clerical companions, I argued with them about John Courtney Murray's new argument for religious liberty. How was religious liberty for all reconcilable with the teachings of Leo XIII, of Pius IX, of Gregory XVI, not to mention the teachings and actions of medieval popes? Benard never shut off my challenges, although I think that he tired a bit on this trip of six or seven hours. "You ought to talk to Murray yourself," he said, and I eventually did at Woodstock in Maryland. At this time, and for some time to come, I had a narrow sense of the development of doctrine.

Benard, I should add, was an authority on Newman and wrote a book about Newman. Newman's name was scarcely unknown to me, but I should credit Benard with leading me to a greater appreciation of Newman's range and depth as the best of all theologians writing in English.

Smith, Arbez, Benard. I turn from the special pleasure of touching on memories of my twenties to teachers I learned from later.

My fourth teacher in the tradition I met only once, but the occasion and the lesson were memorable, and I was taught in addition by his books. About 1950, I was still in graduate studies at the School of Philosophy at the Catholic University when I heard that Jacques Maritain was teaching a graduate seminar in philosophy at Princeton. Maritain was widely regarded as the preeminent Catholic philosopher in the world. I determined to attend at least one session of the seminar at Princeton and did so.

2014]

The subject of the session was "evil", most specifically "moral evil." How did it occur? How could it occur in a universe created and ruled by a good God? Maritain presented a view that was faithfully Thomistic: Evil was an absence of good, a failure of the will, a kind of nothingness. But why did an all-good and all-powerful God permit this kind of failure to occur? Why had God created such fallible creatures? Why did God not foresee the failures and eliminate the occasions on which the evil would arise? To questions such as these Maritain had no answer. Evil was a mystery incapable of rational explanation, a blankness of unintelligibility.

The book of Maritain's that I most valued was entitled *The Person and the Common Good.* In it he distinguished between "the person", that is, each human being with an end transcending this life, and what he termed "the individual", that is, each human being considered as part of humanity with no end higher than the preservation of its life in this world. In this framework each of us was both a person and an individual. As an individual, we were properly subjected to the constraints necessary for society to function. As a person, each of us had a drive and a destiny exceeding our temporal condition and requiring respect from those shaping social controls. Recognition of the personhood of each human being did not by itself create a charter of human rights, but rather offered a perspective and possibilities for the development of such rights. It was no accident that Maritain was a key draftsman of the United Nations Charter of Human Rights and a principal mentor of Pope Paul VI.

I valued what I learned from Maritain as well as what I learned from Étienne Gilson, who came to teach for a while at Berkeley and whom I came to know and to entertain. He told me one story of how he and Maritain were given an audience by Pope Pius XII. The audience went on for over an hour. A papal attendant then approached the pope with two large medals to be awarded the philosophers. "No, no," the pope said. "The usual ones."

I turn to two teachers I met at the time of the Second Vatican Council—Josef Fuchs and Bernard Häring. Both were German. Each was a member of a religious order. Fuchs was a Jesuit, Häring a Redemptorist. Each was a master of moral theology. Each I came to know at a time that the lawfulness of contraception was becoming a controversial topic in the Church.

Häring is the only theologian, or at least the only prominent moral theologian, to have published an autobiography. How essential it is to know the experiences that have shaped the moralist! Häring's book, *Embattled Witness*, focuses on his experience as a medic drafted into the German army at the beginning of World War II. Violating army regulations that denied his priestly status, he frequently celebrated mass and heard confessions, becoming adept in disobeying obligatory rules in order to serve a higher end. At times he compromised with the military system. "Not Quite Like Christ" is the title of one chapter in which he painfully puzzles over his compromises. In sum, this slim volume affords an insight

into someone whose major work—*The Law of Christ*—was a breakthrough in Catholic moral theology.

I met Häring when he was teaching at the Alfonsiana, a graduate center. The story was told in Rome that Joseph Ratzinger had visited the school and had asked for student responses to his talk on the harmony of theology. "The harmony might be there if the trombone was not so loud," one student volunteered. The reference to Roman interventions was unmistakable.

Häring himself was looked at with suspicion by supervisory figures in the Holy Office. "We will catch that herring," they were reported to have said. They never did. Just as he had not always obeyed army regulations and yet escaped discipline, so Häring knew his way around ecclesiastical censorship. He still experienced a burden. Once, later in our friendship, as I was driving him from South Bend to Chicago, he told me of some of his early difficulties. In Rome under Pius XII, the most that a moralist could say about a college or high school dance was that it was not always sinful. I didn't hesitate to tell him that in America Catholic colleges and high schools sponsored dances regularly.

In the later years of his teaching, Häring was afflicted with a disease that affected his vocal chords. He submitted to the use of a box by which his voice could be transmitted—conveying communication that was always conscientious, always acute, always kind.

Soldier in Hitler's army and solider of the Lord, was he carrying, as the saying goes, water on both shoulders? I was not called to judge, only to learn.

Josef Fuchs, at the time I met him, was the leading Jesuit moral theologian—an untitled position but one that carried with it an authority and influence that marked him as exceptional. His post was at the Gregoriana, "the Greg," the Jesuit university in Rome that educated seminarians and priests from many different orders and from all parts of the world.

I encountered Fuchs in 1965 when I was invited to serve as a consultant to the papal commission on the regulation of births. The commission had been created by Pope John XXIII and enlarged by Pope Paul VI. The commission had theologians, demographers, doctors, and three couples representing the laity. I was invited to join the sessions of the commission because my book *Contraception* had just been published and contained the only history of the development of doctrine touching this topic.

The commission was housed and met at a monastery on a road leading into Rome. Awkwardly, the three wives among its members were housed separately. The meeting began early, lasted till a noon meal, then adjoined for a siesta, and resumed from 4 PM to 7 PM. The members spoke thoughtfully and candidly. When the members of the commission assembled in 1965 some of them asked, "What do they want us to recommend?" Only gradually did the conviction come to the members that they were "they." No one was prescribing their recommendations. It soon became clear to me that Fuchs was key. His comments were clarifying, careful, judicious. He was not partisan. He was no advocate. His mind was open to alternatives. He did not rush to judgment on issues that must have been very familiar to him.

In contrast there was another member, also a Jesuit, also a professor at the Greg. He was dogmatic in his position that the prohibition of contraception was established, binding, and immutable. When I offered the analogy of the Church's prohibition of usury and its development from its formulation in twelfth century canon law, he was prepared. At lunch, in the courtyard, he extracted from his pocket a small-size copy of the *Code of Canon Law* and opened it to the canon prohibiting usury. To a literal reader the words spoke literally. For someone conscious of the Church's own use of banks the words required interpretation. No one could have supposed that the Holy See refused to take interest on its deposits with a bank. But the inspired literalist put his trust and his argument in the words on the page.

When Fuchs joined the majority—the majority in every group, theologians, demographers, doctors, and laity—to recommend a change in the rule on contraception, it seemed that the battle was over.

The Second Vatican Council was still in session, in fact nearing the end of its fourth and final session. John Ford, a Jesuit moralist teaching at the Jesuit seminary in Weston, Massachusetts, and not a member of the commission, went to Paul VI to persuade him to add something definitive to the Council's teaching in its proclamation of *Gaudium et Spes* on the Church in the modern world. A footnote then was added referring to earlier papal condemnation of contraception. The commission was bypassed but not trumped.

In fact the work of the commission, again enlarged by the pope, continued. Only in 1968 did Paul VI issue *Humanae Vitae*, the encyclical read by American bishops as a comprehensive prohibition of contraception but not so treated by the bishops of Belgium, France, Germany, and the Netherlands.

Fuchs was a frequent visitor to the United States. I entertained him once in Berkeley. My son, John, aged about six, dragged him upstairs to see a favorite TV show, *Hogan's Heroes*, featuring American prisoners matching wits with their blundering German guards. I had thought myself that Fuchs looked like a U-Boat commander. Did John make a similar judgment? I know only that with the composure characteristic of his balanced mind Fuchs watched the show and rejoined the party. No situation, no difficulty was going to disturb his equilibrium.

Czeslaw Milosz—Chester Love in translation—was first the teacher of my wife, Mary Lee. A professor of Slavic Languages, Milosz taught a course on Dostoevsky. Dostoevsky in his novels showed some disdain for Poles and Catholics. Milosz was a Catholic and, although Lithuanian by birth, a writer of Polish. "Poles and Russians do not like each other," he has written. Nothing of this sort prevented him from a profound appreci2014]

ation of Dostoevsky. In his course, one great writer explored the heart of another great writer's writing.

I didn't have such an experience of Milosz as a teacher. I still would like to think of him as a teacher because eventually I met him as a neighbor in Berkeley and as a fellow parishioner of the Paulist parish of the Holy Spirit.

The first work of Milosz that I read was *The Captive Mind*, an analysis of the thinking of Polish intellectuals who conformed to Communism as it was imposed by their Soviet masters. Perhaps self-reflection played a part in its composition. Milosz himself conformed enough to be given a diplomatic assignment in America by the Communist regime in Warsaw. In his analysis I came to see how Communism had conquered by means more subtle than force.

Milosz had graduated from law school in the early 1930s, but law was not a profession he cherished. He was, above all, a poet—that is, a man for whom the precise words recording his precise thoughts or feelings were what he sought and found. Paradoxically, he wrote in Polish so what I know of his poetry is a translation. He chose his translators thoughtfully and, I believe, guided them, so that I hear his voice in what presents itself in English.

To converse with a poet—a poet of the first rank—was an education in itself. What did I learn? To value the poet as an instrument, a human instrument through whom the divine spoke, a being in every way no different from other humans but selected to transmit visions.

Milosz's first wife, Janina, I did not know before her death, but his second wife, Carol, was an American, who had been a graduate student in English at the University of North Carolina. With Carol, both Mary Lee and I were comfortable. She was a bridge to the poet. Much younger than he was, she tragically died before he did. A survivor, he had survived many losses, and he survived this loss.

I conclude with lines from one collection of his poetry, not entirely joyful but joyously entitled *Bells in Winter*. The lines come from a short poem entitled "An Hour":

Leaves glowing in the sun, zealous hum of bumble bees,

From afar, from somewhere beyond the river, echoes of lingering voices

And the unhurried sounds of a hammer gave joy not only to me. Before the five senses were opened, and earlier than any beginning

They waited, ready, for all those who would call themselves mortals,

So that they might praise, as I do, life, that is, happiness.

One might read these lines differently, but I read them as identifying life with happiness, an extraordinary affirmation by a survivor.