

RESEARCH ARTICLE

“Make All the Laws You Want”: The Catholic Left against Legal Liberalism, circa 1968

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Abstract

How has American Catholicism interacted with American legal culture? Legal scholars have often examined this question in the context of contraception and abortion debates. This article focuses instead on the so-called Catholic left that emerged in protest against the Vietnam War in the late 1960s, and thereby seeks to bring the rich history of Catholic radicalism and peace activism into closer conversation with legal history. Drawing on both primary sources and a rich body of secondary literature in religious and social history that legal scholarship has not fully incorporated, the author examines ideas about law within the writings of Catholic left figures, including writer-monk Thomas Merton, sociologist-priest Paul Hanly Furfey, and activist-priest Berrigan brothers. Building on work by religious historians who have interpreted the Catholic radical tradition as a distinctive response to the limitations of political liberalism, this author emphasizes that the Catholic left also expressed a profound alienation from legal liberalism, with its veneration of lawyers and its faith in courts as sites of social progress. Revisiting the Catholic left through the lens of legal history raises questions for future research about the possible connections between leftist antiliberalism and the more familiar Catholic tradition of conservative illiberalism.

Keywords: Catholicism; legal liberalism; Vietnam War; Catholic left; legal culture

In so far as it falls short of right reason, a law is said to be a wicked law; and so, lacking the true nature of law, it is rather a kind of violence.

—Thomas Aquinas, as quoted in *Pacem in terris*¹

In October 1965, Catholic Peace Fellowship staff member Tom Cornell made plans to burn his draft card at an upcoming rally. He knew this act could send him to federal prison: Congress had recently criminalized the destruction of draft cards. At first glance, legal historians might assume that Cornell was hoping to generate a test case. There was a long American tradition of strategic lawbreaking, carefully designed to vindicate individual rights in the courts. But neither Cornell nor his comrades in the Catholic Peace Fellowship, which had been founded the year before to organize activism against the Vietnam War, were motivated primarily by the prospect of a legal challenge. Cornell felt compelled to burn his

¹ John XXIII, *Pacem in terris* [Encyclical on establishing universal peace in truth, justice, charity, and liberty] (April 11, 1963), <https://www.catholicculture.org/culture/library/view.cfm?recnum=3369>.



draft card not to defend free speech but to protest “the idolatry of American society, the worship of the State.” Certainly he regarded the draft card law as an objectionable effort to stifle dissent, but his main complaint was religious: the federal government had arrogated to itself “the power to consecrate a piece of paper.”² In a letter describing Cornell’s plans, fellow staffer Jim Forest made only a cursory reference to the potential for constitutional litigation. “We are assured by civil liberties lawyers that the draft card burning law will not hold up in the courts,” Forest wrote (a prediction that would prove incorrect), but he offered no further comment about the legal analysis and expressed no interest in the details. Instead he quickly changed the subject: “I know nothing about constitutional law, an ignorance Tom shares with me.”³ In correspondence about an unrelated matter, Forest made the telling aside: “I rather dislike the idea of taking anyone to court. I think there’s something in the Gospels which says we shouldn’t.”⁴

Such comments exemplify a recurring theme in Catholic political dissent in the late 1960s: a disavowal of interest in man-made law and legal institutions. In 1968, the liberal Catholic magazine *Commonweal* published Kathy Mulherin’s dismayed report from the criminal trial of Black Panther leader Huey Newton in which she framed the issue pithily: “Law is thus, finally, a matter of faith.”⁵ Observing the apparent disconnect between jurors and defendants, law and society, some Catholics were beginning to lose the requisite faith. Four years earlier, Thomas Merton, the writer-monk beloved of the Catholic peace movement, had expressed an even more thorough disenchantment with law, a disbelief that extended beyond jury verdicts to encompass legislative enactments and international agreements. All otiose, in Merton’s view: “where there is no love of man, no love of life, then make all the laws you want, all the edicts and treaties, issue all the anathemas; set up all the safeguards and inspections, fill the air with spying satellites, and hang cameras on the moon. As long as you see your fellow man as a being essentially to be feared, mistrusted, hated, and destroyed, there cannot be peace on earth.”⁶

In a second and related theme, writers on and around the so-called Catholic left emphasized the moral duty to disobey unjust laws. In photocopied newsletters and published books, they reminded readers that Christians were not necessarily obligated to respect the duly enacted laws of worldly authorities. In their broad outlines, such arguments were unremarkable insofar as they restated tenets of natural law theory, which holds that there exists an absolute and universal moral order, discernible through human reason, that

² Tom Cornell to Alice Lynd, July 21, 1967, Catholic Peace Fellowship Records, box 19, folder 1, University of Notre Dame Archives, Notre Dame; “Why I Am Burning My Draft Card,” October 26, 1965, Catholic Peace Fellowship Records, box 9, folder 7, University of Notre Dame Archives. On the Catholic Peace Fellowship, see Patricia McNeal, *Harder than War: Catholic Peacemaking in Twentieth-Century America* (New Brunswick: Rutgers University Press, 1992), 139–42, 146–48; and Penelope Adams Moon, “‘Peace on Earth—Peace in Vietnam’: The Catholic Peace Fellowship and Antiwar Witness, 1964–1976,” *Journal of Social History* 36, no. 4 (2003): 1033–57.

³ Jim Forest to Al Hassler, October 26, 1965, Catholic Peace Fellowship Records, box 9, folder 12, University of Notre Dame Archives. I am grateful to research assistant Grace Doerfler for pointing me to this quotation, and to the other documents and quotations cited in this paragraph that illustrate Catholic Peace Fellowship members’ views about law and courts. The draft card law was upheld in *United States v. O’Brien*, 391 U.S. 367 (1968). For a more detailed examination of how the Catholic Peace Fellowship drew upon Catholic conscience theology to make claims against the draft laws, see Peter Cajka, *Follow Your Conscience: The Catholic Church and the Spirit of the Sixties* (Chicago: University of Chicago Press, 2021), chap. 3. Cajka characterizes the Catholic Peace Fellowship as participants in a larger phenomenon of “profound antilegalism” among Catholics in the 1960s, visible both in debates about the Vietnam War and in intra-church debates about contraception. Cajka, *Follow Your Conscience*, 85.

⁴ Jim Forest to Rev. William DuBay, January 16, 1965, Catholic Peace Fellowship Records, box 19, folder 3, University of Notre Dame Archives.

⁵ Kathy Mulherin, “Stalking the Panthers: The Trial of Huey Newton Touched a Deep Nerve in America,” *Commonweal*, October 11, 1968, 58–62, at 62.

⁶ Thomas Merton, *Seeds of Destruction* (New York: Farrar, Straus and Giroux, 1964), 183.

supersedes contradictory positive law.⁷ Within the context of the 1960s, though, and as applied to the moral challenges of the nuclear age, these old truths could produce discomfiting conclusions about the United States government—conclusions that, in turn, threatened to destabilize what was still the relatively recent assimilation of Catholics into American political and legal culture. Whether examining the nuclear arms race, the ongoing civil rights movement, or the escalating war in Vietnam, Catholic radicals turned their sights on law and legal institutions as the scaffolding of organized immorality. In this context, some Catholic thinkers were also moved to reexamine the American past. In 1966, Paul Hanly Furfey, the longtime chair of the sociology department at the Catholic University of America, published a book-length indictment of conventional morality with a damning title: *The Respectable Murderers*. Through case studies of chattel slavery and World War II, Furfey concluded that “the great injustices of history ... are perpetrated not by disreputable men who disobey good laws, but by respectable men who obey evil laws.”⁸

Specific criticism of US law often amounted to an incidental motif, rather than the central topic, within Catholic political writing of this era. When juxtaposed with the self-celebration of legal elites in the same years, though, it leaps out of the pages as a historically significant motif. On the one hand, Catholic doubts about courts, lawyers, and law contrasted sharply with the legal liberalism that, however battered, remained dominant in courthouses, legislatures, and (non-Catholic) law schools—pillars of the so-called mid-century establishment.⁹ On the other hand, the Catholic left did not merely echo or adopt the modes of legal cynicism popularized by the New Left, nor did they operate from the standard Marxist definition of law as the handmaiden to capitalism. Although the differences might seem subtle, the Catholic left advanced a distinctive and more ambivalent, but also more hopeful, vision of American law as currently fallen, but potentially redeemable.

In this article, I bring the history of Catholic radicalism into conversation with legal history. Although there is an extensive historical literature on Catholic responses to the Vietnam War and other 1960s upheavals, this historiography has remained siloed from legal scholarship. Legal scholars (particularly outside of Catholic legal circles) have devoted little attention to figures like Merton, Furfey, and participants in the Catholic “ultraresistance” against the Vietnam War.¹⁰ In scholarly accounts of how social movements remade and reacted to constitutional law, Catholic activism is typically discussed, if at all, in the context

⁷ Nor were such arguments limited to the countercultural figures that are my focus. As Peter Cajka examines in his fascinating study, a wide range of Catholics in the 1960s, including parish priests and ordinary congregants, perceived “a breakdown of the law’s moral authority” (both civil law and church law) and increasingly turned instead to conscience. Cajka, *Follow Your Conscience*, 2. See also Ken I. Kersch, *Conservatives and the Constitution: Imagining Constitutional Restoration in the Heyday of American Liberalism* (Cambridge: Cambridge University Press, 2019), 333–35, for a discussion of how Robert Bolt’s 1960 play *A Man for All Seasons* (and the subsequent Hollywood film of 1966) dramatize the natural law framework in “a distinctively Catholic voice” yet for a broad audience. Kersch, *Conservatives and the Constitution*, 334.

⁸ Paul Hanly Furfey, *The Respectable Murderers: Social Evil and Christian Conscience* (New York: Herder and Herder, 1966), 140.

⁹ For the proposition that even through the upheavals of the late 1960s, liberals retained a great deal of faith in law, and the Warren Court in particular, see Michal R. Belknap, “The Warren Court and the Vietnam War: The Limits of Legal Liberalism,” *Georgia Law Review* 33, no. 1 (1998): 65–154, at 65–66; see also Laura Kalman, *The Strange Career of Legal Liberalism* (New Haven: Yale University Press, 1996). Kalman identifies the 1990s as the moment when liberal legal academics began widely questioning the power of the Supreme Court to promote social progress. See Kalman, 7–8.

¹⁰ As one indicator, the Merton Center’s online bibliography of Merton scholarship appears to list only one law review article, which is a personal reflection. Marquita E. Breit, Patricia A. Burton, and Paul M. Pearson, “About Merton—Secondary Sources 1945–2000,” 2002, <http://www.merton.org/Research/Resources/ABOUT%20Merton.pdf>, citing Frank J. Macchiarola, “Reflections on Thomas Merton on the 25th Anniversary of His Death,” *Cardozo Studies in Law and Literature* 5, no. 2 (1993): 265–80. Searching Westlaw’s legal scholarship database yields about two

of contraception and abortion debates.¹¹ In broad outlines, the pro-life movement fits the recognizable paradigm in which a social movement organizes around a long-term goal of reversing adverse Supreme Court precedent. Catholic antiwar mobilization may appear less relevant to legal history precisely because its participants were often performatively uninterested in law. But even if their engagement took the form of critique, figures on and around the Catholic left also circulated ideas about the relationship between law, society, and political change. By expanding conceptions of what it means to be involved in legal history, it is possible to see that these figures also partook in American legal culture, in important if unconventional ways.¹² Religious and social historians have developed rich accounts of the Catholic left's experiences as targets of the law, which can also be mined for insight into these figures' ideas and attitudes about the law in contrast with the mainstream legal liberalism of the 1960s.¹³

hundred mentions of Thomas Merton (not all in the relevant sense) but mainly as a source of eloquent statements or as an interlocutor in philosophical argumentation, not as an object of legal historical study. Conversely, Merton scholars typically classify his later writings as political or as addressing social issues, though they also address legal topics. See, for example, William H. Shannon, introduction to *Passion for Peace: The Social Essays*, by Thomas Merton, ed. William H. Shannon (New York: Crossroad Publishing, 1997), 1–7; Albert J. Raboteau, *American Prophets: Seven Religious Radicals and Their Struggle for Social and Political Justice*, chap. 5 (Princeton: Princeton University Press, 2016); Dennis Q. McNerny, "Thomas Merton and the Awakening of Social Consciousness," *American Studies* 15, no. 2 (1974): 37–53.

¹¹ For example, William N. Eskridge, Jr., "Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century," *Michigan Law Review* 100, no. 8 (2002): 2062–407 (see brief references to Catholic objections to contraception and abortion at 2121, 2145, and 2149n437); Linda Greenhouse and Reva B. Siegel, "Before (and After) *Roe v. Wade*: New Questions about Backlash," *Yale Law Journal* 120, no. 6 (2011): 2028–87, at 2046–64 (discussing Catholic opposition to abortion and how political actors made it a wedge issue); but for a recent exception, which appeared after the final draft of this article was complete, see Jeremy Kessler, "The Legal Origins of Catholic Conscientious Objection," *William & Mary Bill of Rights Journal* 31, no. 2 (2022): 361–424 (contextualizing the abortion debate alongside Vietnam-era debates about military conscription). This pattern mirrors a similar issue in historical scholarship in which Catholics (and religious believers generally) are not fully woven into historical accounts but instead pop up intermittently as "ahistorical actors, entering the narrative only to give voice to their church's purportedly unchanging views on sexual morality." James P. McCartin, "Sex Is Holy and Mysterious: The Vision of Early Twentieth-Century Catholic Sex Education Reformers," in *Devotions and Desires: Histories of Sexuality and Religion in the Twentieth-Century United States*, ed. Gillian Frank, Bethany Moreton, and Heather R. White (Chapel Hill: University of North Carolina Press, 2018), 71–89, at 73 (emphasis omitted); for the pop-up metaphor, see the classic statement in Jon Butler, "Jack-in-the-Box Faith: The Religion Problem in Modern American History," *Journal of American History* 90, no. 4 (2004): 1357–78. In an edited collection, several prominent US historians reflect upon the disconnect between Catholic history and mainstream historical narratives, and suggest ways in which greater integration would enhance historical understanding. R. Scott Appleby and Kathleen Sprows Cummings, eds., *Catholics in the American Century: Recasting Narratives of U.S. History* (Ithaca: Cornell University Press, 2012).

¹² See Kersch, *Conservatives and the Constitution*, 27, criticizing the presumption of legal academics "that if they or their interlocutors were not doing it, it was not important constitutional theory."

¹³ On Catholic arguments, lobbying, and litigation in defense of selective conscientious objection to the Vietnam-era draft, see Cajka, *Follow Your Conscience*, chaps. 3, 6; for studies of Catholic anti-Vietnam activism that touch upon interactions with law, examined through the lens of social movement history, see, for example, Marian Mollin, "Communities of Resistance: Women and the Catholic Left of the Late 1960s," *Oral History Review* 31, no. 2 (2004): 29–51, which describes how supporters engaged in courtroom packing and jail support; Moon, "'Peace on Earth—Peace in Vietnam';" and a combination oral history and research study by a movement participant, Charles A. Meconis, *With Clumsy Grace: The American Catholic Left, 1961–1975* (New York: Seabury Press, 1979). For a more comprehensive study of Catholic peace activism extending both before and after the Vietnam era (and the resultant criminal trials), see McNeal, *Harder than War*; McNeal covers the Catholic Peace Fellowship and the Berrigan brothers in chaps. 6, 7. For an illuminating but brief discussion of the Catholic Peace Fellowship and "ultraresistance" figures like the Berrigan brothers, see the conclusion to Joseph Kip Kosek, *Acts of Conscience: Christian Nonviolence and Modern American Democracy* (New York: Columbia University Press, 2009). Kosek examines radical Christian nonviolence as a challenge to liberal democracy, and engages in depth with ideas about law and

Religious historians have interpreted the Catholic radical tradition in the United States as a distinctive response to the limitations of modern liberalism. Indeed, this interpretation was first advanced by contemporaries of the Catholic peace movement. In 1972, Garry Wills explained the “ultraresistance” as an expression of disillusionment with the recent liberalization efforts of both church and state, and as novel in its ambition “to criticize the political system itself (and not merely some particular decision made within it).”¹⁴ Subsequent scholarship has emphasized Catholic radicals’ skepticism of liberal fetishes like legislative reform and managerial professionalism. In historian Eugene McCarragher’s typology, if some religious reformers “looked to the state as the modern vehicle of Christian charity”—consonant with mainstream liberalism—and secular leftists identified class struggle as the mechanism of social change, Catholic radicals departed from both and remained distinctively Catholic in their focus on the church as “the incarnate spirit of social and cultural transformation.”¹⁵ Catholic historians have written extensively about Merton, in particular, as modeling a kind of Christian anti-politics; in correspondence with the peace movement, Merton described “political lines” as “largely fabrications” and urged recognition of “another dimension, a genuine reality, totally opposed to the fictions of politics.”¹⁶

The Catholic left expressed an aversion to legal liberalism, not just political liberalism more generally. In supporting this view, I focus on three representative sources for studying the Catholic left: the so-called political writings of Thomas Merton; the books by Paul Hanly Furfey aimed at a general audience; and the public writings and statements of participants in the Catholic ultraresistance around the time of their 1968 trial for raiding a draft board in Catonsville, Maryland, especially the most famous among them: the celebrity-priest Berrigan brothers (Daniel Berrigan was a Jesuit; Philip was ordained in the Josephite order, which served African American communities).¹⁷ At first glance, these sources may seem like odd

the propriety of lawbreaking; in that sense, it overlaps with my aims in this article and provides essential context on the broader political tradition that the Catholic left joined. However, Kosek’s primary focus is the Protestant tradition and in particular the Fellowship of Reconciliation, the Protestant peace organization founded in World War I and relevant into the 1960s (the Catholic Peace Fellowship was an offshoot of the Fellowship of Reconciliation). For a study that examines the Berrigans’ antiliberalism through the lens of religious studies and political theory, and examines their courtroom protests and critique of law as central to their broader critique of political liberalism, see Jason C. Bivins, *The Fracture of Good Order: Christian Antiliberalism and the Challenge to American Politics* (Chapel Hill: University of North Carolina, 2003). Bivins examines the full span of the Berrigans’ career through the late 1990s and is less focused on the specifically Catholic dimensions of their rhetoric, situating them within what he characterizes as a broader phenomenon of Christian antiliberalism.

¹⁴ Garry Wills, *Bare Ruined Choirs: Doubt, Prophecy, and Radical Religion* (1972; repr. Mahwah: Paulist Press, 2014), 143, 295; see also David J. O’Brien, *The Renewal of American Catholicism* (New York: Oxford University Press, 1972), chap. 7, for a panoramic discussion of Catholics and liberalism in the 1960s, and chap. 8, on Catholic radicalism. On Catholic conservative objections to liberalism in this same timeframe, see Patrick Allitt, *Catholic Intellectuals and Conservative Politics in America, 1950–1985* (Ithaca: Cornell University Press, 1993).

¹⁵ Eugene B. McCarragher, “The Church Irrelevant: Paul Hanly Furfey and the Fortunes of American Catholic Radicalism,” *Religion and American Culture: A Journal of Interpretation* 7, no. 2 (1997): 163–94, at 163–64, 185 (quotations). McCarragher is referring to Furfey specifically and identifies Merton as the closest heir to Furfey’s most radical writings. However, McCarragher does not specifically analyze this tradition’s imagery and rhetoric about law. For another work that characterizes the Catholic peace movement as a turn against liberalism and managerial professionalism, though again not focusing on law or legal liberalism in particular, see William A. Au, “American Catholics and the Dilemma of War 1960–1980,” *U.S. Catholic Historian* 4, no. 1 (1984): 49–79. Au usefully contrasts “Catholic liberals [who] refused to interpret Vietnam as a symptom of a radical degeneracy in American society,” and maintained faith that political dialogue could course-correct US foreign policy, with Catholic radicals who viewed the war as an indictment of the liberal state rather than something the liberal state could correct. Au, “American Catholics and the Dilemma of War 1960–1980,” 65.

¹⁶ Thomas Merton letter to James Forest, as quoted in McNeal, *Harder than War*, 125–26.

¹⁷ For a comprehensive account of the Catonsville episode, see Shawn Francis Peters, *The Catonsville Nine: A Story of Faith and Resistance in the Vietnam Era* (Oxford: Oxford University Press, 2012). See also J. Justin Gustainis, “Crime as

choices for a study of legal culture: there were any number of Catholic figures who wrote in a far more learned and methodical fashion about legal issues, including, of course, any number of Catholic lawyers and jurists. However, that very oddity is my methodological entry point; my goal is not to understand how Catholics inside or sympathetic to the legal order squared their beliefs with the law (an interesting but separate question), but rather to trace an alternative sensibility within Catholic culture through figures who regarded law from an external position of skepticism.

While not a comprehensive study of Catholic radicalism, the examples I have chosen provide a cross-section of contemplative, academic, and activist perspectives. These figures were widely admired; in the case of Merton and the Berrigans, they received media coverage in both the Catholic and non-Catholic press; and they all mentored younger participants in the peace movement, so we might assume that, to some extent, their ideas filtered into the larger scene.¹⁸ Their writings up to and including the tumultuous year 1968 lend support to an emerging scholarly conclusion that legal liberalism lost its appeal earlier, and for more and different types of people, than law professors' standard timelines often assume; and suggest questions for future research about the possible connections between leftist antiliberalism and the more familiar Catholic tradition of conservative illiberalism.¹⁹

Liberal Democracy, American Catholicism, and the Origins of the Catholic Left

After World War II, American elites proselytized a version of liberal democracy that placed law at its center and venerated lawyers and judges. Both at home and abroad, United States lawyers, policy makers, and military brass extolled what one historian has termed “a gospel of individual rights reinforced by law.”²⁰ Liberalism generally could be defined to encompass many versions of limited government with protections for individual rights, freedom of conscience, and autonomous economic markets; in the United States, jurists enjoyed pride of place in the cultural and political imagination as the primary defenders of those protections. Thus American liberalism always had a particularly legalistic cast. In the nineteenth century, lawyers and courts had been celebrated for promoting economic progress; by the mid-twentieth century, with the Warren Court's triumphant desegregation rulings,

Rhetoric: The Trial of the Catonsville Nine,” in *Popular Trials: Rhetoric, Mass Media, and the Law*, ed. Robert Hariman (Tuscaloosa: University of Alabama Press, 1990), 164–78. Notably, Gustainis uses the same language of faith as does Mulherin, “Stalking the Panthers”: “The members of the Catonsville Nine had long since ceased to place much faith in the law.” Gustainis, “Crime as Rhetoric,” 171.

¹⁸ For a summary and comparison of the views of Merton and the Berrigans and the Catholic pacifists Gordon Zahn (a student of Furfey) and James Douglass, see Au, “American Catholics and the Dilemma of War 1960–1980,” 67–73. Another methodological caveat: I based this article primarily on published writings because my aim is to trace ideas and rhetoric that circulated publicly, rather than to examine movement participants' private thoughts or intra-group deliberations. However, I acknowledge that focusing on the public image of the Catholic left will tend to deemphasize internal tensions within the movement, especially over the role of women. For a study that focuses on the movement's gender dynamics, see Mollin, “Communities of Resistance.”

¹⁹ Legal scholars have recently raised concerns about the latter tradition: see, for example, Micah Schwartzman and Jocelyn Wilson, “The Unreasonableness of Catholic Integralism,” *San Diego Law Review* 56, no. 4 (2019): 1039–68. For a discussion of religious antiliberalism more generally, see Richard Schragger and Micah Schwartzman, “Religious Antiliberalism and the First Amendment,” *Minnesota Law Review* 104, no. 3 (2020): 1341–1428. For a religious studies perspective on Christian antiliberalism, see Bivins, *The Fracture of Good Order*.

²⁰ R.W. Kostal, *Laying Down the Law: The American Legal Revolutions in Occupied Germany and Japan* (Cambridge, MA: Harvard University Press, 2019), 110; see also Kalman, *The Strange Career of Legal Liberalism*, 2 (defining legal liberalism as “trust in the potential of courts, particularly the Supreme Court, to bring about ... ‘policy change with nationwide impact,’” and as “linked to political liberalism” after the 1950s [emphases omitted]).

lawyers and courts also became central to the nation's collective narrative of racial progress.²¹

Through the early 1960s, it was possible for observers of the American scene to assume that Catholics shared in a key tenet of postwar liberalism: faith in the law as an engine of progressive social change. One historian has posited that prior to 1965, it could have been said that "Catholic adherence to the Constitution was full and complete and never wavered."²² Legal liberalism reached its zenith during the tenure of Chief Justice Earl Warren, and at least initially, Catholics generally remained within the legal-liberal fold. Acolytes of the liberal creed celebrated the judiciary for expanding and enforcing constitutional rights. The famously activist federal judge J. Skelly Wright wrote that for his generation "there was no theoretical gulf between the law and morality," and the Warren Court "was the one institution in the society that seemed to be speaking most consistently the language of idealism which we all recited in grade school."²³ Wright called himself a "bad Catholic," having drifted from the church in which he, like many a native of New Orleans, was nominally raised.²⁴ Good Catholics, though, generally shared his faith in the institutions great and small of US democracy, eager as they long had been to prove their patriotic bona fides; they did not see, and were encouraged by the bishops not to see, the two faiths as incompatible.²⁵ One Catholic lawyer interpreted the Warren Court as having taken over the function, once exercised by the medieval church, of enforcing natural law as a limit on state overreach. Under modern conditions, the judiciary rather than the church was "a proper agency to serve as our social conscience," and its civil rights decisions could be understood as applying "a natural law standard."²⁶

Assimilating legal liberalism into Catholic social teaching dovetailed with Catholic electoral support for New Deal-style political liberalism. Since the 1930s, many Catholics, particularly in working-class and immigrant communities, had voted for the party of Roosevelt.²⁷ The New Deal brain trust, which included Irish Catholics such as Thomas "Tommy the Cork" Corcoran, promoted an expanded regulatory role for the federal government to alleviate the excesses of capitalism and advance the rights of workers.²⁸ While not inherently religious, the New Deal vision of federal state-building comported with Catholic social thinking in its rejection of laissez-faire economics and emphasis upon the dignity of labor.²⁹ By the onset of the Great Depression, Monsignor John Ryan, the director of the Social Action department within the national Catholic Social Welfare Conference, had been writing for decades about the importance of minimum wage laws and social programs;

²¹ See Robert W. Gordon, *Taming the Past: Essays on Law in History and History in Law* (Cambridge: Cambridge University Press, 2017), especially chaps. 12, 13; Alexander M. Bickel, *The Supreme Court and the Idea of Progress* (New York: Harper and Row, 1970).

²² O'Brien, *The Renewal of American Catholicism*, 92.

²³ J. Skelly Wright, "Professor Bickel, The Scholarly Tradition, and the Supreme Court," *Harvard Law Review* 84, no. 4 (1971): 769–805, at 804, as quoted in David Wolitz, "Alexander Bickel and the Demise of Legal Process Jurisprudence," *Cornell Journal of Law and Public Policy* 29, no. 1 (2019): 153–209, at 206.

²⁴ W. J. Weatherby, "Judge with a Conscience," *Chicago Sun-Times*, November 27, 1960, as quoted in Michael S. Bernick, "The Unusual Odyssey of J. Skelly Wright," *Hastings Constitutional Law Quarterly* 7, no. 4 (1980): 971–99, at 984n54.

²⁵ On the Catholic 1950s, see generally Allitt, *Catholic Intellectuals and Conservative Politics*, chap. 1.

²⁶ Harry Hogan, "The Supreme Court and Natural Law," *American Bar Association Journal* 54, no 6 (1968): 570–73, at 572, 571; see also Kersch, *Conservatives and the Constitution*, 300n12.

²⁷ On Catholics and the Democratic Party, see John T. McGreevy, *Catholicism and American Freedom: A History* (New York: W. W. Norton, 2003), 147–53; on ethnic politics, see also Lizabeth Cohen, *Making a New Deal: Industrial Workers in Chicago, 1919–1939*, 2nd ed. (New York: Cambridge University Press, 2008).

²⁸ Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (New York: Vintage, 1995), 49–55.

²⁹ McGreevy, *Catholicism and American Freedom*, 150–53 (noting how Catholic labor thinking formed part of the New Deal landscape of ideas); see also Brinkley, *The End of Reform*, 203–04.

after he was called upon to advise Roosevelt about labor issues, he earned the nickname the “Right Reverend New Dealer.”³⁰

Yet upon closer examination, there were always cracks in the alliance between American Catholics and Warren Court-style legal liberalism. As John McGreevy has observed, Catholic social thought was most compatible with political liberalism on economic questions, while departing from liberal individualism on issues of sexuality and public morality.³¹ This divide generated fault lines between Catholicism and legal liberalism as well, which were apparent even before the Supreme Court addressed abortion. True, the liberal justices of the Warren Court permitted themselves to make decisions on the basis of moral intuition rather than technical legal exegesis.³² But not all Catholics interpreted the Court’s egalitarianism as just an updated form of natural law, because the justices operated from a civic rather than religious conception of morality, oriented by the telos of secular progress, not salvation.³³ As it expanded civil rights protections, the Warren Court strictly enforced the liberal norm that the public sphere should remain theologically neutral, particularly in its decisions prohibiting school prayer and regulating public funding for religious schools. By the early 1960s, a rising generation of conservative publicists, exemplified by William F. Buckley and Brent Bozell, had begun to issue recognizably Catholic complaints about the Warren Court’s jurisprudence, especially in the schools cases.³⁴

Beneath disagreement with particular Supreme Court decisions lay a deeper instability. Catholic allegiance to American law had been produced by a complex combination of political and sociological reasons, some of which were historically contingent. One reason was defensive: prominent intellectuals, well into the 1950s, were still publishing screeds doubting whether Catholicism was even minimally compatible with liberal constitutionalism.³⁵ Such accusations were a mixed bag: some parts pure nativist bigotry, some parts bigotry under a thin intellectual veneer, but also some parts plausible observations about the Church’s teachings. After all, the papal line, pre-Vatican II, was that religious freedom and other liberal cornerstones were heresies.³⁶ Throughout the history of the church,

³⁰ Jean Bethke Elshtain, “Catholic Social Thought and the Public Square,” *Journal of Law, Philosophy and Culture* 2, no. 1 (2008): 121–35, at 121; on Ryan, see McGreevy, *Catholicism and American Freedom*, 142–44, 151–53. “The genius of Ryan was his ability to merge Catholic social thought with the American current of reform.” McNeal, *Harder than War*, 5.

³¹ McGreevy, *Catholicism and American Freedom*, 154–58.

³² See Belknap, “The Warren Court and the Vietnam War,” 69–71.

³³ As the Yale legal scholar Alexander Bickel observed, the Warren Court reasoned not from strict parsing of the constitutional text but from an egalitarian orientation, confident in “the belief that progress, called history, would validate their course.” Bickel, *The Supreme Court and the Idea of Progress*, 13. By contrast, the Catholic Worker founder Peter Maurin (to give one example) did not believe in liberal notions of temporal “progress,” as Patricia McNeal writes: “His goals would be achieved at the end of time—with the second coming of Christ.” McNeal, *Harder than War*, 33.

³⁴ Kersch, *Conservatives and the Constitution*, chap. 6, surveys right-wing Catholic constitutional thought through the late twentieth century; see also Allitt, *Catholic Intellectuals and Conservative Politics*, and D. G. Hart, *American Catholic: The Politics of Faith during the Cold War* (Ithaca: Cornell University Press, 2020). Even the Jesuit theologian John Courtney Murray, though generally a proponent of liberal constitutionalism, criticized the Court’s First Amendment jurisprudence for adopting an adversarial rather than neutral stance toward religion. K. Healan Gaston, *Imagining Judeo-Christian America: Religion, Secularism, and the Redefinition of Democracy* (Chicago: University of Chicago Press, 2019), 137–38.

³⁵ See John T. McGreevy, “Thinking on One’s Own: Catholicism in the American Intellectual Imagination, 1928–1960,” *Journal of American History* 84, no. 1 (1997): 97–131.

³⁶ Pope Pius IX’s “Syllabus of Errors” listed liberty of conscience, separation of church and state, public schools, and toleration of Protestantism. Pius IX, *Syllabus Complotens Praecipuos Nostrae Aetatis Errores* [Syllabus of Errors] (December 8, 1864) (appended to the encyclical *Quanta Cura*), <https://www.vatican.va/content/pius-ix/la/documents/encyclica-quanta-cura-8-decembri-1864.html>. For a discussion, see Anna Su, “Catholic Constitutionalism from the Americanist Controversy to *Dignitatis Humanae*,” *Notre Dame Law Review* 91, no. 4 (2016): 1445–64, at 1449–50.

Catholic thinkers from a variety of perspectives have departed from the American cultural tendency to celebrate individual liberty as an inherent good. Because freedom on the Catholic view cannot be detached from the substantive ends to which it is used, some posit that Catholics simply “cannot share the liberal understanding of freedom as reduced to a set of rights, entitlements, and legal protections.”³⁷

By the 1960s, the ties binding American Catholics to defensive or performative constitutional allegiance had loosened on the planes of both crude sociology and high theology. First, after several generations of assimilation for European immigrants and the culminating presidency of John F. Kennedy, Catholics were no longer political outsiders. Second, Catholic intellectuals had made significant headway in resolving the apparent tensions between modern liberalism and Catholic theology. In particular, the Jesuit theologian John Courtney Murray had labored at length to square Catholicism with the American constitutional tradition.³⁸ The changes set in motion within the church by the Second Vatican Council (1962–1965) reinforced these dynamics. The Vatican II liturgical reforms removed some of the trappings, such as praying in Latin, that had made Catholics appear especially strange to Protestant Americans; and Murray’s efforts at squaring Catholicism and liberalism received, in certain respects, the church’s endorsement. With the promulgation of *Dignitatis humanae* (1965), the Church of Rome for the first time endorsed the individual right to religious freedom.³⁹

The religious historian Robert Orsi has written of the 1960s: “So confidently American were Catholics now that they even had the courage of public political dissent.”⁴⁰ By the years of the Vietnam war, then, it was as if Catholic leaders and theologians had just put the last pieces in place, completing a shimmering mosaic that could contain both American-style liberal democracy and devout Catholicism—only to see the glue immediately start to weaken. The overall picture never totally shattered, but nor did it remain perfectly intact for very long. Moreover, another Vatican II development—the empowerment of the laity—further disinclined Catholics from deferring to the bishops’ efforts to maintain a top-down political line.⁴¹ Across the ideological spectrum, lay intellectuals began to stake out their own political positions and to gain renown as Catholic voices, independent of the church hierarchy. Ironically, some of these newly empowered voices called for reviving antimodernist strands of Catholicism that the Second Vatican Council had sought to move beyond. Others, though, absorbed the Vatican II spirit of historical consciousness but turned the injunction to “read the signs of the times” back upon their country.

³⁷ Xavier Focroulle Ménard and Anna Su, “Liberalism, Catholic Integralism, and the Question of Religious Freedom,” *BYU Law Review* 47, no. 4 (2022), 1171–1218, at 1194. Ménard and Su are summarizing the perspective of Catholic integralism, but the general point that Catholicism often implies skepticism of individualism applies beyond integralists. On tensions between Catholicism and the American “liberal consensus,” see also Kersch, *Conservatives and the Constitution*, 327–28.

³⁸ See Kersch, *Conservatives and the Constitution*, 327–33; Su, “Catholic Constitutionalism”; Gaston, *Imagining Judeo-Christian America*, 136–37, 199–200; Hart, *American Catholic*, 38–40, 72–77.

³⁹ Mark S. Massa, *The American Catholic Revolution: How the Sixties Changed the Church Forever* (New York: Oxford University Press, 2010); Su, “Catholic Constitutionalism,” 1445–46; Hart, *American Catholic*, 85.

⁴⁰ Robert A. Orsi, “U.S. Catholics between Memory and Modernity: How Catholics Are American,” in Appleby and Cummings, *Catholics in the American Century*, 11–42, at 12.

⁴¹ Making this point with respect to the Catholic Peace Fellowship, see Moon, ““Peace on Earth—Peace in Vietnam,”” 1033–34; see also Murray Polner and Jim O’Grady, *Disarmed and Dangerous: The Radical Lives and Times of Daniel and Philip Berrigan* (New York: Basic Books, 1997), 118–19. As Patrick Allitt writes: “Hitherto a monolithic organization dominated by powerful bishops,” American Catholicism “became, in the 1960s and 1970s, contentious and fragmentary, no longer united on any religious, political, or social issue.” Allitt, *Catholic Intellectuals and Conservative Politics*, ix–x.

Figures on what became the Catholic left spoke about some moment when they lost confidence in the idea, itself worked out only through many years of agonizing by earlier generations, that it was possible simultaneously to be a loyal American and a good Catholic. For earlier generations, being Catholic was the source of the problem: they were anxious to prove to their countrymen that they were not covert Vatican operatives. For Catholic radicals in the 1960s, being American was suddenly the source of the difficulty. They did not change their religion, but only applied its standards to their country, and after Selma, after Guatemala, after Vietnam, America suddenly appeared to them “morally questionable in its most basic structures and beliefs.”⁴² In the contemporaneous assessment of Catholic historian David O’Brien, they substituted “the traditions of American democracy and liberty” for “an apocalyptic vision of America as a land of violence and oppression. A church remade in the American image, the goal of Catholic liberalism for over a century, now seemed to many the basest form of blasphemy.”⁴³ Philip Berrigan described how he underwent an “exorcism of [the] soul,” in which he rejected his earlier naïve patriotism through the study of history, informed by the spirit of Vatican II. “I have not lost confidence in my country; I have merely learned about it—this magnificent, frantic, insane nation-empire to which God has hinged so much of the future of mankind.”⁴⁴

By the late 1960s, there were enough Catholics speaking in this language that bemused journalists could anoint a seemingly new phenomenon in American life: the emergence of a “Catholic left.”⁴⁵ Francine du Plessix Gray, at the *New Yorker* magazine, developed a series profiling “those Catholics who have remained deeply dedicated to their faith while rebelling against the Church’s traditional structure and who, in the course of their rebellion, have also become some of the most militant critics and reformers of secular society.”⁴⁶ Though numerically small, this cohort received outsized media attention.⁴⁷

Radical Catholic dissent, even during wartime, was not as unprecedented as the press coverage sometimes implied. Indeed, many members of the Catholic Peace Fellowship came out of the Catholic Worker, the movement established in the 1930s by Peter Maurin and Dorothy Day, whose participants lived humbly, performed service to the poor, worked for the abolition of capitalism, and advocated Christian pacifism.⁴⁸ Day continued to insist on her pacifist stance throughout World War II, at significant cost to the movement, which became internally divided over this issue and saw its newspaper circulation plummet.⁴⁹ Day remained undaunted and continued her pacifist witness as the Cold War intensified. Beginning in 1954, she and several members of the Catholic Worker refused to take shelter during New York City’s mandatory air raid drills; by 1960 the annual protest had expanded to

⁴² O’Brien, *The Renewal of American Catholicism*, 73.

⁴³ O’Brien, 73.

⁴⁴ Philip Berrigan, *Prison Journals of a Priest Revolutionary* (New York: Holt, Rinehart and Winston, 1970), 112, 74; see also McNeal, *Harder than War*, 132–34. McNeal observes that many experienced “an identity crisis” in the 1960s as they reconsidered “the meaning of Catholicism in American society” and became vocal critics of injustice. McNeal, *Harder than War*, 134.

⁴⁵ McNeal, *Harder than War*, 173 (noting press usage of the term between 1968 and 1972).

⁴⁶ Francine du Plessix Gray, *Divine Disobedience: Profiles in Catholic Radicalism* (New York: Knopf, 1970), ix. See also Rosemary Ruether, “Monks and Marxists: A Look at the Catholic Left,” *Christianity and Crisis*, April 30, 1973, 75–79, at 75 (observing commentators’ widespread surprise at the Catholic left).

⁴⁷ See Allitt, *Catholic Intellectuals and Conservative Politics*, 127 (noting media fascination with dissident Catholics).

⁴⁸ There is an extensive literature on the Catholic Worker, but useful brief introductions include Sharon Erickson Nepstad, *Catholic Social Activism: Progressive Movements in the United States* (New York: New York University Press, 2019), 31–35, 53–55; and James J. Farrell, *The Spirit of the Sixties: The Making of Postwar Radicalism* (New York: Routledge, 1997), chap. 2. For a portrait focusing on Day’s role in developing a Catholic pacifism, see McNeal, *Harder than War*, chap. 2.

⁴⁹ McNeal, *Harder than War*, 23–24, 42–43, 47.

nearly two thousand participants.⁵⁰ More generally, Catholicism's adherents had never aligned perfectly along secular political divides; what may have appeared to outside observers as a newly radicalized strain of Catholicism had antecedents, both in the United States and globally. Many of these figures could be understood as working within a longer tradition of what one European historian has labeled "fraternal Catholic modernism."⁵¹ In contrast to "paternal" Catholics, who emphasized the hierarchical, reproductive family as the unit of modern society, "fraternal" Catholics envisioned a private sphere constituted by horizontal solidarity, made up of families, yes, but also "trade unions, youth movements, and a vibrant press."⁵²

The scale and context of 1960s Catholic radicalism were genuinely new, however. During World War II, very few American Catholics registered as conscientious objectors or otherwise resisted the war effort, and they received virtually no support from friends, family, or the institutional church; only the Catholic Worker provided organized assistance.⁵³ By contrast, a much larger and more visible contingent of Catholics mobilized against the Vietnam war.⁵⁴ Of course, in one sense this is hardly surprising because Vietnam was overall far more divisive and unpopular, but the Vatican II-era Catholic Church's institutional position had also shifted toward more skepticism of modern warfare and more support for the individual rights of conscientious objectors. There were nearly twelve thousand Catholic conscientious objectors during Vietnam, plus, of course, thousands more Catholics who joined in protests and demonstrations.⁵⁵ Those Catholics involved in radical dissent had also evolved in their methods of protest, adopting Gandhian nonviolence and a new openness to collaborating with non-Catholic organizations.⁵⁶

Some historians regard the coinage "Catholic left" as a misnomer, which it was in some ways.⁵⁷ There was never any single unified group of Catholic leftists, but rather various individuals and groups who sometimes overlapped and sometimes drifted apart. Although their positions on race and Vietnam overlapped with the political left, many of these figures (not all) adhered to their church's conservative teachings on sexuality, and generally they "were never particularly attracted to liberal thought, the New Left, or the counterculture."⁵⁸ More importantly, they were not standard leftists in search of a new future, but radicals in

⁵⁰ McNeal, *Harder than War*, 91–92; Nepstad, *Catholic Social Activism*, 53–55.

⁵¹ James Chappel, *Catholic Modern: The Challenge of Totalitarianism and the Remaking of the Church* (Cambridge, MA: Harvard University Press, 2018), 13–15.

⁵² Chappel, *Catholic Modern*, 13–15. Some observers at the time traced the lineage even farther back, to medieval monastic communities; see, for example, Ruether, "Monks and Marxists."

⁵³ McNeal, *Harder than War*, 55–58, 64–65. According to McNeal, there were 135 Catholic conscientious objectors during World War II, or .0001 percent of the church membership. McNeal, *Harder than War*, 55. On the lack of support or even hostility they encountered from priests, friends, and family, see Gordon C. Zahn, *Another Part of the War: The Camp Simon Story* (Amherst: University of Massachusetts Press, 1979), 22–26. During World War I, there were only four known Catholic conscientious objectors. Torin R. T. Finney, *Unsung Hero of the Great War: The Life and Witness of Ben Salmon* (New York: Paulist Press, 1989), 6.

⁵⁴ Zahn, *Another Part of the War*, 234; McNeal, *Harder than War*, 130, 138–39; Cajka, *Follow Your Conscience*.

⁵⁵ Finney, *Unsung Hero of the Great War*, 111. On shifts within the Church regarding war and conscientious objection, see Cajka, *Follow Your Conscience*, especially chaps. 2, 3, 6; Zahn, *Another Part of the War*, 249–50; Finney, *Unsung Hero*, 113–14; McNeal, *Harder than War*, 137–38.

⁵⁶ McNeal, *Harder than War*, xii, 92–93; for more discussion of the Catholic peace movement's approach to Gandhian nonviolence, see generally McNeal, chaps. 4, 5.

⁵⁷ See, for example, McNeal, *Harder than War*, 173 (the term "was a misnomer"). One early study (written by a participant) argued that the term should be used, but only for the two hundred individuals who participated in draft raids and similar actions. Meconis, *With Clumsy Grace*, xi. Other studies use the term more broadly to encompass Catholics who were sympathetic to peace activism, and the term *ultraresistance* to distinguish the smaller group that engaged in civil disobedience. I adopt the latter terminology.

⁵⁸ McNeal, *Harder than War*, 171.

the etymological sense: they sought a revival of the early church, “a return to roots.”⁵⁹ They borrowed some ideas from Marxism but rejected its materialism, and most did not sympathize with communist regimes, even if they also rejected the militant anticommunism of both the US government and the Catholic hierarchy.⁶⁰ But the term is useful for distinguishing this cohort from liberals (whether Catholic or secular), and even from left-liberals. For although they spoke often of democracy, they recoiled at the philosophical pragmatism that permeated conventional defenses of twentieth-century liberal democracy. As the feminist theologian Rosemary Ruether has observed, religion gave them what midcentury liberalism could not provide: “clear distinctions between good and evil.”⁶¹ Philip Berrigan was occasionally self-aware on this score, observing “the two-edged absolutism of Catholic discipline; it produces, admittedly, many human casualties” but also “the training ground for saints and heroes.”⁶²

Rather than ideologically along the left-right spectrum, it may be more illuminating to align this cohort’s politics temporally—that is, in terms of how they understood themselves, the nation, and the church to be situated in historical time. First, many were (or became) deeply disturbed by American conduct in World War II; they did not share in the mythology of the good war. Thomas Merton wrote to the mayor of Hiroshima that he prayed every day for the victims; Paul Hanly Furfey equated the atomic bombardiers with the *Einsatzgruppen*; Philip Berrigan, who had fought in the war as a draftee, later renounced his youthful conformity and labeled the bombings war crimes.⁶³ If Catholic peace activists found any salutary lesson in the wartime years, it was the judgment at Nuremberg, whose precedent they hoped, quixotically, might be used to indict Lyndon Johnson.⁶⁴ The Catholic Church, of course, was not doctrinally pacifist, adhering to the tenets of just war theory developed by Augustine, Thomas Aquinas, and their followers; but some Catholics now called themselves “nuclear pacifists,” having concluded that the use of such indiscriminately destructive weapons could never satisfy the requirements of justice.⁶⁵ By 1962, Merton was among those prominent Catholics who reasoned that no possible scenario could justify a nuclear strike: “As St. Augustine would say, the weapon with which we would attempt to destroy the enemy would pass through our own heart to reach him.”⁶⁶

Second, they understood themselves as living in a moment of *kairos*: an unprecedented and critical moment for the church, for the United States, and for mankind. In short order,

⁵⁹ Gray, *Divine Disobedience*, x. As McNeal notes, they “used the term radical, but in a religious sense in terms of living ‘the radical Gospel message.’” *Harder than War*, 171.

⁶⁰ On the radical Catholic trope that both capitalism and communism were materialistic and dehumanizing, see Au, “American Catholics and the Dilemma of War 1960–1980,” 54–55, 67–69; McNeal, *Harder than War*, 174.

⁶¹ Ruether, “Monks and Marxists,” 75.

⁶² P. Berrigan, *Prison Journals*, xxii.

⁶³ “To the Hon. Shinzo Hamai, Mayor of Hiroshima,” in Merton, *Seeds of Destruction*, 295–97, 297; Furfey, *The Respectable Murderers*, 122–24; P. Berrigan, *Prison Journals*, 73–74. Gordon Zahn cited, with approval, another writer’s comparison of Hiroshima to Auschwitz, linked by “the horrendous capacity for justifying the mass destruction of living human beings.” Zahn, *Another Part of the War*, 257. See also James J. Farrell, “Thomas Merton and the Religion of the Bomb,” *Religion and American Culture* 5, no. 1 (1995): 77–98, at 82–83; Ronald E. Powaski, “Thomas Merton and Hiroshima,” *America*, October 22, 1988, 277–79; on Catholic Worker reactions, see Farrell, *The Spirit of the Sixties*, 37–38. For a broader canvas of Catholic reactions to Hiroshima, see McNeal, *Harder than War*, 67–70.

⁶⁴ For invocations of Nuremberg, see, for example, Peters, *The Catonsville Nine*, 46–47, 56; Polner and O’Grady, *Disarmed and Dangerous*, 237, 346. One of the Catonsville Nine cited Nuremberg as “the finest precedent this country ever set,” as quoted in Peters, *The Catonsville Nine*, 56.

⁶⁵ McNeal, *Harder than War*, 69–70, 107–14; Zahn, *Another Part of the War*, 250–51; for an example, see Penelope Green, “Ardeth Platte, 84, Nun Who Was Jailed for Her Antinuclear Activities, Dies,” *New York Times*, October 11, 2020, A31. For an overview on nuclear weapons and just war theory, see Nepstad, *Catholic Social Activism*, chap. 2.

⁶⁶ Thomas Merton, “Christian Ethics and Nuclear War” (*Catholic Worker*, March 1962), in *Passion for Peace*, 56–64, 61.

either the world was going to save itself or blow itself up. The civil rights movement was an early sign; circa 1963, Merton frequently invoked *kairos* when discussing the Black freedom struggle,⁶⁷ and posited that the movement had opened up “a moment of unparalleled seriousness in American history, indeed in the history of the world.”⁶⁸ At stake was salvation: Western civilization must arrive at “some providential reorganization” or “plunge to its own ruin.”⁶⁹ The nuclear arms race was another portent; so, too, as it dragged on, the war in Vietnam. Indeed, these were not discrete conflicts but intertwined evils. This image of humanity at a salvific crossroads, with every domestic and foreign event pointing toward the same decisive turning point in human history, recurred throughout Catholic writings in the 1960s.⁷⁰ Daniel Berrigan decried “hell’s spiderworks spun across the world, anchored in every place of power.”⁷¹ Contrary to postwar Washington fantasies of global dominance, Berrigan warned that the US government and other powerful agents had set in motion developments they would not be able ultimately to control: “you cannot dam up history and its forces indefinitely.”⁷²

To be sure, there was nothing distinctively Catholic about recognizing the 1960s as a fateful historical moment. What was distinctively Christian, however, was to interpret political instability through the lenses of eschatology and soteriology; and what was distinctively Catholic was to do all that, plus to emphasize Vatican II as part of the mix. Rather than the triumph of the proletariat or the sovereignty of the third world, the telos in the Catholic interpretation was the final victory of Christ. For Merton, as for other Christian thinkers, the history of mankind was coextensive with the history of Christianity, because God, through Christ, had become man. Christ, in Merton’s oft-repeated formulation, was the “Lord of History,” and man would be saved “in and through history, through temporal decisions made for love of Christ.”⁷³ Thus, for example, Merton described the civil rights movement of the 1960s as a movement not only toward freedom in this world (for Black

⁶⁷ “The white man, if he can possibly open the ears of his heart and listen intently enough to hear what the Negro is now hearing, can recognize that he is himself called to freedom and to salvation in the same *kairos* of events which he is now, in so many different ways, opposing or resisting.” Merton, *Seeds of Destruction*, 84; see also, 10, 65 (referring to “this most critical moment in American history ... the *kairos* not merely of the Negro, but of the white man”); 74, 83, 97; 85 (on “the Lord of History”).

⁶⁸ Merton, *Seeds of Destruction*, 28. As O’Brien wrote: “The Negro revolution in particular seemed to Merton to be God’s judgment on America. The standard liberal responses to black protest were inadequate, he believed, because they ... ignor[ed] the roots of the racist dilemma, which lay in the depths of each man’s soul.” O’Brien, *Renewal of American Catholicism*, 221.

⁶⁹ Merton, *Seeds of Destruction*, 11; see also “the hour of freedom” was also “an hour of salvation,” 84. Cf. Ruether, “Monks and Marxists,” 77, observing that “the weakness and the power of this kind of Christian radicalism lie in its momentary fusion of finite with final judgment.” For an illuminating commentary on history, salvation, and peace in Merton’s writings, see David Steindl-Rast, “The Peacemaker: Merton’s Critique and Model,” *Merton Seasonal*, 1978, <http://merton.org/ITMS/Annual/1/Steindl-Rast117–128.pdf>.

⁷⁰ See, for example, Thomas Merton, *Faith and Violence: Christian Teaching and Christian Practice* (Notre Dame: University of Notre Dame Press, 1968), 48 (“we have crossed a mysterious limit set by Providence and have entered a new era”); P. Berrigan, *Prison Journals*, 87 (“The United States faces today a crisis of staggering proportions”).

⁷¹ Daniel Berrigan, *The Dark Night of Resistance* (Garden City: Doubleday, 1971), 5.

⁷² D. Berrigan, *Dark Night of Resistance*, 16.

⁷³ Merton, *Seeds of Destruction*, 10. For an extended discussion of this theme, see Patricia F. McNeal, “The American Catholic Peace Movement, 1928–1972” (New York: Arno Press, 1978), 155–56. McNeal explains that for Merton, revolution could not be fully achieved until the Second Coming, but “can be realized in human history to the extent that individuals are willing to let Jesus Christ and His Spirit work through them.” McNeal, “American Catholic Peace Movement,” 156. Daniel Berrigan similarly became interested in “salvation-history theology.” McNeal, *Harder than War*, 183–84. On the parallel preoccupation with historical time among Catholic conservatives, see Allitt, *Catholics Intellectuals and Conservative Politics*, 218.

Americans), but also toward life in the world to come (for everyone): the movement was, at once, a calling “to freedom and to salvation in the same *kairos* of events.”⁷⁴

On this understanding, the revolution needed to end the war, racism, poverty, and all the rest was evangelical, in that word’s ancient definition; people must convert their hearts toward Christ. This conflation of political revolution with Christian renewal gave the Catholic left its distinctive niche on the Cold War political scene. Like many in the 1960s (including a number of Catholic conservatives), the Catholic left believed a global revolution was imminent. In a representative quotation, Phil Berrigan asserted that revolutionary change was inevitable because US policy was intolerable; the question was whether it would come through “escalating urban terror and Southeast Asian war” or “nonviolently because we have the humaneness to do what is right.”⁷⁵ Like some in the 1960s (emphatically not including the conservatives), the Catholic left also welcomed that revolution. Berrigan further insisted that “a man cannot be a Christian without being a revolutionary,” even if he allowed that some actually existing historical revolutions “may be unchristian” in their methods.⁷⁶ But unlike most twentieth-century revolutionaries, the Catholic left were neither materialists nor idealists—if by ideals are meant only ideals about how people might live in harmony on earth. Berrigan was clear that what he meant by revolution was a “spiritual revolution,” “a revolution of the person.”⁷⁷ If enough people followed Christ’s injunction “to affirm life, to insist on its dignity and sacredness, and to oppose its abuse and destruction”—and then, one might add, also followed Berrigan’s example to let Christianity dictate their politics—the result would necessarily be political upheaval “capable of changing even American institutions.”⁷⁸ “Even,” in this sentence, was a small but telling word: American institutions were posited as essentially unmovable, unless by Christianity.

With their distinctive understanding of revolution, the Catholic left also arrived at a distinctive account of how law figured into revolutionary politics. In the classical Marxist account, law was a veil for power relations, and under capitalism law was therefore a tool of capital; in modern legalistic societies, this view generated the perennially vexing problem of whether or how left-sympathizing lawyers could play any meaningful role in class struggle.⁷⁹ From a Catholic perspective this problem need not arise in the same acute and insoluble way. The Catholic left were as disdainful as doctrinaire Marxists of actually existing legal institutions in the modern United States, but they did not theorize law as essentially subordinate to capital or any other illegitimate power. Philip Berrigan issued this message to lawyers and judges: “Let them understand that the law they represent has fallen into disrepute, not because people are especially irresponsible and lawless, but because the law has become a field manual for naked power and a club against the poor.”⁸⁰ In other

⁷⁴ Merton, *Seeds of Destruction*, 84.

⁷⁵ Philip Berrigan, “U.S. Policy and Revolution,” *Catholic Peace Fellowship Bulletin*, April 1968, 4–6, at 6. It is a measure of how seamlessly this language of revolution could blend with standard Christian tropes that this language was not exclusive to the lawbreaking ultraresistance; similar language was also used by establishment left-liberal Catholics. In 1969, law school dean Father Robert Drinan gave a homily, “The Peaceful Revolution,” at an outdoor mass (“Mass for Peace”) at Boston College (the homily was subsequently reprinted in the *Catholic Peace Fellowship Bulletin*, June 1970). In contrast, many Catholic conservatives in the same years described revolutionary politics as demonic or heretical. For examples in this vein, see Allitt, *Catholic Intellectuals and Conservative Politics*, chap. 2.

⁷⁶ P. Berrigan, *Prison Journals*, 78.

⁷⁷ P. Berrigan, *Prison Journals*, 80, 145.

⁷⁸ P. Berrigan, *Prison Journals*, 145–46.

⁷⁹ For new work that promises to illuminate how radical lawyers grappled with such questions, see Luca Falciola, *Up against the Law: Radical Lawyers and Social Movements, 1960s–1970s* (Chapel Hill: University of North Carolina Press, 2022).

⁸⁰ P. Berrigan, *Prison Journals*, 105.

words, “the law *they represent*,”⁸¹ that is, actually existing law circa 1968, was close to what the Marxists said it was; but “the law” did not have to be that way. “The law” in its truer and more humane potential meaning, as Berrigan put it, “responds to principle before power, to human need before vested interest, to morality before pragmatism.”⁸² “Like other Americans,” he continued, referencing the parable in which the wedding feast symbolizes Heaven, “our own lawyers will receive invitations to the banquet. It will be to their credit to accept them, and to be the first of their profession to put on a wedding garment.”⁸³

“Your Liberalism Is Likely to Go out the Window”: The Example of Thomas Merton

According to one participant-historian, “every Catholic peace activist of the sixties read [Thomas] Merton’s writings on peace either before or after their involvement.”⁸⁴ Merton mentored several leaders of what became the Catholic Peace Fellowship and was widely admired beyond that group. As a “nuclear pacifist” and one of the first prominent Catholic figures to denounce the war in Vietnam, he had an enormous influence upon the Catholic left, both in shaping their political views and in bolstering their confidence that a Christian believer could hold such views.⁸⁵ As one reader observed, the Kentucky monk’s attempts at formal theology could be “unsystematic and at times confusing,” but his moral example was coherent and powerful. “When we read what Merton had to say about the Vietnam war today, much of it may sound hackneyed”—this could be written already in 1974—“but this is so only because a large and vociferous group of American intellectuals eventually came to adopt a position which he was among the first to take.”⁸⁶ Consider the example of one would-be conscientious objector to the draft, who listed his sources of guidance as follows: “Gandhi, Thomas Merton, the example of Thoreau and the Civil Rights Movement.”⁸⁷ On this list, Merton was the only Catholic role model. He made it possible, for those so inclined, to integrate antiwar views with their religious identity, rather than feeling they needed to discard one or the other.⁸⁸

Merton’s political commentary had impact precisely because his earlier persona was totally apolitical. His bestselling 1948 autobiography, *The Seven Storey Mountain*, established his renown as a countercultural mystic who had journeyed from dissolute youth to Christian

⁸¹ P. Berrigan, *Prison Journals*, 104 (my emphasis).

⁸² P. Berrigan, *Prison Journals*, 105; see also 103 (“We, too, believe in the law” but not “in those who manipulate it to favor warmaking, white skin, wealth, and privilege against the poor.”).

⁸³ P. Berrigan, *Prison Journals*, 105–06; see Matthew 22.

⁸⁴ McNeal, “The American Catholic Peace Movement,” 161.

⁸⁵ On the 1964 peace retreat that Merton hosted and on his broader influence, see Polner and O’Grady, *Disarmed and Dangerous*, 107–08, 109; McInerney, “Thomas Merton and the Awakening of Social Consciousness,” 46–47; McNeal, *Harder than War*, chap. 5; Meconis, *With Clumsy Grace*, 7–10. One historian identifies Merton as the “most influential individual writer” for the Catholic left. Mollin, “Communities of Resistance,” 33. The Catholic Peace Fellowship named its New York storefront Merton House in recognition of “a dear friend to many of us and mentor to all ... and One from New York,” *Catholic Peace Fellowship Bulletin*, April 1969, 4.

⁸⁶ McInerney, “Thomas Merton and the Awakening of Social Consciousness,” 46. Compare McNeal, *Harder than War*, 107–09. McNeal agrees that Merton was not a “systematic theologian” (describing his writing as “more literary”), but gives him more credit for pointing the way toward nuclear pacifism by relating theological positions to nuclear war. See also McNeal, “The American Catholic Peace Movement,” 131–32.

⁸⁷ “Saying No: Letters from the CPF [Catholic Peace Fellowship] Files,” *Catholic Peace Fellowship Bulletin*, June 1968, 5–11, 8.

⁸⁸ “Merton added very little in his writings to the traditional concept of Gandhian non-violence. What he did do was show the compatibility of these means with the Catholic faith.” McNeal, “The American Catholic Peace Movement,” 147.

conversion.⁸⁹ Merton had entered the Abbey of Gethsemani near Louisville, Kentucky, in 1941, and was ordained in 1949. Thereafter he rarely left Kentucky, but visitors came to him, and he exchanged thousands of letters with correspondents around the world. He never stopped publishing spiritual meditations, but by 1962 he was also publishing explicitly political commentary. Despite his monastic vows—or rather, in fidelity to his monastic vows as he now understood them—Merton began to comment more directly about worldly problems.⁹⁰ From the early 1960s until his untimely death in 1968, he published challenging essays about racism, war, and nuclear weapons.⁹¹

Merton is often remembered as an early critic of the Vietnam war, but the extent to which his political writings also touched upon legal issues is less widely appreciated. Of course, Merton did not publish anything recognizable as conventional legal doctrinal analysis. His style was delphic, and in any event, monastic life afforded him little access to the flow of information required to write conventional legal commentary, particularly during the years when he retreated further into a solitary hermitage on the monastery grounds.⁹² Merton does not appear to have studied secular legal scholarship; in the surviving lists of books that he read, legal themes appear through law-adjacent theologians like John Courtney Murray; a German journalist's detailed report on the 1963 Auschwitz trial; and the fiction of Kafka and Faulkner.⁹³ Still, Merton felt compelled to engage with the conditions of life in a modern, bureaucratic society and thus could not avoid addressing the centrality of law to such a society. Rather than dissecting the content of particular legal rules, he often referred to "law" generically, as an internally homogenous category of human activity. In his prolific writings in the 1960s, he was constantly deriding "legal" thinking, "systems," and "policy makers." Peace, in Merton's estimation, depended not upon any particular arrangement of legal rules, but upon renewed commitment to the human person and the common good.⁹⁴

The scattered mentions of "law" in Merton's political writings merit analysis, then, not because they participated in the legal profession's internal jurisprudential debates, which they did not, but rather because they hinted at a more general critique of the legal culture that could produce such debates. What might Merton's admiring readers have gleaned from

⁸⁹ See James Terence Fisher, *The Catholic Counterculture in America, 1933–1962* (Chapel Hill: University of North Carolina Press, 1989), 210–18.

⁹⁰ On Merton's conception of monasticism, see Patrick O'Connell, "'What I Wear Is Pants': Monasticism as 'Lay' Spirituality in Merton's Later Life and Work," *Merton Annual* 10 (1997): 35–58. For Merton, the monk "loves the world yet stands apart from it with a critical objectivity," Thomas Merton, *Contemplation in a World of Action* (Garden City: Doubleday, 1971), 227, quoted in O'Connell, "What I Wear Is Pants," 45. See also McInerney, "Thomas Merton and the Awakening of Social Consciousness," 51; O'Brien, *Renewal of American Catholicism*, 221.

⁹¹ Scholars have posited different ways of periodizing the shift. One divides Merton's career into "the other-worldly phase," through the mid-1950s, and "the this-worldly phase," from the mid-1950s through his death in 1968. McInerney, "Thomas Merton and the Awakening of Social Consciousness," 39. As McNeal summarizes, Merton himself identified three phases ("ascetic" from 1938–1949, "transition" from 1949–1959, and then the shift to social issues occurring in 1959). McNeal, *Harder than War*, 106–07.

⁹² Exemplifying Merton's unconventional approach to legal commentary, he wrote a poem about the 1896 segregation case *Plessy v. Ferguson*. See Kaitlin Campbell, "Thomas Merton's Last Anti-Poem," *Commonweal*, December 11, 2014, <https://www.commonwealmagazine.org/thomas-mertons-last-anti-poem>.

⁹³ Thomas Merton Center, "Thomas Merton's Marginalia," <http://merton.org/Research/Marginalia/> (last visited August 11, 2022).

⁹⁴ See, for example, Thomas Merton, "Christian Action in World Crisis," June 1962, in *Passion for Peace*, 80–91, at 82 (writing critically of "policy makers"); Thomas Merton, *Raids on the Unspeakable* (New York: New Directions, 1966), 45 (noting that Adolf Eichmann had "a profound respect for system, for law and order"), 156 (praising the poet's "fidelity to life rather than to artificial systems"), 181 (describing the world as "cluttered" with "consequential digits referring to business, law, government and war," contrasted with his drawings which "are not legal marks" and thus have "a Christian character").

his oeuvre? Among many other things, a side-eyed wariness toward courts, legislatures, and their enthusiasts. Merton counted jurisprudence as just another of the many technical discourses that had overly mesmerized twentieth-century man, who now found himself adrift in “a pea-soup fog of exhausting and half comprehended technicalities about law, economics, politics, weaponry, technology etc.” He praised the papal encyclical *Pacem in Terris* (1963) precisely because it “did not offer a series of casuistic solutions to complex and detailed questions,” but rather reminded believers of “fundamental ideas.”⁹⁵ This sensibility comported with his theological aim, as Patricia McNeal describes: not to develop rules for the state, as just war theorists did, but rather to guide “individual Christians” in their responses to the state.⁹⁶

On the topic of race, Merton was most specific in his critique of law and thus most at odds with elite liberal discourse. Referring in 1964 to the Civil Rights Act, recently signed to great fanfare, Merton cautioned: “it is one thing to have a law on the books and another to get the law enforced when in practice not only the citizenry and ‘Citizens’ Councils’ but the police, the state governments and the courts themselves are often in league against the Federal government.” Merton wondered whether the new civil rights protections might “remain a dead letter in the South” and “aggravate pressures and animosities in the North, where such rights are still guaranteed in theory more than in practice.”⁹⁷

To some extent, Merton’s observations about the limitations of formal legal equality were unremarkable, even if he embedded them within a distinctively Catholic framing. His terminology echoed, perhaps unwittingly or through indirect cultural transmission, the familiar distinction in legal scholarship between “law on the books” and “law in action.”⁹⁸ Actually he had articulated a version of his intuitions about law’s limitations even as a young man, just before he entered the monastery, writing in 1941:

If you make laws to provide the nation with old age pensions and the nation is populated by people who beat up their grandmothers, your old age pension law doesn’t mean much.

If you make a law (and this time nobody is being funny) providing the unemployed with unemployment insurance, and then refuse to employ certain classes, or types, or races of people in any decent job, your law is never going to eliminate unemployment.⁹⁹

In his 1960s writings, Merton blended this kind of observation with another familiar distinction: the difference between legal equality and economic opportunity. Antidiscrimination protections, however well enforced, could not compensate for a lack of jobs or inadequate housing, and to achieve meaningful equality, black Americans would need to

⁹⁵ Merton, *Seeds of Destruction*, 101.

⁹⁶ McNeal, *Harder than War*, 119–20. “[T]he problem for Merton was not how to change the state, but how to change individuals into peacemakers in America.” McNeal, *Harder than War*, 124.

⁹⁷ Merton, *Seeds of Destruction*, 3–4. For a discussion of this passage and the essay’s reception, see Raboteau, *American Prophets*, 126–30. Merton revisited the essay after the 1967 riots, which he noted, had caused some readers who had initially thought him “too pessimistic” to revise their assessments. Merton, *Faith and Violence*, 165. Merton now concluded: “The non-violent struggle for integration was won on the law books—and was lost in fact.” Merton, *Faith and Violence*, 121.

⁹⁸ See, for example, Merton, *Seeds of Destruction*, 20–21 (“we are making laws simply because they look nice on the books”).

⁹⁹ Thomas Merton to Catherine de Hueck Doherty, October 6, 1941, in *The Hidden Ground of Love: The Letters of Thomas Merton on Religious Experience and Social Concerns*, ed. William H. Shannon (New York: Farrar, Straus and Giroux, 1985), 4–5.

acquire “some form of power.”¹⁰⁰ Taken out of context, such observations could, with little alteration, have been spoken by any number of civil rights activists at the time or, for that matter, by President Johnson.

At times, however, Merton’s critique of legislative reform went beyond the standard observations about the need for meaningful enforcement and economic power. He occasionally implied that he viewed legislative reform not just as insufficient, but as affirmatively bad: a cruel trick that liberals were playing on the nation to forestall real change. He articulated this argument at greatest length in “Letters to a White Liberal,” a scathing essay in the 1964 collection *Seeds of Destruction*.¹⁰¹ The essay resists summarizing, and merits reading in full; although many of its observations restate conventional critiques of postwar hypocrisy, the essay derives unique force from its soteriological vision and the dark poetry of its imagery. As relates specifically to law, however, “Letters to a White Liberal” is most notable for its warning against self-congratulation about legislative reform and the judicial enforcement of rights.¹⁰²

To read such an essay in 1964 would have presented a sharp contrast from the political and legal establishment, which was still engaged in a fair amount of celebration of recent jurisprudential progress on civil rights. Of course, there were academic critics of the Warren Court, but the standard scholarly complaint was that the justices were behaving in an insufficiently legalistic fashion. They had allowed their moral intuitions to dictate their decision-making. Merton’s criticism came from the other direction: that for all of their constitutional and legislative creativity, liberal elites were still not confronting the true moral stakes of the moment. They continued to valorize law and legal institutions, shrinking away from the *kairos*, the possibility for deeper change that the confrontation with racial injustice presented. Rather than credit white liberals for their good intentions, Merton suspected that they were writing legislation that was designed to be evaded: “If you are knowingly responsible for laws that will be systematically violated, then you are partly to blame for the disorders and the confusion resulting from civil disobedience and even revolution.”¹⁰³

“Letters to a White Liberal” also takes head-on the conventional wisdom in praise of the federal courts as guarantors of racial equality. Merton preemptively responds to an imagined reader who might object to his pessimism by citing “the Supreme Court decisions that have upheld Negro rights,” such as *Brown v. Board*. Instead of celebrating the courts as venues for pursuing justice, Merton emphasizes the burdens of the judicial process: “In effect, we are not really giving the Negro a right to live where he likes, eat where he likes, go to school where he likes or work where he likes, but only to sue the white man who refuses to let him do these things. If every time I want an ice cream soda I have to sue the owner of the drugstore, I think I will probably keep going to the same old places in my ghetto.”¹⁰⁴

Ultimately liberalism, for Merton, was not a catalyst of racial progress; it was another relic of Cold War society that would be dismantled in a true (Christian) revolution. “Letters to a White Liberal” floats a dark possibility: Southern conservatives, however “sinister,” were at least acknowledging “the revolutionary nature of the situation.” Liberals were

¹⁰⁰ Merton, *Seeds of Destruction*, 4–5.

¹⁰¹ The essay was first drafted in 1963 and updated with a new introductory note for the 1964 volume.

¹⁰² As one contemporary scholar wrote: “it is a tribute to Merton’s perceptiveness as an amateur sociologist that he, who was living in a secluded monastery, seemed often to be ahead of the professionals in the accuracy of his assessment of not only the situation of blacks in America, but sociological realities in general.” McNerny, “Thomas Merton and the Awakening of Social Consciousness,” 45.

¹⁰³ Merton, *Seeds of Destruction*, 20.

¹⁰⁴ Merton, *Seeds of Destruction*, 19–20 (emphasis in original). In 1967 Merton reiterated that “the laws are not enforced and the Negro is often denied his obvious rights.” Merton, *Faith and Violence*, 173.

deluding themselves “that somehow the Negroes (both north and south) will gradually and quietly ‘fit in’ to white society exactly as it is.”¹⁰⁵ Instead, Merton urges his imagined interlocutor to accept the “revolutionary sting,” to make peace with the looming obsolescence of received ideals. He predicts an “upheaval” that would “sweep away not only the old style political machines, the quaint relics of a more sanguine era, but also a great deal of the managerial sophistication of our own time. And your liberalism is likely to go out the window along with a number of other entities that have their existence chiefly on paper and in the head.”¹⁰⁶

Outside of the civil rights context, Merton commented only obliquely on legal developments, but his writing deflated tendencies in American political culture that equally prevailed among lawyers: a pragmatist philosophical bent; a hard-nosed insistence that simple compassion was eccentric and childish; an obsession with debating elaborately constructed but extremely unlikely hypothetical cases. These tendencies Merton rejected as rotten fruit of a “secularist, irreligious pragmatic spirit” that had “undermined the whole moral structure of the West.”¹⁰⁷ Contrary to political tropes contrasting the godless Soviets with the Christian West, Merton classified Western countries as essentially atheist too, in thrall to “neo-paganism with a Christian veneer.”¹⁰⁸ Civic discourse might retain some “vestiges of Christian morality, a few formulas and clichés,” but when it came to policy choices, “[t]he Christian ethic of love tends to be discredited as phony,” the pacifist dismissed as “a pathetic idiot.”¹⁰⁹

To illustrate the funhouse-mirror effect by which absurd positions became defined as realistic, and the peace movement denigrated as naïve, Merton wrote about a great hubbub in the Catholic press regarding the question of whether, come the bomb, a family would be justified in using force to keep interlopers out of their backyard fallout shelter. This hypothetical was seriously debated with all the tenets of moral philosophy applied to the possible factual scenarios. Merton observed that the conclusions people had developed might follow from their premises, but the premises were outrageous. These included the following:

First of all that a shallow backyard shelter itself makes any sense. ... That it is really worth the trouble having such a shelter, and that it is even so important to get into it that one can go to the lengths of killing another person in order to keep him out. This whole mentality is deeply disturbing. It seems to me to be equivalent to saying that if the only food left in the world were a single hamburger, it would be worth a fight to the death to get hold of it. A fallout shelter might be of some value in Colombia or Peru—or perhaps in Australia. In the event of an all-out atomic attack on the U.S. such a shelter recommends itself only to someone who wants to die in a small hole.¹¹⁰

Additional examples of Merton’s aversion to American legal culture could be multiplied. He questioned the veneration of individual rights, which risked tipping over into “a ‘me first’

¹⁰⁵ Merton, *Seeds of Destruction*, 28–29.

¹⁰⁶ Merton, 34, 37.

¹⁰⁷ Thomas Merton, “Red or Dead: The Anatomy of a Cliche” (*Fellowship*, March 1962), in *Passion for Peace*, 48–52, at 50–51 (quotation at 51).

¹⁰⁸ Thomas Merton, “Religion and the Bomb” (*Jubilee*, May 1962), in *Passion for Peace*, 65–79, at 68.

¹⁰⁹ Thomas Merton, “Nuclear War and Christian Responsibility” (*Commonweal*, February 9, 1962), in *Passion for Peace*, 37–47, at 40; Merton, “Religion and the Bomb,” 74.

¹¹⁰ Thomas Merton, “The Shelter Ethic” (*Catholic Worker*, November 1961), in *Passion for Peace*, 20–26, at 22; for a discussion of this exchange (and Dorothy Day’s position), see McNeal, *Harder than War*, 115–16.

attitude.”¹¹¹ He defined violence to include not only interpersonal aggression but also the “social structure which is outwardly ordered and respectable, and inwardly ridden by psychopathic obsessions and delusions.”¹¹² Clearly, Merton’s definition contravened conservative law-and-order rhetoric, but it was equally antagonistic to an emerging left-liberal approach to governance which defined violence narrowly in terms of physical harm to third parties. Under this form of cosmopolitan liberalism, ascendant in many cities in the late 1960s, local leaders increasingly tolerated vice and sexual diversity while promising “tougher policing” against street crime.¹¹³ In contrast to both conservative and liberal visions of law as the remedy to violence, law could not so easily restrain violence as Merton defined it, because law was often the author of that violence. For Merton, “[v]iolence today is *white-collar violence, the systematically organized bureaucratic and technological destruction of man.*”¹¹⁴

Merton’s writings, then, even when not directly about legal issues, could easily prime readers for an aversion to the lawyerly pragmatic ethos and the American fixation with individual rights. For Catholic readers, Merton’s rhetoric would have echoed other Catholic sources, including conservative writers who equally lambasted the political establishment as overly pragmatic. Yet Merton modeled a way to turn those tendencies of Catholic political thought against Jim Crow, nuclear weapons, and the Vietnam war.

“We Need a Theology of Disobedience”: The Teaching of Paul Hanly Furfey

If Merton’s example offered general moral encouragement, the sociologist-priest Paul Hanly Furfey’s writings gave more specific direction about when to disobey the law. Though less widely known, Furfey was also an influence upon the Catholic peace movement.¹¹⁵ In the 1930s, he was among the first academics to take Catholic social teaching toward relatively radical political conclusions, and he mentored the Catholic pacifist Gordon Zahn, who studied under him at Catholic University.¹¹⁶ In the 1960s, Furfey became a founding member and financial supporter of the Catholic Peace Fellowship.¹¹⁷ In turn, that organization’s newsletter commended to its readers Furfey’s 1966 book, *The Respectable Murderers*, and Catholic Peace Fellowship leader Jim Forest also expressed great interest in his 1969 follow-up, *The Morality Gap*.¹¹⁸ By the early 1970s, Furfey described himself as having become

¹¹¹ Merton, “The Shelter Ethic,” 25.

¹¹² Merton, *Faith and Violence*, 3.

¹¹³ Christopher Lowen Agee, *The Streets of San Francisco: Policing and the Creation of a Cosmopolitan Liberal Politics* (Chicago: University of Chicago Press, 2014), 248, 14.

¹¹⁴ Merton, *Faith and Violence*, 6 (emphasis Merton’s); see also 8 (observing “supposedly peaceful laws” that are “in fact instruments of violence and oppression”). For a discussion of this passage in the context of Merton’s pacifism, see McNeal, *Harder than War*, 115.

¹¹⁵ Furfey’s biographer posits that he “would have recognized strains of his own contributions to the peace movement in both [Daniel] Berrigan and Merton.” Nicholas K. Rademacher, *Paul Hanly Furfey: Priest, Scientist, Social Reformer* (New York: Fordham University Press, 2017), 222.

¹¹⁶ Benjamin T. Peters, “A Completely Fresh Reappraisal of War’: Americanism, Radicalism, and the Catholic Pacifism of Gordon Zahn,” *American Catholic Studies* 128, no. 4 (2017): 1–27, at 3–5; Gordon C. Zahn, “Tribute to a Mentor: Paul Hanly Furfey (1896–1992),” *New Oxford Review* 59, no. 7 (1992): 8–10. Zahn, in turn, observed that many priests “traced their awakening” on social justice to reading Furfey’s earlier work. For a comprehensive biography, see Rademacher, *Paul Hanly Furfey*; see also McCarragher, “The Church Irrelevant.”

¹¹⁷ Rademacher, *Paul Hanly Furfey*, 218–22, 233; James H. Forest to Rt. Rev. Msgr. Paul H. Furfey, March 28, 1968, Catholic Peace Fellowship Records, box 19, folder 4, University of Notre Dame Archives (praising Furfey as the Catholic Peace Fellowship’s “most generous member”).

¹¹⁸ Review of *The Respectable Murderers: Social Evil and Christian Conscience*, *Catholic Peace Fellowship Bulletin*, December 1967, 8 (recommending *The Respectable Murderers* as “brilliant and compelling”); Forest to Furfey, March 28, 1968 (“looking forward to seeing *The Morality Gap*”).

further radicalized and in his final published works, began to endorse liberation theology. However, my analysis below focuses not on those later works but on the texts that would have been available to peace activists circa 1968.¹¹⁹

Throughout his career, Furfey sought to harmonize social science with moral theology. Raised in Irish Catholic Boston, he was ordained in 1922 and completed graduate studies in psychology and social work at Catholic University, where he joined the faculty in 1926.¹²⁰ He began his career publishing conventional, if Catholic-inflected, studies on childhood development, but over time he became increasingly radical both in perspective and method. In a 1935 manifesto for the Catholic University sociology department, he railed against the “selfish upper class” and emphasized the social scientist’s moral duty to “defend the rights of the poor, the Negro, the underprivileged,” which the department implemented through settlement houses where students and faculty lived and worked with Washington, DC’s urban poor.¹²¹ Meanwhile, in the late 1930s, he was also among a group of writers who sought to develop theological justifications for Catholic pacifism.¹²²

In his writings for a non-academic (but Catholic) audience, Furfey advocated strict adherence to moral principle, no matter the social or political consequences. In this way, his work can be read as rejecting the assimilationist project of clergy who encouraged American Catholics to display conspicuous patriotism.¹²³ In Furfey’s reading of US history, Catholics got into trouble when they assimilated too readily; they had too often acquiesced in conventionally tolerated evils like slavery. They ought instead to be Catholics first: “to invoke abstract Christian principles on the interracial situation and then to follow these principles remorselessly to their logical conclusion.”¹²⁴ Furfey applied equally unsparing logic to World War II. During the war, only a few isolated Catholic voices, including Furfey himself, had written publicly to condemn the use of obliteration bombing.¹²⁵ For Furfey, now writing decades later, this silence remained both puzzling and disappointing, because it was “simply traditional doctrine,” he observed, that “the killing of noncombatants, even in an otherwise just war, is equivalent to murder.” Accordingly, Catholic leaders ought to have spoken out against the Allied bombings of Germany and Japan: Christ’s teachings must always take precedence over national loyalty.¹²⁶ Notably, Furfey decoupled the moral obligation to make a public statement of dissent from considerations of political efficacy. “If American Catholics had acted, even as late as the end of 1944, they might have had an influence on policy; for they form an influential minority in the United States,” he insisted, quixotically. But nevertheless, he added: “If they could not have forced a change of policy, at least they would have publicly repudiated obliteration bombing.”¹²⁷

If Catholic teaching was so clear, and so absolute, why were Catholics so easily swayed into political conformity? Here Furfey pinned the blame not on ordinary people but on the

¹¹⁹ On Furfey’s 1972–73 turn, see Rademacher, *Paul Hanly Furfey*, 234–39.

¹²⁰ The biographical information in this paragraph is drawn from Rademacher, *Paul Hanly Furfey*, chaps. 1–3; and Zahn, “Tribute to a Mentor.”

¹²¹ Quoted in Rademacher, *Paul Hanly Furfey*, 125. Further quotations from the manifesto are found in Rademacher, 124–25.

¹²² McNeal, *Harder than War*, 38–39.

¹²³ Furfey wrote to Dorothy Day in 1939 that “the infamous principle, ‘My country, right or wrong,’ has no justification in Catholic theology.” Quoted in Rademacher, *Paul Hanly Furfey*, 190; on Furfey’s rejection of nationalism, see Rademacher, *Paul Hanly Furfey*, 190–93.

¹²⁴ Paul Hanly Furfey, *The Morality Gap* (New York: Macmillan, 1969), 9.

¹²⁵ McNeal, *Harder than War*, 67. Furfey’s condemnation was printed in the *Catholic Worker* in 1944. Only one American Catholic moral theologian (John C. Ford, S.J.) wrote publicly to argue (also in 1944) that the tactic violated just war tenets, and only one American bishop offered words of protest. McNeal, *Harder than War*, 65–67.

¹²⁶ Furfey, *The Morality Gap*, 14–17, at 16.

¹²⁷ Furfey, *The Respectable Murderers*, 82.

Catholic leaders and institutions for failing to provide adequate guidance, inculcating instead a stunted and apolitical conception of morality. According to the then-standard catechism for young children, Catholics were “bound to honor and obey [their] bishops, pastors, magistrates, teachers, and other lawful superiors.”¹²⁸ Versions for older students did add some caveats: Catholics “should refuse to obey ... superiors who command us to sin,” and (although tucked into the section on marriage contracts) must “obey the laws of their country” only “when these laws are not opposed to the laws of God.”¹²⁹ Furfey’s research suggested that such caveats had gotten lost in the translation to popular understanding. In his book *The Morality Gap*, he analyzed a sampling of missals, devotionals, and prayer books, and decried their simplistic, checklist-style “tables of sins,” which fixated on social niceties and “minor vices.” To his dismay, not one devotional instructed Catholic readers about “the duty of resisting unjust laws and national policies.” Across the standard Catholic texts, he found “no suggestion at all that disobedience is sometimes a virtue as it was in the case of the Christian martyrs.”¹³⁰ Furfey arrived at the same diagnosis as Merton: Christianity may be “the professed religion of Western civilization” but in practice, it was only a kind of “pseudo-Christianity.”¹³¹

Furfey was no anarchist; he accepted the need for law enforcement,¹³² and he equally singled out popular devotionals for their simplistic guidance about the affirmative duties of citizenship. In Furfey’s view (at least, as of the late 1960s), Christians were obligated to disobey immoral laws but equally duty-bound to obey valid laws and participate constructively in organized politics.¹³³ But the “tables of sins” mentality framed the Catholic’s civic duties only in negative terms: “He will not bribe a public official. ... He will not falsify his tax return.”¹³⁴ For Furfey, avoiding rule-breaking was insufficient; to exercise Christian virtue in the 1960s might also mean “to agitate for an open-housing law, to fight for equal rights for women, or to encourage the desegregation of the school system.”¹³⁵ Furfey, then, expressed more confidence in legislative reform than Merton. Particularly in a democracy, where

¹²⁸ *A Catechism of Christian Doctrine* (“Baltimore Catechism No. 1”) (1885), § 363, <https://gutenberg.org/cache/epub/14551/pg14551.html>. This catechism was used into the 1960s.

¹²⁹ *A Catechism of Christian Doctrine* (“Baltimore Catechism No. 3”), Q.1260, Q.1035, <https://gutenberg.org/cache/epub/14553/pg14553.html>. More generally, to the extent that Catholic teaching had always included the idea of conscience as a limit on the duty of obedience to law, even standard Catholic manuals had always contained an internal “radical side.” See Cajka, *Follow Your Conscience*, 30–43, at 30.

¹³⁰ Furfey, *The Morality Gap*, 23–27, at 27. Furfey was not alone in making this critique: a cohort of liberal Catholic sisters asserted that the church “had directly contributed to the racial crisis by stunting the moral development of Catholics,” and offered similar complaints about the “rigid, negative, authoritarian training” of pre-Vatican II religious education. Amy L. Koehlinger, *The New Nuns: Racial Justice and Religious Reform in the 1960s* (Cambridge, MA: Harvard University, 2007), 97 (Koehlinger quotes “rigid, negative, authoritarian training” from Mary Eric Zeis, “Forming a Christian Social Conscience,” in *Split-Level Lives: American Nuns Speak on Race*, ed. Mary Peter Traxler (Techy: Divine Word Publications, 1967), 27–42, at 38). In a fascinating chapter, Cajka discusses how, by the 1970s, “postlegal Catholic thinkers” would borrow from developmental psychology as a framework for conceptualizing how to push individuals beyond rote obedience to mature, conscientious decision-making. Cajka, *Follow Your Conscience*, chap. 5, at 138.

¹³¹ Furfey, *The Morality Gap*, ix.

¹³² See Furfey, *The Morality Gap*, 138–39, see especially 139 (“In the New Testament there is no suggestion that [the Roman soldiers] should put down their arms and allow anarchy to prevail. ... To keep the peace, nonviolence is not a substitute for the ordinary agencies of law enforcement.”). This point would seem to distinguish Furfey from those Catholic Workers who identified as Christian anarchists. On Dorothy Day’s usage of the term, see Nicholas Rademacher, “Dorothy Day, Religion, and the Left,” in *The Religious Left in Modern America: Doorkeepers of a Radical Faith*, ed. Leilah Danielson, Marian Mollin, and Doug Rossinow (Cham: Palgrave Macmillan, 2018), 81–99, at 90–91.

¹³³ He characterized disobedience as an “occasional duty.” Furfey, *The Morality Gap*, 27 (my emphasis).

¹³⁴ Furfey, *The Morality Gap*, 28.

¹³⁵ Furfey, *The Morality Gap*, 28, 30. As additional examples Furfey lists “pressing for good labor legislation,” “fighting racial discrimination,” or “working to provide better housing.” Furfey, *The Morality Gap*, 30.

individuals ostensibly had some voice in policymaking, Christian love might look not only like prayer and personal charity, but also “group action to secure social justice through legislation” or empirical research into social problems.¹³⁶

It was not this theme of Furfey’s writing, however, that attracted the attention of the Catholic left, but rather his calls to martyrdom. To replace the simplistic morality of popular prayer books, “we need a theology of disobedience,” Furfey wrote to Jim Forest, of the Catholic Peace Fellowship, in 1965. Instead, Furfey lamented, “we apparently just take it for granted that we should obey constituted authority and that we have no responsibility to examine the morality of a law before obeying it.”¹³⁷ The need for guidance was especially acute for citizens living in what Furfey called “paramoral societies,” in which cultural standards of propriety departed from objective morality. In a thoroughly moral society, custom and morality would perfectly align; a thoroughly immoral society, Furfey posited, would quickly collapse. In between and more typical was the “paramoral society,” such as the United States, in which social conventions and morality align to some extent, but “at least a few conspicuous mores [that is, customary norms] are clearly immoral.” It is painful to realize that “the ‘respectable’ thing to do may be a clear violation of the objective moral law.”¹³⁸ Furfey evinces sympathy for the citizen in such a bind: “The conscientious citizen living in a paramoral society suffers from a stress which can be simply overwhelming.” Using the same diagnostic language as Merton, Furfey describes paramoral societies as “ethically sick”: “by a strange perversion crime becomes a badge of decency.”¹³⁹

Yet even as Furfey sympathizes with conflicted citizens, he insists upon the Christian obligation to choose morality over any conflicting social or political considerations. It would have required no great leap for readers to make the connection between Furfey’s historical case studies and the ongoing war in Vietnam, and—if they were convinced by his arguments—to reach the conclusion that disobeying one’s parents, one’s bishop, or one’s government might be the truly Christian thing to do. After all, in Furfey’s paramoral society, it is the pillars of the community who are precisely those most likely to be complicit in evil: “A man may be just in his business dealings, an excellent family man, and upright in his relations with friends and associates; yet he may cooperate without a qualm in outrageous policies of social injustice, in the waging of an unjust war, or in the exploitation of a whole social class.”¹⁴⁰ Conscientious believers could not, therefore, take their cues about the war from business leaders and family men; they would have to analyze the war independently. And if they concluded the war was unjust, they would not merely be permitted to act against it, but obligated. For a generation brought up with tables of sins and knuckle-rapping nuns, it must have been bracing indeed to encounter a priest arguing, as Furfey did, that Western civilization overemphasized obedience, and that “disobedience, too, can be a moral duty.”¹⁴¹

Furfey did not countenance disobedience for its own sake. Even within his construct of the paramoral society, there were always some rules that merited following. For all its contrarian flourishes, then, Furfey’s work remained steeped in a relatively traditional

¹³⁶ Furfey, *The Morality Gap*, 40–41 (quotation at 40). Indeed, for one historian, Furfey’s concessions to conventional politics are emblematic of Catholic radicalism’s ultimate failure to develop a true alternative to managerial professionalism and the liberal welfare state. McCarragher, “The Church Irrelevant,” 184–85.

¹³⁷ Paul Hanly Furfey to James Forest, October 28, 1965, Catholic Peace Fellowship Records, box 19, folder 4, University of Notre Dame Archives. Forest responded: “I think we do need a theology of disobedience, but I’m not sure we don’t simply need to become more responsible to the existing theologies in the meantime.” Jim Forest to Msgr. Paul Hanly Furfey, November 29, 1965, Catholic Peace Fellowship Records, box 19, folder 4, University of Notre Dame Archives.

¹³⁸ Furfey, *The Respectable Murderers*, 20–21 (quotations at 21).

¹³⁹ Furfey, 21.

¹⁴⁰ Furfey, 26.

¹⁴¹ Furfey, 66.

Catholic conception of social and legal ordering as an aid to human flourishing. For Furfey's Catholic audience, however, the injunction to obey would not have been surprising. What would likely have stood out most was to see that injunction paired with an equal insistence upon the citizen's obligation to "refuse to obey a law when he is morally certain that the law is immoral." Moreover, as Furfey presented it, that obligation was non-negotiable: citizens "must refuse to cooperate with immoral policies" while also "do[ing] whatever [they] can, particularly in a democratic country, to have the immoral laws repealed."¹⁴²

Although Furfey remained thoroughly committed to nonviolence, and thus, may or may not have approved of particular protest actions, his work expressed a version of the same moral framework that the ultraresistance would cite when explaining actions like Catonsville.¹⁴³ As Furfey laid out the rules in his straightforward prose, there was not a general duty to obey the law tempered by a minor caveat that it might sometimes be justifiable to disobey the law under certain extreme and hypothetical circumstances. Rather, Furfey insisted upon an overriding, rigorous, and everyday duty to conform one's conduct to objective morality, which entailed a duty to obey morally acceptable laws but also an equal and opposite "duty of disobedience to evil directives."¹⁴⁴ In its insistence on absolutes and objective morality, such an inflexible rule was stylistically quite Catholic, and it was a similar inflexibility against the fuzzy standards of liberal pragmatism that would soon distinguish the Catholic ultraresistance from secular protest movements which viewed civil disobedience only as a permissible tactic. For the Catholic left, let the directive be evil, and disobedience was not a tactic. It was an obligation.

"We Appeal to Americans to Purge Their Law": The Theatrics of the Catholic Ultraresistance

In May 1968, nine Catholics, clerics and lay, walked into the offices of the Catonsville, Maryland, draft board; grabbed nearly four hundred files; and then, outside in the parking lot, used homemade napalm to set the files on fire.¹⁴⁵ Catonsville was neither the first nor the last display of the Catholic left's defiance of law, but historians generally agree that it was the most shocking. Priests had surely broken the law before, but secretly and scandalously, in private ways. To flout federal law in a performance designed for television news cameras, while wearing clerical collars and praying the Our Father, was as total and dramatic a departure as one might imagine from the stereotypical persona of the Catholic priest in postwar America.¹⁴⁶ The year 1968—post-JFK, post-Vatican II—was a high point in the assimilation of Catholics into mainstream American life, but also a moment when there remained millions of adults, even rather young adults, who had grown up ensconced in the more insular worlds of immigrant parishes and parochial schools. On both sides of that coin—and whether admired or resented—priests and nuns were, in one historian's description, "people who embodied authority, not rebellion. Yet here they were, facing felony

¹⁴² Furfey, 83.

¹⁴³ See Rademacher, *Paul Hanly Furfey*, 218–22, 233 (noting that Furfey supported the peace movement's activism overall, but "kept his distance" from actions that tended toward violence).

¹⁴⁴ Furfey, *The Respectable Murderers*, 83–84 (quotation at 83).

¹⁴⁵ The most comprehensive account is Peters, *The Catonsville Nine*; see also Polner and O'Grady, *Disarmed and Dangerous*, chap. 10; McNeal, *Harder than War*, 148–49, chap. 7; Au, "American Catholics and the Dilemma of War 1960–1980," 70–73; Mollin, "Communities of Resistance," 31–38. On the Berrigans, a useful introduction is Anne Klejment, "The Berrigans: Revolutionary Christian Nonviolence," in *Peace Heroes in Twentieth-Century America*, ed. Charles DeBenedetti (Bloomington: Indiana University Press, 1986), 227–54.

¹⁴⁶ On how the action was staged for the media, see Gustainis, "Crime as Rhetoric," 165–66, 171.

charges.”¹⁴⁷ Among the complaints in the manifesto they circulated, the Catonsville Nine listed “the ruse of the American ruling class invoking the cry for ‘Law and Order’ to mask and perpetuate injustice.”¹⁴⁸

The radical wing of the Catholic peace movement, or the ultrasistance, as it was sometimes labeled, combined Merton-style disaffection with establishment legal culture and Furfey-style rigorous insistence upon the duty to disobey; but unlike either Merton or Furfey, they acted out these positions. From their initial acts of lawbreaking through the resultant criminal proceedings, they performed at every step a choreographed display of opposition not only to American legal institutions, but by extension, to the legal liberalism that dominated such institutions in the late 1960s.¹⁴⁹

Even as Catholic peace activists became increasingly confrontational in expressing their hatred of particular laws, they remained uninterested in engaging law on its own internal terms. In actions against the draft laws and the war in Vietnam, the ultrasistance moved away from the modalities of civil disobedience that were used to dismantle Jim Crow laws. Members of the Catholic Peace Fellowship supported the civil rights movement—several had traveled to Selma in 1965—and they did borrow from, and remain committed to, the Gandhi-King tradition of nonviolence.¹⁵⁰ But the ultrasistance concluded that protesting military policy would require a novel and more theatrical approach. The March on Washington and the Selma-to-Montgomery march had captured the nation’s attention, but mass rallies against the war in Vietnam had quickly become ritualized as a form of respectable dissent that the administration appeared prepared to tolerate indefinitely.¹⁵¹ If policy makers were unmoved by crowds in the streets, they concluded, then they needed to interfere directly with the war machinery—hence, the decision to destroy draft files, which the Catholic left naively insisted might hinder the administration of the draft, but even if not, would certainly attract notice.¹⁵²

Also in contrast to the civil rights movement, which sought federal enforcement of constitutional and statutory protections (that federal law might redeem the local), the

¹⁴⁷ Mollin, “Communities of Resistance,” 36; see also Gustainis, “Crime as Rhetoric,” 175–76; Wills, *Bare Ruined Choirs*, 259. The Catonsville Nine were also shocking in the sense that they did not stick to familiar scripts of American religious activism. Kosek notes that compared to the (Protestant) Fellowship of Reconciliation, the ultrasistance relied upon “a shocking, and more specifically Catholic, emphasis on the dialectic between the sacred and the blasphemous.” Kosek, *Acts of Conscience*, 235. Orsi situates the Berrigans (and other Catholic figures like Cesar Chavez) within “inherited traditions of sainthood, martyrdom, and bodily mortification,” which often made their rituals incomprehensible to other Americans. Orsi, “U.S. Catholics between Memory and Modernity,” 12.

¹⁴⁸ “A Statement from Maryland,” reprinted in *Catholic Peace Fellowship Bulletin*, June 1968, 2, 15.

¹⁴⁹ Indeed, Justin Gustainis, a scholar of rhetoric, interprets the Catonsville trial as a drama in which the defendants played the main roles and their hundreds of supporters the “Greek chorus.” Gustainis, “Crime as Rhetoric,” 171. For an illuminating discussion of how the Berrigans used courtrooms as sites of ritual protest against liberalism, beginning with Catonsville and continuing for decades thereafter, see Bivins, *The Fracture of Good Order*, 139–45. As Bivins notes, the courtroom was “ground zero” of the “liberal political order.” Bivins, 139. Bivins discusses how, well into the 1990s, the Berrigans continued to transform courtroom proceedings into “a theater where the defendants put the law itself on trial.” Bivins, *The Fracture of Good Order*, 143.

¹⁵⁰ See, for example, Bob Gilliam and Tom Cornell, “In Selma, Alabama,” *Catholic Peace Fellowship Bulletin*, June 1965, 1–2. On the civil rights movement as an influence on Merton and the Berrigans, see McNeal, *Harder than War*, 117–18, 181–83. Philip Berrigan taught at a Black Catholic high school in New Orleans from 1956 to 1963.

¹⁵¹ Peters, *The Catonsville Nine*, 57, 75, 82, 158; Mollin, “Communities of Resistance,” 34–36; Farrell, *The Spirit of the Sixties*, 196. Their manifesto alleged that “the ruling class of America ... is aloof of public dissent and parliamentary process.” “A Statement from Maryland,” *Catholic Peace Fellowship Bulletin*, June 1968, 2.

¹⁵² Already in 1965, Tom Cornell observed that thousands of Americans had “written to their congressmen” and “marched upon our nation’s Capitol,” and yet “the war in Vietnam rages on.” “Why I Am Burning My Draft Card,” October 26, 1965, Catholic Peace Fellowship Records, box 9, folder 7, University of Notre Dame Archives. By 1968 this conviction was even more pronounced.

Catholic left's version of civil disobedience was structured around opposition to law at every level. As one historian observes, in their "brazen defiance of the federal government," the Catholic ultrasistance departed from the nonviolent tradition rooted in liberal Protestantism, which dramatized noncompliance with state laws and local ordinances but invited federal intervention.¹⁵³ Of course, the federal government did not always respond as civil rights activists had hoped, and movement participants were often quite critical of the legal establishment, but participants in the sit-ins and other campaigns engaged in complex, and often contentious, internal debates about the tactical use of courtroom litigation and long-term legal strategies.¹⁵⁴ Therefore, when Jim Forest wrote in 1965 that he "[knew] nothing about constitutional law," as if the field was simply off his radar, he was already expressing an attitude that distinguished Catholic peace activists from the civil rights movement. Within the next three years, the Catholic left's rhetoric became more pointedly directed at the law. Increasingly they described the law not as an uninteresting technicality, but as a defensive weapon of the military and diplomatic establishment, and a weapon that was itself being used in violation of natural law.¹⁵⁵

This accusation, that the federal law was itself illegal, made its debut in late 1967, after the first of the draft raids, known as the "Baltimore Four" action. In a prelude to Catonsville, the quartet of participants, among them Philip Berrigan, descended upon the draft offices housed in the Baltimore Customs House and splattered a selection of draft files with blood (mostly collected from butchered meat, after amateur efforts to draw their own blood fell short). In their manifesto, alongside the standard leftist denunciations of war and property, they included a section subtitled "LAW." While admitting that their action exceeded "the scope of Constitutional right and civil liberty," they insisted that the war itself depended upon "unjust laws of conscription, tax preferences and suppression of dissent." Rather than submit to the legal order's judgment, they flipped the accusation back on the government, appointing themselves as a kind of metaphorical grand jury: "We indict such law with our consciences and acts and we appeal to Americans to purge their law, conform it to divine and humane law[.]"¹⁵⁶

In their public rhetoric, the ultrasistance thereafter continued to blend the Thomist vocabulary of natural law with allusions to the American political tradition of civil disobedience. In his *Prison Journals*, for example, Philip Berrigan invoked Thoreau's essay "On the Duty of Civil Disobedience," but elsewhere described civil disobedience as a specifically "Christian duty."¹⁵⁷ For all of the trouble that the Berrigans got into with the church, and for

¹⁵³ Kosek, *Acts of Conscience*, 235.

¹⁵⁴ See Christopher W. Schmidt, "Divided by Law: The Sit-ins and the Role of the Courts in the Civil Rights Movement," *Law and History Review* 33, no. 1 (2015): 93–149; Tomiko Brown-Nagin, *Courage to Dissent: Atlanta and the Long History of the Civil Rights Movement* (New York: Oxford University Press, 2011). An older sociological study attributes this difference to external constraints more than participants' views about law. Contrasting civil rights trials with those of Catholic radicals and other antiwar protesters, Steven Barkan argues that because Southern trial courts were hostile to civil rights defendants, they had little choice but to mount conventional legal defenses and hope for better treatment on appeal, whereas judges were somewhat more sympathetic to antiwar defendants, giving them more leeway to use the courtroom as a stage for moral arguments. Steven E. Barkan, *Protesters on Trial: Criminal Justice in the Southern Civil Rights and Vietnam Antiwar Movements* (New Brunswick: Rutgers University Press, 1985). In my reading of more recent civil rights historiography, there were genuine generational and ideological divides within the movement about how to engage with law, but his point is well-taken that different movements' approaches to law were formed partly in response to external constraints, and that Catholic radicals may have benefited from sympathies denied to other defendants.

¹⁵⁵ The Catonsville Nine targeted "law and property" as lying at "the roots of exploitation, racism, violence and war." McNeal, *Harder than War*, 174. Increasingly over time, the Berrigans "concluded that the entire judicial system lacked moral and legal justification." O'Brien, *Renewal of American Catholicism*, 194–95 (quotation at 195).

¹⁵⁶ "We Shed Our Blood Willingly," *Catholic Peace Fellowship Bulletin*, December 1967, 2.

¹⁵⁷ P. Berrigan, *Prison Journals*, 69, xxi.

all of their criticisms of it, they never renounced it, and their politics remained thoroughly shaped by the conventionally Catholic assumption “that there exists in nature ... a rational order which can provide intelligible value-statements independently of human will, that are universal in application, unchangeable in their ultimate content, and morally obligatory on mankind.”¹⁵⁸ If anything, compared to many of their coreligionists, they were unusually strident in their adherence to the natural law tradition (or, as conservative critics might put it, unusually eager to bend the rhetoric of natural law to justify breaking the law). Although natural law theory does define unjust laws as morally nonbinding, the Thomist tradition also contains the notion that prudence should temper the decision to disobey unjust laws.¹⁵⁹ To put it mildly, prudence was not a component of the tradition that the Catholic left emphasized.

Once the draft raids began, the ultrasistance clashed more literally with the legal establishment through a recurring sequence of arrests and criminal trials. In the pages of the *Catholic Peace Fellowship Bulletin*, readers could find updates on the high-profile proceedings alongside dozens of brief notices about lesser-known conscientious objectors.¹⁶⁰ For example, a reader of the December 1967 issue would have encountered the full text of the Baltimore Four manifesto, but also a snippet on the federal sentencing proceedings of a Minneapolis draft resister who gave this statement to the court: “Civil law is not absolute.”¹⁶¹ Each item of this kind was short and straightforwardly factual in itself, but the regularity of such items reinforced the undercurrent of anti-legalism throughout the *Bulletin*, and circulated maxims that readers could use in their own conversations (or court proceedings) around the country.

In the trials of both the Baltimore Four and the Catonsville Nine, the ultrasistance further dramatized their opposition to the legal order by refusing to go through the motions of criminal procedure. If every trial is also a kind of play (and in fact, Daniel Berrigan would later adapt the Catonsville trial transcript into a play), these defendants went off-script. They declined to engage in plea negotiations; the Baltimore Four stated from the outset that because the legal order was unjust, “we refuse any counsel that would bargain for our benefit within the law.”¹⁶² At the Catonsville trial, the defense opted out of jury selection—defense lawyer William Kunstler simply told the judge to “take the first twelve”—leaving the judge to conduct the *voir dire* himself.¹⁶³ Proclaiming moral innocence while conceding legal guilt, the defendants asked their lawyers for “a short trial,” an “intense, forthright, and dramatic”

¹⁵⁸ Paul E. Sigmund, *Natural Law in Political Thought* (Cambridge, MA: Winthrop, 1971), viii, as quoted in Allitt, *Catholic Intellectuals and Conservative Politics*, 7–8. For a brief primer, see Thomas D’Andrea, “The Natural Law Theory of Thomas Aquinas,” Public Discourse, August 22, 2021, <https://www.thepublicdiscourse.com/2021/08/77294/>

¹⁵⁹ Compare, for example, D’Andrea, “The Natural Law Theory of Thomas Aquinas,” (suggesting that although human laws that contravene natural law are not really laws, they should sometimes “be observed for prudential reasons”).

¹⁶⁰ See, for example, “Tangents no. 2,” *Catholic Peace Fellowship Bulletin*, April 1968, 2, 7; and “Resistance: A Special Issue on War and the Draft,” special issue, *Catholic Peace Fellowship Bulletin* June 1968. Throughout all the issues, there are first-person accounts of being arrested, going to jail, and appearing in court.

¹⁶¹ “Tangents,” *Catholic Peace Fellowship Bulletin*, December 1967, 6. The same issue also mentioned efforts to interfere with naval recruiters at Fordham, and a quotation from a Rhode Island chapter urging adherence to “moral values” rather than “war laws.” “Tangents,” 7.

¹⁶² “We Shed Our Blood Willingly,” *Catholic Peace Fellowship Bulletin*, December 1967, 2.

¹⁶³ Gray, *Divine Disobedience*, 172–73 (quotation at 172). Quotations from the trial proceedings come from Gray’s notes as a journalist observing the trial. See also John F. Bannan and Rosemary S. Bannan, *Law, Morality, and Vietnam: The Peace Militants and the Courts* (Bloomington: Indiana University Press, 1974), 128–29. The defendants initially requested to waive a jury trial altogether but Kunstler thought it would be better to have an audience. David J. Langum, *William M. Kunstler: The Most Hated Lawyer in America* (New York: New York University Press), 224–25; Peters, *The Catonsville Nine*, 140.

display for the audience.¹⁶⁴ Actually, within the four-day trial, the defendants did testify at some length, but mainly about their life stories and religious views; they conceded they had violated the law. The judge allowed their testimony but then “charged the jury to ignore most of [it].” Not surprisingly, the jury convicted.¹⁶⁵ In sum, the Catonsville defendants reacted to each stage of the adjudicative process as though American law was so thoroughly permeated with injustice that not only must the substantive draft laws be disobeyed, but resisters should thereafter also disregard the conventional procedures for resolving their cases.¹⁶⁶

Although chronicles of lower-profile cases are sparser, there is suggestive evidence that a similar attitude toward criminal procedure permeated the wider Catholic peace movement. Some Catholics who were arrested for burning draft cards did raise constitutional issues once on trial, but their first inclination was to offer moral rather than technical legal defenses. For example, after a 1965 rally, David Miller, a member of the Catholic Worker, was the first defendant indicted under the new law prohibiting the destruction of draft cards. Miller eventually accepted representation by lawyers from the American Civil Liberties Union and agreed that they should argue free speech at his trial. But his initial plan, he recalled, had been to represent himself and “only to bring up moral issues in my defense.”¹⁶⁷

Many accounts have noted the Catholic left’s ambivalence about offering legal defenses as an illustration of their anti-institutionalism, but scholars have not fully contextualized the defendants’ attitudes within legal history. Given the timing, their attitude also amounted to a more specific and significant rebuke of legal liberalism. Between 1960 and 1968, the Warren Court had issued a series of controversial decisions that expansively interpreted the constitutional rights of defendants at all stages of the criminal process: arrest, interrogation, trial, and post-conviction relief.¹⁶⁸ These decisions were most transformative in the state courts, as one-by-one, the Court took protections already guaranteed in the federal courts by the Bill of Rights and incorporated them against the states. But the cultural import of these decisions in the public mind was not dependent on technicalities of state vs. federal jurisdiction. The general impression was that—for better or worse—the Warren Court was standing up for people on the margins of society, including criminal defendants. For this line of cases, liberals celebrated the Warren Court and conservatives decried it.¹⁶⁹ But both liberals and conservatives assumed that the constitutional law of criminal procedure meant something—that one could measure the righteousness of a legal order by consulting its

¹⁶⁴ P. Berrigan, *Prison Journals*, 111; see also Gustainis, “Crime as Rhetoric,” 167.

¹⁶⁵ Barkan, *Protesters on Trial*, 124–27, at 126; summarizing the testimony, see Peters, *The Catonsville Nine*, chaps. 15, 16.

¹⁶⁶ Individuals did not remain perfectly consistent in this stance. Five years later, at the Harrisburg Seven trial for an alleged conspiracy to kidnap Henry Kissinger, the defendants would again instruct their lawyer, Ramsey Clark in this case, not to present a defense, but only after a vote in which Philip Berrigan was among those who voted the other way. That trial ended in a hung jury. McNeal, *Harder than War*, 205–06.

¹⁶⁷ Bannan and Bannan, *Law, Morality, and Vietnam*, 41–42, 44–45 (Miller quoted at 44). David O’Brien, whose case became the vehicle for the Supreme Court decision upholding the law, did represent himself at trial, although the American Civil Liberties Union assisted with his appeal. Bannan and Bannan, *Law Morality, and Vietnam*, 57–58.

¹⁶⁸ See Lawrence M. Friedman, *American Law in the 20th Century* (New Haven: Yale University Press, 2002), 206–11, and William J. Stuntz, *The Collapse of American Criminal Justice* (Cambridge, MA: Belknap Press of Harvard University Press), 218–26.

¹⁶⁹ Discussing liberal celebration of the Warren Court, see Sara Mayeux, *Free Justice: A History of the Public Defender in Twentieth-Century America* (Chapel Hill: University of North Carolina Press, 2020), 19–20, 108–10; for an example of conservative complaints, see Richard Nixon, “Address Accepting the Presidential Nomination,” August 8, 1968, The American Presidency Project, <https://www.presidency.ucsb.edu/documents/address-accepting-the-presidential-nomination-the-republican-national-convention-miami> (accusing the courts of “weakening the peace forces as against the criminal forces in this country”).

procedural rules. Against both positions, the Catholic left regarded criminal procedure as totally derivative of the moral righteousness (or lack thereof) of the substantive legal order.

The Catonsville defendants also flouted the judicial insistence upon rule-following. Even as the Warren Court issued favorable substantive rulings on segregation and voting rights, the justices continued to insist upon strict compliance with judicial process as the proper way to challenge unjust laws. In this regard, it is notable that the Catonsville Nine were tried just one year after *Walker v. City of Birmingham*, in which the Supreme Court emphasized that “no man can be judge in his own case, however exalted his station, however righteous his motives, and irrespective of his race, color, politics, or religion.” In *Walker*, the local government had enjoined a planned civil rights march on flimsy grounds; a majority of the Supreme Court (over dissents from the most liberal wing) held that if the marchers wanted to challenge the injunction, they must abide by its terms throughout the pendency of the litigation. Against the argument that the morally righteous need not jump through legal hoops, *Walker* countered: “respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom.”¹⁷⁰ To insist upon rule-following is probably inherent in the nature of a court, not exclusive to liberal democracy. But many legal elites in the 1960s connected the two by subsuming respect for process into an ideology that celebrated courts as venues not just for resolving ordinary disputes but for pursuing societal progress. By this algebra, adhering to court orders became a way of working toward “constitutional freedom.”

The trial of the Catonsville Nine could, therefore, be interpreted as a spontaneous performance of rejection of the liberal presumption that “respect for judicial process” was, in itself, a guarantor of freedom. And yet, the Catonsville defendants did not exactly disrespect the judicial process.¹⁷¹ Instead, it was as if they thought, by disavowing any competence to consider religious questions, the federal judiciary did not respect itself *enough*. They urged participants to elevate the judicial process into something more spiritual. After the jury left the courtroom to begin deliberations, Daniel Berrigan asked the judge if he could lead the remaining courtroom personnel in praying the Our Father. To the astonishment of observers, and confusion of the US marshals in the room, the judge agreed. In one journalist’s description of the moment, the judge’s bench “metamorphosed into a pulpit, his ornate courtroom into an affluent suburban Church.” Lingering spectators, prosecutors and defense attorneys, and the defendants themselves joined together in the recitation. “And the words of the Lord’s Prayer—boldly trespassing upon the separation of Church and State, brazenly intruding into the formal language of the law—seemed, in that courtroom, like the marvelous tongues given to the Apostles at Pentecost.”¹⁷²

The suggestion to pray the Our Father came at the end of an extended colloquy between the defendants and the judge, Roszel Thomsen, a free-flowing discussion that was equally (legally speaking, anyway) unorthodox—and which gave fullest expression to the Catholic left’s views of the judiciary.¹⁷³ The defendants asked, repeatedly and in various formulations, why the judge had instructed the jurors to disregard their moral and religious motivations. “Your honor,” Daniel Berrigan said, “we are having great difficulty in trying to adjust to the atmosphere of a courtroom in which the world is excluded.” The judge

¹⁷⁰ *Walker v. City of Birmingham*, 388 U.S. 307, 320–21 (1967); see Randall Kennedy, “Walker v. City of Birmingham Revisited,” *Supreme Court Review* (2017): 313–36.

¹⁷¹ Indeed, a contemporary social science study of political trials observed that in the Catonsville trial, unlike the Chicago Seven trial, “[j]udge and defendants respected each other enough for the dramatic potential of the encounter to be focused on the issues themselves rather than on the courtroom behavior of those involved.” Bannan and Bannan, *Law, Vietnam, and Morality*, 125.

¹⁷² Gray, *Divine Disobedience*, 221–22 (quotation at 222); see also Peters, *The Catonsville Nine*, 237–38.

¹⁷³ Extended excerpts are reproduced in Bannan and Bannan, *Law, Morality, and Vietnam*, 143–50.

sputtered back in exasperation: the defendants “for some reason, either because your lawyers have not gotten it over to you or for some other reason, simply do not understand the functions of a court.” As a judge, he explained, he was bound by an oath and also by his pride in the US Constitution. “I think you spoke very movingly of your conception of your vocation,” Berrigan allowed in reply, “and I wish merely to ask whether or not one’s reverence for his tradition of law or of religion or of any worthwhile human inheritance does not also require us constantly to reinterpret this and to adjust it to the needs of the people here and now ... So that it may be possible, even though the law has excluded certain very enormous questions of conscience, that we admit them for the first time and, thereby, rewrite the tradition for the sake of our people.”¹⁷⁴

There were, in Berrigan’s remarks, the following notable concessions that a secular leftist might not have made: that judging was a vocation; the judge an honorable practitioner of that vocation; and law a “worthwhile human inheritance.” Yet, and here Berrigan’s legal commentary was infused with the Vatican II spirit, he also insisted to the judge that traditions must be open to change. Couldn’t it be true, he asked, that the law must adapt? In answer to this question, the judge made a point of speaking only “as a man.” “To me as a man,” he said, “I would be a very funny sort of man if I had not been moved by your sincerity on the stand and by your views. I doubt if any of these jurors has great enthusiasm for the Vietnam war. ... I am as anxious to terminate it as the average man, perhaps more than the average man.” Finally, Judge Thomsen added, he hoped everyone would vote in the next election.¹⁷⁵

Throughout the trial, whenever the government or the judge referenced the existence of legally permissible outlets for political dissent, the defendants countered that those forms of dissent were tolerated precisely because they were useless. In their view, once it became apparent that legitimate protest had failed to end the war, then anyone who stuck to legitimate protest became complicit in making war.¹⁷⁶ In the early 1960s, Daniel Berrigan recalled, it was possible to believe that citizens could end the war through politics, but no longer. “Appeals to the President,” “letters (dead letters) to powers and dominations”—such tactics “rest on dead assumptions like a stale sandwich in the teeth of a corpse.”¹⁷⁷ Now Berrigan dismissed legal proceedings as “safety valves,” and offered sarcastic praise for “the glories of a ‘free press’; maintained because it is in practice harmless.”¹⁷⁸ Philip Berrigan offered a similar rejoinder to his critics: “My brother and I have had experience with legitimate dissent for ten years,” he insisted. By 1968, asking protesters “to restrict their dissent to legal channels is asking ... for silent complicity with unimaginable injustice ... God would never ask that of any man; no man can ask it justly of other men.”¹⁷⁹ The Berrigans singled out their own lawyers (who included the likes of William Kunstler—a man rarely accused of establishment tendencies) as quintessential and deluded “liberals”: “What our lawyers, along with other American liberals, must learn,” Phil Berrigan wrote, “is that

¹⁷⁴ As quoted in Gray, *Divine Disobedience*, 217–18.

¹⁷⁵ As quoted in Gray, 218.

¹⁷⁶ On Philip Berrigan’s “ideological break with legal and gradualistic politics,” see Polner and O’Grady, *Disarmed and Dangerous*, 168. Ruether described the Berrigans’ activism as suited to a historical moment when government seemed impenetrable not only by “moral outrage, but even [by] some of the more reasonable kinds of *Realpolitik*.” Ruether, “Monks and Marxists,” 79. On the Berrigans’ frustration that mass protests seemed ineffective, see also Klejment, “The Berrigans,” 238–42; Mollin, “Communities of Resistance,” 34–35.

¹⁷⁷ D. Berrigan, *Dark Night of Resistance*, 95.

¹⁷⁸ D. Berrigan, 18–19, 24.

¹⁷⁹ P. Berrigan, *Prison Journals*, 18–19. Lest a reader not get the point, there followed a lengthy section entitled, “The Uselessness of Legitimate Dissent.”

illegitimate power can protract the Viet Nam war indefinitely, despite majority opposition ... and can crush any ghetto uprising with impunity.”¹⁸⁰

By 1968, then, the ultrasistance recognized no internal porousness within the US government; it was a monolith of “illegitimate power.” In the words of one historian, they had essentially concluded that Christians must “return to the suspicion of the state which characterized the early Church prior to Constantine.”¹⁸¹ Daniel Berrigan offered a facetious definition of “law” to mean: “That which violated brings down the present order. That which obeyed makes one the instrument of order maintained.”¹⁸² When talking to the judge, Berrigan had not dismissed the law as inherently unredeemable; he had held out hope that it might change. But in his published writings, he made clear that he regarded American law as it actually existed as a tool that had been co-opted by evil, distorted away from its humane promise. “In matters crucial to its own survival,” Philip Berrigan wrote, “illegitimate power will manipulate the law, make it (if need be), enforce it, and crush any threat to it,” and “those who practice disobedience can be sure of a ‘fair’ trial and a long jail sentence.”¹⁸³

After their conviction and sentencing, the Catonsville defendants had one last act of defiance: several of the group went “underground,” refusing to surrender to serve their prison terms. Some lived as fugitives for months, in the case of Daniel Berrigan, or even years, in the case of Mary Moylan. Going into hiding was another departure from the Gandhian script, in which the protester violates the law whose injustice he seeks to expose, but then submits to punishment in accordance with law.¹⁸⁴ It was also another thumb in the eye of legal liberalism, a refusal to respect the machinery of appeals and habeas proceedings that the judiciary held out as the remedy for injustice. Again, the defendants appropriated the law’s own distinctions, taking the badge of guilt and throwing it back upon the law: in one Catholic historian’s notable observation, they indicted “[a]ll of America, its governments and courts, its businesses and unions, its churches and its schools” as complicit in evil.¹⁸⁵ Recall, in contrast, the consummate legal liberal Skelly Wright, for whom many institutions in society may indeed have gone awry—but not the courts, the fixers of evil, the one societal bulwark of grade-school morality.

Philip Berrigan was remanded to prison before his fugitive brother, and while there, he continued his rhetorical campaign against the judiciary, publishing a collection of *Prison Journals* in 1970. “In court,” he wrote, “one puts values against legality according to legal rules and with slight chance of legal success. One does not look for justice; one hopes for a forum from which to communicate ideals, conviction, and anguish.”¹⁸⁶ Juxtaposing the internal standards of the legal profession with the higher calling of the natural law, he contrasted the government’s position “that breaking the law is also a crime” with his insistence “that breaking the law in the case at hand is ... a moral and political duty,” imposed by “a higher law.” Berrigan compared himself and his codefendants to a man who “broke down a door to save children in a burning building” and “deserve[d] a medal,” not criminal prosecution.¹⁸⁷ But perhaps the Berrigans’ sharpest insults were their jaded descriptions of courtroom decor. Dan described one courtroom as “musty,” “impersonal

¹⁸⁰ P. Berrigan, *Prison Journals*, 104.

¹⁸¹ Au, “American Catholics and the Dilemmas of War 1960–1980,” 69.

¹⁸² D. Berrigan, *Dark Night of Resistance*, 167–68 (quotation at 167).

¹⁸³ P. Berrigan, *Prison Journals*, 102–03.

¹⁸⁴ See McNeal, *Harder than War*, 198–202; Peters, *The Catonsville Nine*, chap. 20 (on Berrigan), chap. 23 (on Moylan).

¹⁸⁵ O’Brien, *Renewal of American Catholicism*, 198–99 (quotation at 198; my emphasis).

¹⁸⁶ P. Berrigan, *Prison Journals*, 111.

¹⁸⁷ P. Berrigan, 111–12.

as a railroad station or a mortician's parlor."¹⁸⁸ Phil wrote off all the trappings of the Baltimore federal courthouse—flags, brass eagles, portraits of judges—as “tasteless and affected, stamped with the pompous assumptions of an affluent society.”¹⁸⁹

Most Catholics had not rejected the legal order. But the ultraresistance, even if small, signified that enough Catholics had rejected that order to shatter the fiction of a singular obedient American Catholicism. In their politics, the ultaresistance were the opposite of many of their coreligionists. Yet in their educational backgrounds, their appearance, and even their clothing, they *looked* the stereotypical parts of American Catholicism. This disconnect, between representation and resemblance, drove the cognitive dissonance experienced by many external observers of the Catholic left. As each of the Catonsville defendants took the stand, the *New Yorker* writer Francine Gray described their physiognomies with fascination. Mary Moylan looked like “a genteel young suburban matron.” Marjorie Melville resembled “the cheer-leader at the Rose Bowl.” Thomas Melville appeared “as beefy and burly and Yankee as the Federal marshals lining the courtroom, looking like the most popular guy at the Firehouse’s Saturday night poker game.”¹⁹⁰

In 1972, Garry Wills published an extended meditation on the “Kafkan pursuit of Catholics by Catholics” generated by the intersection of postwar sociological phenomena: good Catholic boys who became rebellious priests and good Catholic boys who became FBI agents. “They were brought up to reconsider all Authority as one, in church and state, and to think of priests as especially allied with American values,” Wills wrote of this generation. “Imagine, then, the harsh cheating of expectations when Catholic loyalists were sent out to trap their grade-school teachers, ‘the good nuns.’”¹⁹¹ The phenomenon repeated itself up and down the federal bureaucracy: “Catholic judges were listening to Thomistic arguments on higher law and conscience and the limits put on Caesar, then reluctantly sentencing the priests who used all that seminary learning in court to a harsher penal monasticism.”¹⁹²

Conclusion

Throughout 1968, Catholic intellectuals debated what the Catonsville Nine had done. Most every famous Catholic joined the discussion: Walker Percy, Dorothy Day, Rosemary Ruether, Thomas Merton. Their debate is now a standard episode in histories of Catholic activism against the Vietnam war, with the same evocative quotations recurring across journalistic and scholarly accounts.¹⁹³ Even among writers who sympathized with the Berrigans’ politics, many deprecated the Catonsville action as an inarticulate stunt or worried that it had skirted too close to violence.

The most revealing disagreement was between the Berrigans and Thomas Merton. They otherwise agreed about so much, and as one historian observes, the Berrigans “almost desperately sought [Merton’s] imprimatur.”¹⁹⁴ After Catonsville, Merton wrote to a friend: “I don’t agree with their methods of action, but I can understand the desperation which prompts them.”¹⁹⁵ In September 1968, Merton published an essay that equivocated publicly.

¹⁸⁸ Daniel Berrigan, “The Breaking of Men and the Breaking of Bread: An Introduction,” in P. Berrigan, *Prison Journals*, xv.

¹⁸⁹ P. Berrigan, *Prison Journals*, 112.

¹⁹⁰ Gray, *Divine Disobedience*, 188, 184, 179.

¹⁹¹ Wills, *Bare Ruined Choirs*, 261, 263; see also Massa, *The American Catholic Revolution*, 112–14.

¹⁹² Wills, *Bare Ruined Choirs*, 275.

¹⁹³ For extended discussions, see Peters, *The Catonsville Nine*, 121–30; Paul Elie, *The Life You Save May Be Your Own: An American Pilgrimage* (New York: Farrar, Straus and Giroux, 2003), chap. 10. For briefer accounts, see also Polner and O’Grady, *Disarmed and Dangerous*, 209–12; Klejment, “The Berrigans,” 245; Nepstad, *Catholic Social Activism*, 61–65.

¹⁹⁴ Peters, *The Catonsville Nine*, 128; see also Polner and O’Grady, *Disarmed and Dangerous*, 209.

¹⁹⁵ Quoted in Elie, *The Life You Save May Be Your Own*, 409.

The Catonsville action, he worried, had “frightened” rather than “edified”: “The country is in a very edgy psychological state. ... In such a case, the use of nonviolence has to be extremely careful and clear.” The Catonsville Nine had expressed “their own intense conviction that the law is wrong, rather than pointing out where and how the law is wrong.”¹⁹⁶

Interpretations differ. Did Merton really disapprove of Catonsville? In other contexts, Merton always characterized his own writing as tentative,¹⁹⁷ and it seems that Daniel Berrigan, reading the monk’s published letters years later, concluded that Merton had eventually come to understand his perspective.¹⁹⁸ But whatever his private thoughts, Merton offered no conspicuous support for the Catonsville Nine at the time. “I definitely want to keep out of anything that savors of a public ‘appearance,’” Merton decided, “especially in America.”¹⁹⁹ In any event, he was scheduled to travel to Asia, on essentially his first trip out of Kentucky in nearly three decades. It was also his last. On December 10, 1968, Merton died suddenly at a retreat facility in Bangkok. He was electrocuted by a defective fan.

As illustrated by Merton’s apparent discomfort with the Berrigans’ tactics, there was a tension within the Catholic left, one that several commentators had observed in various formulations by the turn of the 1970s. Precisely what distinguished Catholic radicals from the secular left—their dual interest not only in change today, but also salvation tomorrow—froze them into a bind. It proved difficult to pursue both aims at once. “Can we be both practical and holy? Can we move social structures and keep our hands clean?” Rosemary Ruether asked in 1973. “The dilemma of human existence is that we seem unable to raise one question seriously without, in crucial ways, defaulting on the other.”²⁰⁰ One contemporary historian worried that the Catholic left had become stuck in critique: “Organization, planning, recruitment, programs, coalitions, compromises, elections, officeholding, administration, all are part of politics, and necessary parts. Radical Catholics must be prepared to engage in these activities ... Perhaps this suggests a reversion to liberalism, but one hopes that the commitment to peace, to justice, to human freedom and dignity, to the making of history, does not necessarily eliminate the possibility of morally engaging in democratic politics.”²⁰¹

Because of their limited interest in institution-building, the brief cultural prominence of the Catholic left, circa 1968, is often interpreted as a colorful episode in religious history, rather than a rupture with lasting significance.²⁰² Revisiting the Catholic left through the

¹⁹⁶ Thomas Merton, “Note” (*Ave Maria*, September 7, 1968), in *Passion for Peace*, 322–25, at 323–24 (quotation at 323); for context and analysis, see Elie, *The Life You Save May Be Your Own*, 410–11. Merton referred to “the Baltimore nine”; Catonsville is a suburb of Baltimore.

¹⁹⁷ See, for example, Merton, *Seeds of Destruction*, 70 (describing “Letters to a White Liberal” as “subject to correction”). In line with this mode of constant questioning, Merton often published raw excerpts from journals and letters. Farrell, “Thomas Merton and the Religion of the Bomb,” 86–87.

¹⁹⁸ Elie reports a 1995 letter, in which Berrigan “tells of finding peace at last in a letter from Merton to John Howard Griffin, written from Asia ... in which Merton said: ‘If, in fact, I basically agree with them, then how long will I myself be out of jail?’” Elie, *The Life You Save May Be Your Own*, 526n408. For additional discussion of the differences between Merton and the Berrigans, see Peters, *The Catonsville Nine*, 129–30; Elie, *The Life You Save May Be Your Own*, 399, 409–11.

¹⁹⁹ Merton journal, quoted in Elie, *The Life You Save May Be Your Own*, 409. Elie concludes, “In retrospect Merton is invariably described as a friend, mentor, and precursor to the Berrigans. He was all of those things, but he did not lend his support to the Catonsville action ... he sent no letter of solidarity to the embattled activists, filed no declaration of approval in his journal for the sake of posterity.” Elie, *The Life You Save May Be Your Own*, 410.

²⁰⁰ Ruether, “Monks and Marxists,” 79.

²⁰¹ O’Brien, *The Renewal of American Catholicism*, 208, 229–30 (quotation at 229).

²⁰² See, for example, Au, “American Catholics and the Dilemma of War 1960–1980,” 74 (concluding that the Catholic left “could concede no legitimate role to the state, and their anti-institutionalism could not foster the

methodological lens of legal history confirms this interpretation in some ways, but also raises possible complications and new research questions. The Catholic left's aversion to postwar liberalism extended beyond their disengagement from political coalition building; it also found expression in their profound rejection of legal liberalism. While they correctly identified legal institutions as central to the American political order, they maintained that one could change the political order by converting hearts, without engaging law on its own terms and without deigning, at times, to use legal procedure tactically in their own interest. Catholic thinkers had long grappled with questions about the nature of the state and the relationship between temporal and spiritual authority; instead, the Catholic left wrote off the state generally, and law more specifically, as "mere institutions." In the words of one would-be conscientious objector: "I believe that it is not mere institutions that will insure peace, but that it begins with us."²⁰³

Despite its failures to catalyze institutional or policy change, the Catholic left may have had subtler long-term significance, particularly in providing a model for the public performance of opposition to legal liberalism. Recognizing the centrality of anti-legalism to the Catholic left's public rhetoric could deepen historical understandings of why the Catholic-liberal alliance in the twentieth-century United States, across both politics and law, proved fragile. It is widely appreciated that for many Catholics, the issue of abortion was what finally fractured their faith in American law. Decided in 1973, *Roe v. Wade* came to symbolize an elite legal culture that valorized sexual liberation, whether achieved through legislative reform or judicial decisions.²⁰⁴ Catholics across the political spectrum typically (if not universally) opposed legalized abortion, but a faction of ultraconservative Catholics generalized *Roe* into something larger: not only a grievous decision in itself, but also a sign that the American legal order was irredeemable. After *Roe*, the reactionary *Triumph* magazine announced that "law and order can no longer be a slogan for Catholics": the time had come to obey "the norms of a higher law."²⁰⁵

I highlight a different trajectory: several years before *Roe*, a small cohort of Catholics active in movements for racial justice, antiwar protest, and nuclear disarmament had already begun to express their disillusionment with America in terms recognizable as a critique of elite legal culture. That the nation, including its law and courts, was only nominally Christian, and urgently required redeeming, was a trope on the Catholic left, not only an invention of the later religious right. Indeed, a few Catholic historians have previously, but briefly, noted situational and rhetorical parallels between the Berrigans and militant pro-life activists.²⁰⁶ More recently, Peter Cajka, in his study of conscience discourse,

development of intermediary structures"); McCarraher, "The Church Irrelevant," 184 (chiding the Catholic left as small-group "existential theater"). At most, some historians credit the peace movement for contributing to change within the Catholic Church. See, for example, McNeal, *Harder than War*, xiii ("Catholic peacemakers had the greatest impact not on the government but on the institutional church."); Moon, "Peace on Earth—Peace in Vietnam," 1049–51 (emphasizing the Catholic Peace Fellowship's contributions to empowering the laity).

²⁰³ "Saying No: Letters from the Catholic Peace Fellowship Files," *Catholic Peace Fellowship Bulletin*, June 1968, 8–9.

²⁰⁴ In McGreevy's account, for example, no sooner did Vatican II herald a historic détente between Catholicism and American-style liberalism, than "the abortion debate shattered this Catholic-liberal rapprochement." McGreevy, *Catholicism and American Freedom*, 265. William F. Buckley identified *Roe* as "the death of pluralism" and John Noonan criticized the Court's conception of liberty as closer to "libertinism." Both quoted in Allitt, *Catholic Intellectuals and Conservative Politics*, 191, 200. So, too, for Brent Bozell and the *Triumph* magazine circle, their "break with Americanism" came over the issue of abortion, even before *Roe*. Hart, *American Catholic*, 147–48.

²⁰⁵ Editorial, "The Catholic Obligation," *Triumph* 8 (March 1973), 31, as quoted in Allitt, *Catholic Intellectuals and Conservative Politics*, 190–91.

²⁰⁶ See, for example, Massa, *The American Catholic Revolution*, 128; Allitt, *Catholic Intellectuals and Conservative Politics*, xi, 144–45, 152–60 (noting "strange parallels between Catholic traditionalists and Catholic radicals in the late 1960s," including their anti-liberalism and willingness to violate secular law). Orsi muses about a line of "anger run[ning] through the language of U.S. Catholic citizenship" that could explain actions "outside abortion clinics, in

has emphasized “the intertwined nature of sex and war” as issues that catapulted into the public sphere a distinctively Catholic “antiauthoritarian logic,” and has traced how the language of conscientious objection migrated from antiwar circles into the pro-life movement.²⁰⁷ Such insights have not yet been fully explored or incorporated into legal scholarship, which often assumes a narrative organized around abortion when considering the interactions between Catholicism and American legal culture in the late twentieth century. Incorporating such insights into legal scholarship could help to illuminate not only historical questions but also pressing contemporary questions about the interactions between Catholicism and US constitutional law, at a moment when—as is often commented upon—the Supreme Court has a supermajority of justices who were raised Catholic.

Further research is needed on these complex interactions. It may be that the Catholic left and the Catholic far right were unrelated but parallel developments—cousins who looked, in different ways, like their shared grandparents. But perhaps these stories were intersecting lines, not parallels: a college student sympathetic to the antiwar movement in 1968 might grow up to become a pro-life parishioner circa 1990. There are many prominent examples of political drift among Catholic intellectuals, and the familiar term “Reagan Democrats” was coined, in part, to capture the phenomenon of Catholic voters shifting their loyalties.²⁰⁸ The prominence of the Catholic left should not be overstated, but as scholars continue to try to make sense of late-twentieth-century legal history, these figures are worth contemplating as important participants in the complex history of how American Catholicism has interacted with American legal culture.

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the parking lots of Selective Service offices,” and beyond. Orsi, “U.S. Catholics between Memory and Modernity,” 36–38.

²⁰⁷ Cajka, *Follow Your Conscience*, 4–5.

²⁰⁸ On Garry Wills (right-to-left) and Michael Novak (left-to-right), see Allitt, *Catholic Intellectuals and Conservative Politics*, chap. 7; see also Daniel K. Williams, *Defenders of the Unborn: The Pro-life Movement before Roe v. Wade* (New York: Oxford University Press, 2016); Williams characterizes the early anti-abortion movement as liberal.

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