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Fundamentally Moral: A Philosophical Defense of Judge W. Arthur Garrity, Jr. and Morgan v. Hennigan

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Abstract:

In this paper, I explore the possible influences of Thomistic moral and political philosophy on Judge W. Arthur Garrity’s view of the law and the rule of law. I focus on the social and political context in which Garrity was introduced to the Thomistic and Jesuitical teachings at the College of the Holy Cross. I argue that stress on civic engagement and moral ethics shaped Garrity into a meticulous and just judge who integrated the rule of law into his rule of life. Further, I contend that medieval political philosophy was not only relevant to Judge Garrity’s view of the rule of law and jurisprudence but also pertinent to the shaping of society’s social moral consciousness.
Introduction¹:

“Few men had as much impact on the life of the city as Judge Arthur Garrity. He was a man of deep convictions. And whether you agreed or disagreed with his opinion a generation ago, everyone can agree that Judge Garrity’s influence on our city will be felt for a long time to come.”

– Thomas Menino, Mayor of Boston upon Garrity’s death in The Boston Globe, 1999

Wendell Arthur Garrity Jr., federal judge from 1966 to 1985 in the United States District Court for the District of Massachusetts, left an undeniable legacy in America’s history of civil rights and public education. His 152-page opinion in Morgan v. Hennigan (1974) provided precise supporting details for his controversial decision: racially imbalanced schools are inherently unconstitutional. The resulting years of mandated busing in Boston outraged community members of South Boston and Charlestown and gave African Americans little hope of achieving racial equality in Boston’s public schools. Ruth Ann Harris of Boston College, who was conducting research in Belfast, Ireland during the immediate aftermath of Morgan v. Hennigan in Boston and the IRA bombings of northern Ireland,² recalled how the denizens of Belfast “were glued to the television… watching Boston. They felt sorry for me… They imagined that I was living in a war zone in Boston.”³

Four decades after Garrity’s decision, the atmosphere is still permeated with bitter dissent from largely working class whites and blacks in the affected areas. In an interview with Derrick Kelly of The Boston Globe following Garrity’s death, the late James Kelly, former Boston city council president, contended,

I don't know if it is possible to calculate how many lives [Garrity] destroyed, how many marriages broke up because husbands and wives didn't have good jobs because of good education. How many people turned to drugs and alcohol? ... I have no reason to be sad that he died” (Jackson 128).

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¹ I am indebted to Professor Lynne Viti, Laura Reiner, Kimberlee Johnson-Rivera, Kellyann Mercer, Bailey Desmond, Prerana Nanda, Emma Smith, and Grace Tien of Wellesley College as well as Moyukh Chatterjee of the Massachusetts Institute of Technology, Katherine Doerner of Northeastern University, and Cecily Carlisle of Yale University for the many helpful comments I have received on earlier versions of this paper.


³ Ruth Ann Harris, Professor of History with emphasis on Irish immigration history (especially women and emigration) at Boston College, Personal Interview.
In the same article, Raymond Flynn, former mayor of Boston, added in a less reactionary tone, “I only wish that the decision he made about the Boston public schools didn’t disrupt the education of our children and the stability of our city as it did. In my opinion, public schools in Boston still haven’t recovered from the decision” (Jackson 128). By Kelly and Flynn’s words, it would seem that the judge had made a grave moral error.

There is no doubt that the immediate consequences of Garrity’s controversial decision were detrimental to several Boston communities – South Boston, Roxbury, and Charlestown, among others. As recounted in Michael MacDonald’s memoir, *All Souls*, mid-1970s Boston witnessed exponentially increasing racial tensions as poor and working class whites from South Boston were pitted against poor and working class blacks from Roxbury. As violent demonstrations and opposition to the busing of Roxbury students by Southie residents intensified, Roxbury residents pushed back with more violence. Soon, conflict waged between the Southie camp, led by Boston School Committee Chairwoman Louise Day Hicks, and Roxbury forces spearheaded by the NAACP. Reflecting on the violence that has hardened so many hearts of greater Boston denizens, it is important to probe the influences on Garrity’s moral and political stance on public school integration.

**Saint Thomas Aquinas and Thomism**

At the end of the Dark Ages, a surge of curiosity and academic pursuits gave rise to universities, institutions committed to learning in a religious framework. Theologians and intellectuals, known as Scholastics, opined that there was no conflict between reason and faith, or science and faith. From one of the first medieval universities, the University of Paris, came the greatest figure of Scholasticism, Saint Thomas Aquinas (1225 - 1274). As Professor of Philosophy at the College of the Holy Cross Lawrence Cahoone explained, medieval scholasticism is the integration of Aristotle’s philosophy of nature and Christian theology. Aquinas was a Dominican priest whose philosophy, natural theology, and academic practice of Scholasticism and Aristotelian syllogism became the bedrock of Catholic canonical teachings.

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4 Much of the information about Aquinas and Thomism and Thomistic Natural Law Theory is derived from the lectures and class discussions in Professor Philip Deen’s Wellesley College course, PHIL 310: Medieval Political Thought during the spring 2011 semester class participants included Gloria Medina, Anna Talley, Alicja Lam, and myself. Unless otherwise noted, the factual basis for facts concerning Aquinas and Thomism was provided by Professor Deen and the PHIL 310 class.

5 Lawrence Cahoone, Professor of Philosophy at the College of the Holy Cross, Personal interview.
(McInerny and O’Callaghan 1). Having studied Saint Augustine of Hippo, Aquinas was also familiar with the classical tradition and in particular, appealed to Justinian codified Roman canonical law. Due to the re-discovery of ancient Greek texts, Aquinas analyzed Plato and Aristotle, writing extensive commentaries on the works of the latter. In the practice of Aristotelian syllogism, to state and expound his arguments, Aquinas wrote in terms of major premises, minor premises, and conclusions as his tool for arriving at normative truths about law and justice (Lukas 226). Like Plato, Aquinas used dialogues of questions and answers to resolve contradictions in philosophic and theological theory. In keeping with the Scholastic tradition of the written form, he included questions and accompanying objections to which he responded with answers and accompanying replies to objections. Aquinas penned many treatises or lengthy prose works exploring a single subject. In his most famous work, the *Summa Theologiae*, Aquinas shared all contemporarily recognized knowledge about theology, espousing what later became known as natural theology and natural law theory. Referring to Justinian, Augustine, Isidore of Seville, Aristotle, Cicero, Apostle Paul, and the Bible as the primary authorities for his arguments in the *Summa Theologiae*, Aquinas presented his theology and philosophy as logically unquestionable.

**Thomistic Natural Theology**

It is often said that Aquinas “baptized” Aristotle (Cahoone interview). By the 13th century, because of the Crusades, lost ancient Greek texts were re-discovered by Western Europeans. European culture came into contact with Arab cultures and scholars who had preserved the writings of Aristotle. At first the Church viewed the ideas of Aristotle, newly translated into Latin and highly appreciated by scholars, as a threat to religious dogma. Aquinas wanted to show that Aristotle’s ideas were intellectually friendly to Christianity. Scholastics claimed that Aristotle had given rational proof for the existence of God. According to Aristotle, things move only when something moves them. Our world is characterized by motion, so there has to be a prime mover, logically. The first bit of rational proof for God’s existence is that every effect in our world must have an efficient cause. Secondly, everything in our world has a purpose or what Aristotle called a teleological cause. Lastly, some agent had to design everything and create

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6 Longer treatises – *summas* – were summaries of all what is known on a subject.
7 Dr. Scott Curtis, Mississippi School for Mathematics and Science, in his lectures for the class “Foundations of Western Thought”
everything from the world’s inception. This strong argument became known as the argument from design: complex things were not created by accident so there must have been a design, intent, and designer. This powerful argument has withstood the test of time. In fact, in the 19th century, Charles Darwin lauded many of Aristotle’s fundamental precepts about the order of the natural world. Referring to Aristotle for rational proof for the existence of God, Aquinas contended that God has created a great world order in which He has placed all the things of this world. Modeled after Aristotle’s scale of being, the Thomistic Great Chain of Being is a hierarchical structure of the world that placed God at the highest and all living creatures below by social rank from king to serf. This natural theology espoused a very static, or unchanging, view of the world.

Reflecting God’s design in the natural world, Aquinas contends that the state – viz. government – is natural. People living in a society must be governed under rulers just as a colony of bees needs a queen bee. On matters of government, Saint Aquinas began with the Aristotelian idea that man is a social and political animal. Man must live in a group because alone, he cannot provide for all of his own necessities (*Summa Theologiae* I-II Q. 92). Man is, by nature, an intelligent being. Man has an end to which all his actions are directed. And lastly, man cannot provide for his life alone (McInerny and O’Callaghan, 4). Therefore, in society, people need to help each other individually and cooperatively. The common interest of all members is to achieve separate, private goods.

The common good is essentially the stable relationship between all the citizens in that each can achieve their private goods. This point reflected Aristotle’s idea that the common good is the goal for all citizens to live as excellent of humans as possible. Aquinas contended that the common good is not universal happiness and fulfillment of individual, private interests but two-fold happiness and blessedness in the present world and the after-life. This self-sufficient good is necessarily oriented towards God (*ST* I-II Q. 92 Art.1). Thus, members of a society as well as the society as a whole should seek the common, public good. Furthermore, law is natural and rational. Reason is the superior part in our souls and moves us to the good. Law in government

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moves people to the common good. Therefore, there are normative moral rights and wrongs. The final end of a group of free men should be to behave with accordance to Christian morality and to seek the common good (ST I-II Q.96 Art.6). Just rulers and jurists should neglect their personal goods and interests but direct their attention to the common good. Just lawmakers lead the individuals to the good life of virtue and sufficiency of material goods on earth as well as eternal life in heaven (Bigongiari, xxvi). Ideally, such a natural state would be a peacefully governed society.

Thomistic Natural Law Theory

According to Aquinas, “Law is a rule and measure of acts whereby man is induced to act or is restrained from acting; for *lex* (law) is derived from *ligare* (to bind), because it binds one to act” (ST I-II Q. 90 Art.1), and “… is derived from *legere* (to read) because it is written” (ST I-II Q. 90 Art.4 ad.3). By combining legal tradition, philosophic tradition, and religion, Aquinas codified Roman canon law within the framework of his natural theology. Aquinas discerned four types of law. The first type is eternal law. This is God’s providence or overall design for human history and the world. Divine law is the law found in the Scriptures, given by God to humans as a guide to living on earth (ST I-II 91). Beneath divine law is the natural law, what the Roman rhetorician Cicero called law of all nations. Natural law constitutes the norm of moral virtues and practical reason. Finally, Aquinas wrote of a fourth type of law called human – or secular – law, which includes constitutions, law codes, and black letter law (ST I-II Q. 91). Aquinas claimed that God has given humans reason: humans know what is right and wrong and have free will. In the Thomistic hierarchy of law, humans are not bound by human law but by the highest order of the divine.

Finnis, a critic of Thomistic social and political philosophy, compounded Aquinas’s assertion that natural law is a reflection of eternal law. Aquinas claims that “human participation of the eternal law in the rational creature is called the natural law” (ST I-II Q. 91 Art.2). Natural law tells people what is good and what is evil and it is human awareness of eternal law so far as it can be conceptualized by the human mind. It is human participation in God’s providence. In

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10 I am indebted to Stephen Brown, Professor of Medieval Philosophy and Theology at Boston College, whose advice allowed me to make some aspects of my research on Thomism more concrete.

11 Black letter law is law that is commonly known and unlikely to be disputed.
so far as eternal law tells us that there are certain things worth attaining in life: preserving life through the cycle of procreation, knowing the truth of God, and coexisting with one another in society. Because not all people are equally rational, natural law guides the establishment of human laws by rulers and jurists (Finnis 3). As moral certainty is found is eternal and divine law, there can be no moral doubt.

Human, or positive, law is necessary because it solves aspects of the problem of application. Given that all people have natural reason, it follows to expect all people to view natural and divine law in different perspectives and thus respond in different ways (ST I-II Q. 97 Art.1). However, people have different rational capabilities and degrees of legislative authority. It is impossible to eliminate all human vices; the coercive property of law prevents misuses of natural law. By coercive, Aquinas does not mean to say that the law is forceful or forced upon the people (Finnis 4). Instead, he gives an Augustinian answer that people fear t uncertainties and naturally care about self-preservation.

Because human law is modeled on natural law and aspires to achieve the common good, anything else outside of the law is violence. As rational actors, people are obliged to seek the common good. The common good is not the equivalent of universal happiness. Instead, the common good is the final good – the one towards which all people would aspire (Finnis 3). By this logic, all people are subject to human law. In that people are virtuous, they cannot be coerced to the law but are motivated by rationale to follow the law for the sake of their own self-preservation ways (ST I-II Q. 96 Art.5). Although all people are oriented towards God, not all are moving in the right direction. A good leader, therefore, seeks the common good of his or her people and not for his or her own desires, and seeks to lead the people to this good. He or she alone will maintain peace and unity in the community that he rules (Finnis 4). Human law is the lowest of all the laws that exist. Again, that all people, regardless of station, must subscribe to the higher orders of natural and divine law.

As seen in nature that a pack of wolves needs a leader, government of men is also natural. Humans by nature live with adherence to the rule of law. Therefore, the law is simply “an ordinance of reason for the common good of a [complete] community, promulgated by the person or body responsible for looking after that community” (ST I-II Q. 90 Art. 1). Such morally upstanding leaders would create and change human laws to reflect natural law. According to Saint Aquinas, the law of non-contradiction shows that one cannot have both A and
not A. All morality is grounded in absolute, normative ethical truths in the eternal law. The conceptions of good and evil set the foundation from which people make moral decisions (ST I-II Q. 95 Art.4). Divine truths about good and evil are seen in nature. Human law must regulate and abolish all that is naturally seen as evil. Governments with leaders and jurists are thus necessary to maintain societal order and justice, mirroring that of the divine.

Aquinas elaborated on the point that law must be made known to the public and by he who has care of the community (ST I-II Q. 96 Art.6). The purpose of law and government is so that all people can strive towards the common good. Aquinas defined justice or the right as rendering unto each person what each is owed (ST II-II Q. 58 Art.1). This follows the scriptural teaching to love your neighbor as yourself. Aquinas gave a three-fold model that places obedience to God as the highest rule. According to Aquinas, obedience to those in higher positions is divinely designated and thus just. This includes obedience to secular princes. However, if any commandment/law is against the will of God, it is unjust (ST I-II Q. 96 Art.4).

Finnis made the connections between Thomistic doctrine and modern points of legality and natural law theory more explicit. Like Aristotle, Aquinas defined justice as the reason ruling the appetite and serving as the mean between excessiveness and deficiency (ST II-II Q. 58 Art.10). Moreover, justice is an expression of the right. Aquinas further makes the distinction that justice on earth given by human law as jus and that of the divine as fas. Legal justice is the greatest of all virtues and essentially keeps peace on earth. His definition of domestic justice explains the relationship of a slave to his master as the same as that of a father to a son (Finnis 2). As one critic summarizes, the basis of natural law theory is that “from the God's-eye point of view, it is law through its place in the scheme of divine providence, and from the human's-eye point of view, it constitutes a set of naturally binding and knowable precepts of practical reason” (Murphy 2). With that said, legality subscribes to morality regulated by reason and justice can be boiled down to a fundamental moral obligation to do the right thing.
The College of the Holy Cross Education

“We have achieved prodigies! It pleases me to send you news of ‘the Catholic College of the Holy Cross of the Society of Jesus’ – in the midst of Yankees!”

- Father Francis Dzierozynski, provincial of College of the Holy Cross, in a letter to the Jesuit general, August 22, 1848

The College of the Holy Cross, founded in 1843 by Bishop Benedict Fenwick S.J., was the first Jesuit college in New England. Holy Cross integrates the academic rigor of secular sciences and humanities with moral training in the Jesuit tradition. More so than the college motto, the scriptural verse carved on the frieze of the college’s Dinand Library, “Ut Cognoscant Te Solum Deum Verum Et Quem Misisti Jesum Christum,” translated as “That they may know you, the only true God, and Jesus Christ whom you have sent” (John 17:3) emphasize the spirit of the institution in its historical intention to educate Catholic males.

The Jesuit Model

The Society of Jesus, formed by Saint Ignatius Loyola and his company of six, was formally established as a canonical order by Pope Paul III in September of 1540 (Kuzniewski 4). These founding men consecrated their lives to what became the Jesuitical rule of spirituality as expounded in the Spiritual Exercises, written by Ignatius in 1548 (Kuzniewski 2). Modras described the Jesuit humanism and spirituality as focused on six uniquely Ignatian pillars: “centeredness on a Christ with a Mission,” “Trinitarian sweep,” “liberality of grace,” “faith as trust,” “service in the world,” and “praying with discernment” (38-49). Instead of searching for truth – veritas, Jesuit Humanism emphasizes public engagement or Erasmian pietas (O’Malley 8). After all, the bedrock of Ignatian spirituality as expounded in the Spiritual Exercises is service. The phrase “helping souls” is ubiquitous throughout the writings of Ignatius and in the Constitutions of the Society of Jesus because service is the end to “the ‘contemplation to attain love,’ where it is described as the love that manifests itself ‘more by deeds than by words’” (Modras 45). Superficially, it may seem that Renaissance Humanism with its ideal uomo universale conception of the Renaissance man who knows all and does all is antithetical to the service and humility orientation of the Society of Jesus. However, this problem was abrogated

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12 As quoted in Kuzniewski, 33.
with the inclusion of the *Summa Theologiae* into the Jesuit framework. Thomistic natural theology of an ordered universe was appealing to Humanistic tradition of wisdom, unity, and universality of truth (Modras 63-65). Furthermore, unlike theologians preceding him, Aquinas maintained that God’s grace builds on nature. This happy marriage of Christian doctrine and pagan classics allowed the Jesuits to pursue rigorous academic study to further the kingdom of God, coining unique Jesuit humanism.

As summarized by the College of the Holy Cross historian Anthony Kuzniewski, S.J., the Jesuit motto, “*Ad majorem Dei gloriam*” or “For the greater glory to God” embodies the Ignatian spirit in all areas of life, from academic study and civic engagement.\(^{14}\) According to Joseph Lawrence, Professor of Philosophy at Holy Cross, the Ignatian spiritual exercises were meant to transform the self towards becoming a leader in the world. The Jesuits look for evidence of God in the world to understand the reality of evil and justice. Therefore, the Jesuit project is the moral transformation of the world itself. Unlike other Catholic orders, the Society of Jesus has established itself as a very political and pragmatic order. As Joseph Lawrence, Professor of Philosophy at Holy Cross, claimed, “Change the world. Fight for justice. Very, very Jesuit slogans.”\(^{15}\)

**Ratio Studiorum**

Officially known as the *Ratio atque Institutio Studiorum Societatis Jesu*, this Jesuit course of study was the order’s academic model for educating young men (Kuzniewski 6). This course of study reflected the Humanistic fervor of Ignatius’s contemporary Renaissance Europe. The idea of *studia humanitatis* – educating the whole person – in the classics included extensive study of Latin and Greek manuscripts and pre-Christian thinkers such as Aristotle (Modras 59). In February 1551, Ignatius replaced Peter Lombard’s *Book of Sentences* with Aquinas’s *Summa Theologiae* as the primary theological text because the medieval philosopher not only represented the pinnacle of Scholastic learning but also the convenient marriage of pre-Christian philosophy and Christian theology (Kuzniewski 6).

\(^{14}\) Anthony Kuzniewski, S.J., Professor of History and College Historian at the College of the Holy Cross. Personal Interview.

\(^{15}\) Joseph P. Lawrence, Professor of Philosophy at the College of the Holy Cross. Personal interview.
The university deals with things of the mind; education is an intellectual and spiritual process which has to do with the opening of the windows of the human mind, the enrichment and ennobling of the human soul. Therefore, the university must place humane values, spiritual values, above material values; training of men in thinking is more important than training in techniques.


Holy Cross College from 1937-1941

From the turn of the century to 1960, the “second Holy Cross,” as the College’s historian Kuzniewski called it, in response to pressure from President Eliot of secular Harvard University, had by World War I adjusted its program from a European-like gymnasium to “an American college” that fostered competitive intercollegiate athletics without sacrificing a curriculum that reflected the Ignatian Ratio (xv). By 1936, Holy Cross had reduced its previous offering from ten degree tracks to four (Kuzniewski 279):

- Bachelor of Arts with Honors (Latin and Greek required)
- Bachelor of Arts (Latin required)
- General Bachelor of Science (no required Latin or Greek)
- Bachelor of Science in Economics, Education, or History (no required Latin or Greek)

16 Thomas O’Connor, University Historian at Boston College. Personal Interview.
By that time, the Bachelor of Arts Honors track was the most true to the *Ratio*, with its compulsory study of both Latin and Greek. According to Jesuit scholar John O’Malley S.J., aside from being faithful to the Ignatian curriculum, arduous studies of Greek and Latin “were also supposed to help us young Jesuits achieve ‘perfect eloquence’ – *eloquentia perfecta*” (13). According to the 1938 Holy Cross College catalog, “Only when it is occupied with the entire man, Body, Intellect and Soul, and which man’s entire life, the present and future, does education attain its ultimate end” (24). As galvanized by Thomistic ideals, the college emphasized study of art, literature, and theatre as forms of spiritual transformation to make students social and political actors in the world (Lawrence interview).

Daily life regimens in place for decades unintentionally prepared the men of Holy Cross to enlist (willingly) in the Second World War (Kuzniewski 287):

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>7:00 A.M.</td>
<td>Rise</td>
</tr>
<tr>
<td>7:15 A.M.</td>
<td>Mass</td>
</tr>
<tr>
<td>7:45 A.M.</td>
<td>Breakfast</td>
</tr>
<tr>
<td>9:00 A.M.</td>
<td>Class (Freshmen Only)</td>
</tr>
<tr>
<td>11:50 A.M.</td>
<td>Dinner</td>
</tr>
<tr>
<td>12:20 P.M.</td>
<td>Class (All)</td>
</tr>
<tr>
<td>1:15 P.M.</td>
<td>Class (All)</td>
</tr>
<tr>
<td>3:00 P.M.</td>
<td>Classes End</td>
</tr>
<tr>
<td>5:55 P.M.</td>
<td>Supper</td>
</tr>
<tr>
<td>6:25 P.M.</td>
<td>Chapel</td>
</tr>
<tr>
<td>7:00 P.M.</td>
<td>Study Period</td>
</tr>
<tr>
<td>10 P.M.</td>
<td>Lights Out (11:00, 1940-41)</td>
</tr>
</tbody>
</table>

Ethics had more weight than any other study, and the sense of moral certainty in Thomistic teachings was translated into the practical realm: “He is not sent to the law school without an intelligent grasp of the ethical nature and development of man and of the logical processes which make for and characterize sound judgment” (Lawrence interview; 1938 Holy Cross Course Catalogue). In the fervor of Deweyan pragmatism and philosophy on education, Jesuit undergraduate institutions were pressured by top-ranking graduate schools to forsake the *Ratio* for a more elective based curriculum. For Holy Cross, the staunch opposite of the centuries old *Ratio* was the electives-based curriculum at Harvard University. However, the Jesuits stood their ground. One Jesuit priest claimed that any undergraduate student would graduate from Harvard with only:

…disjointed and broken pieces of learning… [without] any knowledge of general philosophical principles. Logic and the laws of thought may be as unfamiliar to

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17 John Dewey (1859-1952) was an American pragmatist philosopher and education reformer who contended for a liberal democracy whose two most important elements are the schools and civil society. In education, he espoused hands-on learning and experiential education. Often compared to those of Karl Marx, Dewey’s views are best categorized today as democratic socialism.
him as the Devanagari alphabet [of ancient Sanskrit]… and the basic doctrines of rational psychology as unknown as the hieroglyphs of an Egyptian scarab.

(O’Toole 15)

On the other hand, a student who graduated from Holy Cross would have had the moral backbone to face to handle any ethical dilemma with ease and grace.

During his years at the College of the Holy Cross, a student delved into the ideas surrounding the teachings of St. Aquinas - Scholasticism, natural theology, and natural law theory. At the time, Holy Cross philosophy professors would have had three years of intensive Thomistic training through Jesuit studies (Kuzniewski interview). The principle texts were written in the fashion of a modern mathematics book – in terms of problems and solutions (Lawrence interview). At Holy Cross, philosophy was not reduced to abstract ideas. Instead, philosophy had concrete applications to life and the world at large.

Holy Cross boys took courses in religion to establish themselves as good Catholics. Referring to Table 2 in the Appendix, in the freshman and sophomore years, the courses – “Fundamental Apologetics; Divinity of Christ” and “The Church of Christ” in the freshman year and “Existence and Essence of God” and “God and Creation” in the sophomore year – established a thorough understanding of the fundamental Catholic doctrines as presented in the Jesuitical tradition. These core religion courses set the framework for the intensive ten courses in philosophy in the latter two years of the Holy Cross curriculum.

In the junior year, the Holy Cross boys took their first four courses in philosophy. In “Logic,” students would learn “natural and artificial logic, the three operations of the mind: idea, judgment, and reasoning,” as well as Thomistic syllogism, other modes of argumentation, deduction, and induction (1940 Holy Cross Course Catalogue). The courses on “Ontology,” “Cosmology,” and “Natural Theology,” taught as philosophy, focused on “laws of nature” and “the moral proof… of God’s existence” (1940 Holy Cross Course Catalogue). Furthermore, taken concurrently with the religion courses of “God, the Redeemer” and “God and Redemption,” “Natural Theology” emphasized the sub-topic of “Concurrence of God in the Actions of Creatures,” which stressed “St. Thomas [Aquinas] and ‘Premotion’; Divine Providence and its
relation to physical and moral evils; the possibility of a Supernatural Providence” (1940 Holy Cross Course Catalogue). Since logic, syllogism, and natural theology were taught in the third year of the Holy Cross curriculum, natural law theory would have pervaded the philosophy lectures. Not surprisingly, “Epistemology” included the study of “logical and moral truth…rejection of false theories; Objective Evidence” (1940 Holy Cross Course Catalogue). Because natural theology dictates the providence of God and unity in his Truth and natural law theory claims the normative morality of the divine, these two positions on life and law were intended to form the moral bedrock of the Holy Cross student’s personal and public ethics.

According to Boston College University Historian O’Connor, the curriculum at Holy Cross – very similar to that of Boston College – in the later 1930’s and early 1940’s revolved around the study of moral ethics, including not-so-scientific psychology courses offered by philosophy faculty. By his senior year, the student would have a comprehensive understanding of reasoning and judgment-making: “Scholastic concept of life” in “Fundamental Psychology”; “origin of ideas, judgment and reasoning, attention and reflection, memory, the rational appetite – the will, its nature and freedom” in “Advanced Empirical Psychology”; and “the human soul, its substantiality, individuality, simplicity and spirituality… origin and destiny of the human soul” in “Advanced Rational Psychology” (1941 Holy Cross Course Catalogue). These courses in philosophy would teach the Platonic and Aristotelian influences in Thomistic thought, in addition to sentimentalists like John Locke and David Hume. In “General Ethics,” the student studied the Thomistic ideas of the end of man and imperative of moral ethics, including “eternal law and the natural law; properties and sanction of the natural law; nature and origin of moral obligation” (1941 Holy Cross Course Catalogue). In “Special Ethics,” the student was taught his duties to God, his neighbor, and himself. On matters of “civil society,” the course focused on “the Scholastic doctrine; forms of civil government; citizenship; universal suffrage; the functions of civil government – legislative, judiciary, executive… state education” (1941 Holy Cross Course Catalogue). Finally, the heavily Thomistic education was rounded out by electives in modern foreign languages, education, economics, English, history, sociology, political science,

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18 Sentimentalism refers to a school of philosophy that holds that moral ethics stem from sentiment (emotion) as opposed to reason. For sentimentalists, reason serves as an instrumental role, not the principle role, in guiding one towards moral actions. At Holy Cross, students would have studied Locke’s Essay Concerning Human Understanding and Hume’s Enquiry Concerning the Principle of Morals. In philosophy courses, Thomism, which favored reason from God, was used to refute ideas of Locke and Hume, among others.
and general sciences, shaping the Holy Cross boys to graduate as good Catholics and “educated gentleman” (1941 Holy Cross Course Catalogue; Ascending the Heights 28).

**Desegregating Spring Hill College and Boston College**

Whereas most private institutions waited late into the Seventies to open their doors to African American students, two Jesuit colleges – Spring Hill College and Boston College – served as leaders in integration and active recruitment of African Americans. Founded in 1830 by Bishop Michael Portier, and run by Jesuits beginning in 1847, Spring Hill College in Mobile was the first private institution in Alabama and one of the first in the South to integrate (Padgett 167). In 1941, Andrew Smith, S.J., 20 claimed in “The Modern Schoolman,” St. Louis University’s journal of philosophy: “The teacher in the teaching situation is not talking merely to himself… [And is] by his very nature…the middleman of knowledge… [with] twofold responsibility to truth and to good” (“A Professor, a President and the Klan”). The social responsibility to act with accordance to God’s truth and the common good is a key Thomistic idea. With integration on the horizon, president of the college and rector of the Jesuit community from 1946 to 1952, Patrick Donnelly S.J. agreed with the view that: “It would hardly be consistent for me to speak of world citizenship… [to] criticize and denounce Stalin’s Russia—as the very antithesis of democracy—and then lapse into silence where the creed and business of democracy touches us most closely—in our beloved Southland, in our great state, in our beautiful city” (“A Quiet Change of Course”). For Donnelly, the federal government had kept silent for too long about the social injustices brought upon African Americans by various social institutions such as education. Trumpeting the horn of Ignatius, Spring Hill College opened its doors to African American students in September 1954, less than two years after the college became co-educational (Padgett 167).

Boston College also served as a prime example of the Jesuit progressive stance on integration. In a personal interview, BC University Historian Thomas O’Connor explained that before the 1960s there were very few African American students at Boston College. As race consciousness in society began to develop, the president of the college Michael Walsh S.J.

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19 I am indebted to Professor Stephen Brown’s e-mail correspondence suggesting that I look into the desegregation example of Spring Hill College.

20 Smith would later become president of Spring Hill and then carried his desegregation agenda to Loyola University of New Orleans as its president.
thought that Boston College needed to do something significant before he left office in 1967. Father Walsh wanted to recruit students from the enclaves in Boston that have been historically and continue to be mostly settled by African Americans. He met with the members of those communities—the South End and Roxbury among others—to find qualified prospective students. In 1968, Walsh initiated a fund of $100,000 to support this initiative. Later that year, 47 African American students entered Boston College’s doors. In 1970, 186 African American students were matriculated at the college (O’Connor interview).

In his famous 1963” Letter from the Birmingham Jail,” Martin Luther King Jr. lauded the moral significance of Spring Hill’s leading integration of the foundational institutions of society. Amidst one paragraph’s critique of the churches’ lack of involvement in the Civil Rights Movement, there is a contrasting example of the Jesuit college: “I want to commend the Catholic leaders of Alabama for desegregating Springhill [sic] College several years ago” (Padgett 188). As seen from Table 1 in the Appendix, all of the private colleges that have desegregated by 1951 were founded in part or fully upon Christian values. About half of these colleges are Catholic, and Loyola University of New Orleans and St. Louis University are distinctly Jesuit.

The Judge Responsible for Morgan v. Hennigan and the Boston Busing Years

Wendell Arthur Garrity Jr. was born in Worcester on June 20, 1920 into an Irish Catholic family. The son of a U.S. District Commissioner, Garrity showed his love for the law at an adolescent age. At his 1937 graduation from Worcester North High School, he gave a speech contrasting chaotic Europe to a relatively tranquil United States at the dawn of World War II, reasoning that U.S.’s calm demeanor is an effect of the Constitution, “a code of justice far superior to any ever formed before” (American National Biography). Later that year, Garrity matriculated at his father’s alma mater, the College of the Holy Cross, where he was active in several debate clubs and was inducted into the first pledge classes of the Alpha Sigma Nu – the national Jesuit honor society for academic achievement and service – and Delta Epsilon Sigma – the national Scholastic Catholic honor society for “good character, liberal culture, and high-ranking scholarship” (1941

“1941 Purple Patcher, the College of the Holy Cross yearbook, ACHC

**The Best Man for the Job: Federal Judge of the First District of Massachusetts**

As father, husband, judge, and public servant, Garrity exemplified himself as one of high moral caliber with a great sense of duty to his fellow citizen. In law, Garrity proved to be an extraordinary purveyor of the Constitution. While in private practice, Garrity handled several significant cases that laid the foundation for his moral reputation: successful prosecution of a corrupt state district court judge before the state Supreme Judicial Court in 1951 and investigation as court-appointed counsel for the 1950 $2.7 million Brinks robbery, among others (American National Biography).

As a judge, Garrity’s dedication to the Constitution, meticulous attention to detail, and immense sense of morality heightened. In *Inmates of Suffolk County Jail v. Eisenstadt* (1972), inmates of the 1848 built Charles Street Jail complained of the institution’s deplorable conditions and petitioned for it to be shut down (Eckman). Recalled by Jean Garrity as her father’s one “business trip,” the judge and his clerk, John Clarke Kane Jr., spent a night in a cell on murderers’ row to clear the factual basis of the plaintiff’s claims (Seligmann 198). As Alan D. Rose, the judge’s law clerk from 1972-1973, recounted, “The judge

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21 Alan D. Rose, Sr., partner at Rose, Chinitz, and Rose. Personal Interview.

“I think part of why he was so well suited to the job was because he loved being a student, and as a judge he would learn from experts the intricacies of the various issues brought before him.”

- Jean Garrity, daughter of Judge Garrity, in an e-mail to a young relative, Sam.
really… really thought it was his duty to delve into the facts, no matter the case was.” As an example, LeClair, the judge’s law clerk from 1973-1974, recalled the Old Colony bankruptcy case in Boston a few years before his clerkship. Many people had their retirement invested in this bank. At that time, bankruptcy cases usually begun with federal judge and then are referred to a bankruptcy judge. When the Old Colony case was drawn by lot to Judge Garrity, he did not pass it on to a bankruptcy judge. He kept working on the case and helped the creditors recover a significant part of their money.

LeClair gave another example of Garrity’s moral and legal autonomy. Because of his Catholicism and family values, Garrity had very strong views on obscenity. In 1970, *Hair: the American Tribal Love-Rock Musical* was touring in Boston. In this theatrical play, there were parts where the actors were stark naked – no sexuality, just nudity. Although the Boston arts community embraced the hippie musical, Suffolk County District Attorney Garret Byrne wanted to ban the showing of the play. The show’s producer Michael Butler armed with Gerald Berlin, Harold Katz, and Henry Monahan as legal counsel brought the case to the Massachusetts State Supreme Court, whose unfavorable memorandum opinion led to an appeal to a Federal Court consisting of Judge Garrity and two judges from the Court of Appeals ("Gerald Berlin and Defending Hair"). Not minding the other judges’ ruling in favor of *Hair*, Garrity staunchly opposed to the showing of Hair in Boston, keeping true to his moral convictions and family values.

Likewise, Garrity’s view on racial equality was foreshadowed by his attitude towards the General Electric controversy at his alma mater. In September 1969, the newly formed Revolutionary Students Union (RSU) permeated the Holy Cross campus with heated discussions of national hot-button issues, including most significantly anti-Vietnam War protestation. One particular demonstration by fifty-four Holy Cross students against GE’s on-campus recruitment stirred up undue controversy. The protesting students stood against the company because it was a major contractor for manufactured products such as the powerful Minigun. Out of the sixteen students facing penalties, four black students – eighty percent of the total black students involved – were charged by the college with obstruction (Brady, “The Walkout”). The Black Student Union (BSU) denounced the college’s Judicial Board’s decision as tainted with racism. After

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22 I am indebted to Mariann Panarella, Alumna-in-Residence for Law at Wellesley College. Panarella clerked for Judge Garrity in much later years and suggested that I contact the judge’s law clerks from 1972-1975 for interviews.
23 Brian LeClair, formerly of Hale and Dorr. Personal interview.
much deliberation, the college president Father Raymond J. Swords – to the mixed positions of
the Holy Cross students and alumni – granted amnesty to the black students and to avoid charges
of reverse racism, the white students as well (Kuzniewski 417-20). Amidst the negative
communication Swords received, there was a warm letter Garrity, in which he stated that the
controversy over Swords’ decision was “not worth rending the fabric of the Holy Cross
community.”

**Garrity Tackles Morgan v. Hennigan**

The 1950s witnessed a migration of Southern blacks into Northern cities such as Chicago
and Boston and migration of whites from the cities into the suburbs (O’Connor interview). The
post-World War II era saw the black sharecroppers being replaced by the new cotton-picking
machinery – for instance, one man in a mechanical reaper can harvest more cotton in a single day
than a thousand workers – and attracted to the wartime jobs. “Push and pull” caused this great
migration. As the blacks moved in, many whites moved out of the South End and Roxbury areas
and into the neighboring neighborhoods (O’Connor interview). Blacks poured into the working
class Boston neighborhoods, swelling to ten percent of the city’s population by 1960 (O’Connor
255). Furthermore, John Harris, Professor of Economics at Boston University, adds that
suburbanization moved out the middle class and many jobs. Therefore, the people who were left
in the city were “stranded” there (J. Harris interview). Nearly a decade after the 1954 *Brown v.
Board of Education of Topeka*, in June 1963, the National Association for the Advancement of
Colored People (NAACP) first noted that the racially imbalanced Boston schools were intended
by the school committee. Ignoring the NAACP’s findings or the commonwealth’s 1965 Racial
Imbalance Act that deemed any school that was more than fifty percent black racially
imbalanced, the Boston School Committee staunchly maintained that the Brown decision was
irrelevant to the Boston public school system. The school committee – a cadre of Irish Catholics
including Louise Day Hicks, William O’Connor, John McDonough, John Craven, Paul Ellison,
and James Hennigan – firmly kept the doors of all-white schools shut to black students
(O’Connor 257).

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24 Kuzniewski cites this as a letter from W. Arthur Garrity, Jr. dated January 7, 1970 and located in the Swords
Papers, Box 14, folder I, ACHC, 12.24 but I was unable to find the original letter at the Special Collections and
Archives at the College of the Holy Cross. The above quotation comes from Kuziewski’s book. Nevertheless, I
postulate that Judge Garrity would have written a bit or two about the moral and legal right of Father Swords’s
decision, foreshadowing Garrity’s own landmark opinion on *Morgan v. Hennigan* just four years later.
On March 15, 1972, *Tallulah Morgan et al. v. James V. Hennigan et al.* 379 F. Supp. 410 was filed by the Harvard Center for Law and Education and NAACP on behalf of fifteen black parents and their forty-three children as a class action case. The plaintiffs alleged that James Hennigan, president of the Boston School Committee, and other defendants for enacting and perpetuating *de jure* segregation in the Boston Public Schools (Guide to the Morgan v. Hennigan Working Files 1). Because cases were assigned by rotation, it was by pure chance that *Morgan v. Hennigan* was allotted to Garrity and became one of the most important cases in history. Rose stressed that the judge’s sense of duty drove him to handle the case with professional objectivity. After over two years of deliberation, Judge W. Arthur Garrity Jr. delivered his opinion “that the defendants . . . knowingly carried out a systematic program of segregation affecting all of the city's students, and . . . intentionally brought about and maintained a dual school system. Therefore, the entire school system is unconstitutionally segregated” (379 F. Supp. 410).

The lion’s share of racial discrimination lawsuits were filed in the South. Those cases challenged *de jure* segregation by law. There was no question about whether it was segregation by accident or by legal mandate. Boston, however, was the premier case of *de facto* segregation – whether segregation was the result of pure happenstance or law. Therefore, the decision was so long because the recitation of the fact finding. Boston public schools were segregated because of convoluted, intended policies, which LeClair described as “so bloody complicated!” Mayor Kevin White felt the pressure of the case and thought that the defense needed to be excellently handled. He personally called a lawyer, James St. Clair, from Hale and Dorr and said, “You need to do this.” The liability phase of the case took about six weeks from February to March 1973 (Rose interview). Garrity carefully deliberated over the evidence and issued his decision on June 21, 1974.

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25 Formerly Hale and Dorr. Presently named as Wilmer Cutler Pickering Hale and Dorr LLP or best known by its market name WilmerHale.
According to Rose, there were two issues in *Morgan v. Hennigan*. There was the Constitutional question. The court had decided starting with *Brown v. Board of Education* that the separation of the children in the public school system was unconstitutional and “inherently unequal.” Was the Boston situation produced intentionally? Or did segregation result consequentially from discriminatory housing patterns?

Garrity was also concerned about improving the educational quality for all children. Rose contended that Garrity sought to improve an overall poor school system out of moral right, not because the Constitution or statutes said it needed to be. Because of this, the judge wanted as much practical assistance from the parents. There needed to be a big push to improve the Boston school system. In addition to racial segregation, the school committee had failed to create the best possible school system.

There were five to six weeks of presentation of evidence. Most of this was dry and statistical. The evidence showed that the schools had become increasingly segregated with age group [viz. high schools were far more racially imbalanced than elementary schools]. The assignments were made deliberately to make the schools all-white or all-African American (Rose interview). What caused this phenomenon? And was there deliberate intention on the part of the school committee to keep the children segregated?

The school committee certainly had several tricks up its sleeve. For example, the committee would build a school in the middle of black project that was only big enough to hold the students from the black projects. Then, the school committee implemented school choice as an escape mechanism for whites – “if you were a white student in a largely black neighborhood, you could escape and go to a white school, but if you were black, say in Roxbury, you would be turned down to go to Southie” (LeClair interview). Louise Day Hicks disingenuously made the argument that segregation was due to the housing patterns created by the Boston Housing Authority and thus, not a responsibility of the school committee (O’Connor interview). Based on the report of how many empty seats there were at Southie, the school committee told the janitors to unbolt the extra desks and put them in the basement. That way, the school committee would be able to tell black applicants to Southie, “Sorry, no more seats” (LeClair interview).

Additionally, the school committee had placed the least qualified, minority teachers in the

“**You understand my position. I just have to carry out the law.**”

- Judge W. Arthur Garrity, Jr., as quoted posthumously in *The Boston Globe*, 1999
minority schools. Feeder patterns, districting and redistricting, controlled transfers, and facility conditions all attributed to the judge’s argument that Boston public schools were indeed *de facto* segregated by the Boston School Committee. All in all, *Morgan v. Hennigan* had to be excruciatingly detailed so that “no rational person could deny that there was discrimination by government policy” (LeClair interview).

The most important piece of evidence that Garrity found was one that has garnered little to no media attention. During the discovery phase of the case, a former member of the school committee in the 1960s, Joe Lee, sent a letter to the judge. Garrity brought all of the lawyers into his chambers. He passed out copies of the letter. The letter was a direct and unapologetic explanation for the need to separate the races in the public school system – a clear admission of malicious intent by the school committee (Rose interview).

To be sure, one could not underestimate Garrity’s sophistication or political understanding, especially of the consequences of legal decisions. Terry Jean Seligmann, law clerk for Judge Garrity from 1974-75, asserted that Garrity wanted to reflect the political and personal viewpoints of a diverse and knowledgeable set of advisors.26 Therefore, the judge asked two experts, Robert Dentler, dean of Boston University’s School of Education, and Marvin Scott, Dentler’s associate dean to aid him. Additionally, he appointed a panel of four masters: Supreme Judicial Court judge, Jacob J. Spiegel; former U.S. Commissioner of Education Francis Keppel; former state attorney general Edward J. McCormack Jr.; and professor at Harvard University’s Graduate School of Education, Charles V. Willie (Seligmann 198). This team of masters and experts was instrumental in the development of the receivership plans for three primary phases of busing orders, beginning on June 21, 1974 with Phase I and ending with Garrity’s final orders in September 1985 (“Desegregation-era Records Collection”).

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26 Terry Jean Seligmann, Director of the Legal Writing Program and Arlin M. Adams Professor of Legal Writing at the Earle Mack School of Law at Drexel University. Phone conversation. Respecting Professor Seligmann’s wishes, I did not record this conversation. Any work attributed to “Seligmann conversation” is based on the notes I took during our phone conversation.
Morgan v. Hennigan Excerpts Analyzed through Thomistic and Jesuitical Lenses

The judge’s 152-page decision on Morgan v. Hennigan was five to six times the length of similar cases. In Common Ground, Lukas claimed, “In producing such a document, the judge had two principal objectives: first, to ensure against reversal on appeal, and second, to overwhelm Boston’s persistent opposition to desegregation by the sheer weight of evidence and the power of his logic” (239). In light of Aquinas’s methodology of presenting a question, raising presumed objections to the premises, and then answering to the objections in detail when providing his own answer to the posed question, Garrity’s meticulous attention to the details of Morgan v. Hennigan shows Thomistic adherence to the systemic analysis of each argument. According to Thomas Flaherty, law clerk for the judge from 1975-76, Garrity had a simple tactic: “We’ll just outsmart them… we can always deal with whatever issues they will throw up as road blocks.”

According to the judge’s law clerks, in Morgan v. Hennigan, the judge used constitutional law and judicial precedents to stake the claim that segregated schools are inherently unconstitutional:

A long line of decisions beginning with Brown v. Board of Education, 1954, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873, established that a dual school system explicitly imposed by law is unconstitutional. The Keyes case simply makes it clear that the intentional imposition of a dual school system by covert or subtle means is equally unconstitutional. It should be clearly understood that racial hostility is not the applicable standard. Segregation need not have been inspired by any particular racial attitude to be unconstitutional (379 F. Supp. 410).

In the entirety of the two years of fact-finding and deliberation over Morgan v. Hennigan, the judge considered “theoretical constitutional law issues involving inherent powers of the court, due process rights of the citizens as well as equal rights issues and freedom of speech issues” (Flaherty interview). Acting upon his “moral duty to uphold the Constitution,” Garrity tried to carefully balance all elements of the Constitution so that his issued decisions would be oriented towards the common good (Flaherty interview).

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“Judge Garrity’s 33 years of service to America are a shining example of matchless fidelity to the law and gracious sensitivity to everyone with whom he dealt.”


27 Thomas J. Flaherty, Littler Mendelson P.C. Phone Interview.
As often there are gaps or ambiguity in the law, the judge was aware that he may need to look for new approaches, amending the law or creating new laws (Flaherty interview). In addition to his view that all human laws should reflect natural and divine law, Aquinas also stated, “Wherefore human law should never changed unless, in some way or other, the common weal be compensated according to the extent of the harm done in this respect” (ST I-II Q. 97 Art. 2). By this, Aquinas asserted that laws should only be changed for the greater common good of the society. For Garrity, integration of the public school system would be the greater good for all people, regardless of their race, class, or creed (Rose interview). To justify his decision and later busing mandate, Garrity first established the violation of constitutional laws by the defendants:

The question to be decided therefore is whether the defendants have followed a deliberate policy of separating students on the basis of race. Even this statement is an oversimplification since a course of intentionally discriminatory decisions, all arrived at independently, which over the years has produced a dual school system, would be equally unconstitutional (379 F. Supp. 410).

This excerpt implicitly claimed that segregated schools, whether legally categorized as de jure or de facto, are unconstitutional and unjust. According to Aquinas, justice is “the love of God and our neighbor… the common principle of the entire order between one man one man and another” (ST II-II Q.58 Art. 8 ad.2). Thus, segregation is inherently unjust by divine and natural law and thus, condemned by human law.

Secondly, the judge asserted that greater remedies were needed to reverse the effects of the dual school system. Once he had established his constitutional and legal defense of his ruling, Garrity allowed his “moral compass to guide him” (Flaherty interview). After presenting his extensive evidentiary support for his opinion, Garrity flatly stated, “Neutral conduct is no longer constitutionally sufficient” (379 F. Supp. 410). The Boston School Committee had failed to comply with the Racial Imbalance Act and constitutional principles. Unlike Brown v. Board of Education II, the judge had no patience for segregation “with all deliberate speed” (349 U.S. 294(1955)).

“The effort and hope, of all of us there involved, was first to vindicate the rights of the plaintiff class to equal educational opportunity while at the same time improving the educational opportunity of all students of every race, color, and creed.”

In the Ignatian spirit, the judge not only ruled that desegregation required immediate action, but oversaw its progress over the next two decades.

Overall, because all people participate in the natural world, natural law – these fundamental moral principles – are known to all people, regardless of creed. Implicit in natural law is the conception of “natural right,” which is “equality…as when a man gives so much that he may receive equal value in return” (*ST* II-II Q. 57 Art. 2). As expounded in America’s most basic human law, the Constitution, all people do have certain inalienable rights. As Flaherty contended, “If you put the Ten Commandments side by side with the Bill of Rights and the principles of the Supreme Court, you’ll find a lot of similarities.” Garrity believed it was incumbent upon him to remind factious interests to not overstep the bounds of natural law and infringe upon the natural rights of their fellow men and women.

**Rule of Law: Moral Principles Underlying the Constitution**

In a 1999 interview with *The Boston Globe*, Senator Edward M. Kennedy praised Garrity, “In so many ways, he was a profile in courage in the law… [and] believed passionately in the fundamental constitutional principle of equal protection of the laws for all our citizens” (ACHC). In a defense of his decision in *Morgan v. Hennigan*, Garrity appealed to natural law, the higher order that gives meaning and definition to the human laws prescribed by the courts of the state. As Lukas summarizes in *Common Ground*, Garrity believed that “racial justice was commanded not only by the United States Constitution but by divine law and natural law” (248). Normative truths about morality explicitly delineate moral transgressions. The jurist is only an instrument set to carry out and modify human law in accordance with natural and divine law. Therefore, the political implications of his decision did not need approval from mundane spectators but from the divine and eternal. His concern was not to make the pleasing political maneuver but to uproot the uncomfortable truths and essentially do the right thing.
On March 13, 1975, the Boston Bar Association presented Garrity with its Public Service Award for his “steadfast devotion to the law” (Feeney). In his acceptance speech, Garrity said:

The rule of law encompasses the entire process whereby social order is achieved and preserved… These are the traditional principles of liberty, justice, and decency commonly called the natural law… Is there any body of positive principles and precepts which a good citizen cannot deny or ignore? … Indeed, there is such a thing as the public philosophy of civility. It does not have to be discovered or invented. It is known. But it does have to be revived and renewed” (Lukas 247).

For Garrity, the rule of law was not simply what is stated in the Constitution and statutes and how and they have been interpreted and enforced by the courts and government officials. Instead, he felt that there is something more fundamental than the human laws (Lukas 247). He believed that there are moral principles innate in all people because all people are capable of rationality (J. Garrity interview). The judge viewed the law as a very important device for civility and government. Without a well-functioning and fair legal system, a democracy would be impossible to maintain (LeClair interview). Garrity saw the law as grounded in morality and humanity because he felt that “you have to keep your humanity to be moral” (LeClair interview).

Lastly, after hearings in all of his cases, the judge would talk with his law clerks about the things the lawyers had said, what moved him, and what did not move him (Rose interview). Rose claimed that to this day, he still thinks about the procedures that Garrity would have done and the things the judge would have said, whenever he is preparing to make an oral argument. Shaped by the example Garrity set, Rose said, “When I’m advising a client, I’m not thinking just about what a client can do or is entitled to do, I’m thinking about what he should do. I take into consideration the statutes, rules, and regulations… but you’ve got to go beyond that and ask what the legal, personal consequences of the decision?” Rose insinuated that in the practice of law, there is the legal question and there is the underlying moral question. Out of the two, the moral question may be more important. Especially in decisions like Morgan v. Hennigan, the moral question is entangled

“If Judge Garrity had a more activist streak, going beyond the rule of the law, then I would attribute that to the Jesuit influence.”
- Professor Joseph Lawrence, personal interview
with the legal question. Despite Southie and Charlestown denizens’ impassioned opposition to the busing decree, Garrity knew that it was legally and morally correct to set the precedent that even in the liberal North, segregation was a systemic issue that needed to be extirpated.

**Rule of Life: Moral Principles in Everyday Practice**

Contrary to J. Anthony Lukas’s caricature of the judge as a grandiose socialite with an inextricable attachment to the Kennedy and “a pathological fear of losing control” *in Common Ground*, Garrity was, in fact, a humble man who lived modestly (231). Garrity did not allow himself many luxuries in his work: his one “business trip” was the night he spent at the Charles Street jail (J. Garrity interview). Also, Seligmann recounted that the judge was annoyed that due to safety issues, he could not take the train to work like everyone else (phone conversation). To the extent that he was “controlling,” the judge regulated his children’s interaction with the younger, mischievous Kennedys. 28 She stated that despite his illustrious and personal relations with the Kennedys, the judge “was never so enamored by the Kennedy optimism that he didn’t look out for the best interest of his own kids.” Regardless of one’s political or social position, people in general were important to the judge. Upon hearing that President John F. Kennedy had been shot, Garrity went to the nearest church to pray for his recovery (Garrity’s oral history 19). Upon the passing of LeClair’s mother, Garrity consoled his law clerk, “Death is only other thing you’ll ever have in common with Julius Caesar or Mark Antony or any other great person in history – it’s what unites us all” (LeClair interview). Following both events, Garrity offered solace in whichever way he could.

The judge was not afraid of “losing control” of situations in either his personal life or professional life. Instead, he was liberal in his child-rearing philosophy. He claimed, “A parent’s job is to lay out a healthy banquet for the kids. It’s not the parent’s job to fill up their plates.” Judge Garrity, who had married a schoolteacher, brought up his children in a family setting reminiscent of his own upbringing by a lawyer father and schoolteacher mother (J. Garrity interview). Modeling his parenting philosophy after that of his own parents, the judge maintained

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28 Jean Garrity, daughter of Judge Garrity. Personal Interview. I am indebted to Ms. Kristyn Dyer, Director of Alumni Relations at the College of the Holy Cross, for initially contacting Mrs. Garrity and then connecting me to her for an interview.
a very Jesuitical set of moral values in his household.\textsuperscript{29} He introduced his children to great and morally sound opportunities but let them choose their own path. Three of his four children attended his alma mater, Holy Cross, out of their own volition, not his (J. Garrity interview). Always judicious and fair, even prior to his appointment to the bench, Garrity placed equality and morality at the forefront of every decision, no matter how small or big. As Jean Garrity fondly recalled, whenever her friends or the neighborhood kids would get into a tussle, the judge would mildly break up the squabble and state, “Now, I want to hear both sides…”

Someone who “oozed wisdom,” Judge Garrity imparted those who were close to him with sound advice (J. Garrity interview). His career advice to his children was “be yourself and be on time” – to be true to yourself and to respect others (J. Garrity interview). As his daughter explained, the judge earnestly believed that “what is given is what is expected… This goes back to the Jesuits. Just by virtue of their humanity, every person is afforded their humanity. It’s not something people need to work for”(J. Garrity interview). Rose remembered how Garrity responded to 1972 presidential candidate George McGovern’s explicit assertion of patriotism: “He’ll lose. Any presidential candidate who feels that he needed to say “I love my country” is doomed to lose.” The judge believed that the people will know a public official by his or her actions, not by his or her words. On that note, the judge thought people would see his actions and know that he loved his country. Rose stressed, “He [the judge] didn’t feel like he was compelled to say that” because he always did what he felt was oriented towards the common good of his country (personal interview). Lastly, the judge advised his law clerks: “One of the best things you can do in your life is to be involved in the significant things in your life” (LeClair interview).

In terms of Thomistic and Jesuitical values, involving oneself in significant things requires people to be steadfast moral actors seeking the common good. As shown in the examples of Spring Hill College and Boston College and as exemplified in Judge Garrity’s tremendous role in the Boston desegregation era, many significant events in history were the effects on the part of great moral initiative.

\textsuperscript{29} The judge’s siblings all became involved in civic-minded careers and projects. For example, his sister Margaret “Peggy” Garrity Shea upon her passing left her house to a battered women’s shelter, Abby’s House in Worcester, MA, and his brother John T. Garrity endowed the W. Arthur Garrity Sr. Professorship in Human Nature, Ethics and Society at the College of the Holy Cross (J. Garrity interview).
“Fit[ting] the rule of law into the rule of life...”30

“More than ever I find myself in the hands of God. This is what I wanted all my life from my youth. But now there is a difference; the initiative is entirely with God. It is indeed a profound spiritual experience to know and feel myself so totally in God’s hands.”

- Father Pedro Arrupe S.J. as quoted in Garrity’s funeral service program

In his July 31, 1973 – the feast of St. Ignatius – “Men (and Women) for Jesus”31 address to the “Tenth International Congress of Jesuit Alumni of Europe,” Father Pedro Arrupe espoused three key values of the Jesuit order and its social responsibility: “live more simply,” “draw no profit from unjust sources,” and “become change agents” (Modras 271-72). Undoubtedly, it is no mere coincidence that Garrity’s immediate family had chosen the words of Arrupe to remember the life, work, and person of Judge W. Arthur Garrity Jr.

As “champion, crusade, savior,” Judge Garrity epitomized “American judicial ideals – integrity, dignity and fairness” (Daley). In his speech announcing the donation of his working files on Morgan v. Hennigan at the University of Massachusetts at Boston, Garrity was explicit about his view that the law must address the moral problems of the day. Reflecting on the tumultuous course of Boston school integration, the judge quoted the late President Kennedy in 1963 that the case was inherently a “moral issue” that challenged us as a democracy to maintain our status as the purveyor of equality. Quoting Felix Frankfurter in 1958, the judge emphasized, “The responsibility of those who exercise power in a democratic government is not to reflect inflamed public feeling but to help form its understanding” (Garrity speech). In his speech, Garrity pointed out that he believed that public officials need to consider not only about what is in the statutes – the Constitution – but also about what kind of a society America wanted to be and should be. With his opinion in Morgan v. Hennigan as an example, Garrity challenged other creators and maintainers of the law to look to a higher order in untangling the most complex moral dilemmas. In this way, Garrity modernized Aquinas’s allusion to the teachings of Apostle

30 Speech given Judge Garrity upon his donation of his personal working files to University of Massachusetts at Boston on December 8, 1998. Used with permission from Alan D. Rose Sr.
31 The original title of Arrupe’s address was “Men for Jesus.” As Creighton University notes, the address was delivered in front of a dominantly male congregation. As Jesuit schools such as Boston College and Georgetown University have adapted Arrupe’s address as their mission statement for civic service and global engagement, it is appropriate to adjust the phrasing to include both men and women. See http://onlineministries.creighton.edu/CollaborativeMinistry/men-for-others.html and (Modras 271).
Paul: “the law is not made for the just men; because they are a law to themselves…they show the work of the law written in their hearts” (ST I-II Q. 96 Art. 5 ad. 1).

Americans need to be guided by our sense of morality, putting “the rule of law into the rule of life” (Garrity speech 5). This not only insinuated that the rule of law is normative but also that as the rule of life, the rule of law must reflect what is natural. Judge Garrity claimed that the sixty some-odd boxes of papers have left out the most important document of all – the Constitution. He provides a solution to the problem: “But that omission may be overcome. If the Constitution is to inspire and govern indefinitely, it must live in our hearts as well as [in] our minds” (5-6). Expounding on his previous point, Rose explained that for the judge, “If you don’t really believe in the principles of the Constitution in your heart, then the Constitution is just a piece of paper” (personal interview). Again, Garrity alluded to Thomistic teachings that the moral duty incumbent on every person follows the natural and divine order. Because human law – the Constitution – reflects natural and divine order, people should subscribe to human law and act upon moral conscience in their everyday actions.

Finally, in a letter to the President of Holy Cross praising the conferring of the honorary degree of Doctor of Laws to Garrity, Frank J. Harris S.J. of the Boston Citywide Coordinating Council quoted Our Mission Today to describe the judge’s marvelous lifework: “It (the mission of the Society [of Jesus]) demands a life in which the justice of the gospel shines out in a willingness not only to recognize and respect the rights of all, especially the poor and the powerless, but also to work actively to secure those rights” (ACHC). Because the judge not only upheld but also carried out the principles of the Constitution for the sake of the just and good, Garrity clearly embodied the Ignatian mission of “men and women for others” and “for the greater glory of God.” And upon the conferring of Judge Garrity’s honorary degree, Father John E. Brooks S.J., President of the College of the Holy Cross, commended Judge Garrity on his “premier example of the teaching role of the Good Judge… demonstrate[ing] that the fundamental values to which this College is dedicated are not merely desirable, but also achievable” (ACHC). Honored alongside Mother Teresa, the judge was given due credit for his exemplary moral leadership and service.
Critique of Morgan v. Hennigan and its Aftermath

“Things fall apart; the Center cannot hold; Mere anarchy is loosed upon the world... the Best lack of all conviction, while the Worst are full of passionate intensity.”

– W. B. Yeats as quoted by Fr. Brooks, President of the College of the Holy Cross, on the conferring of Judge Garrity’s honorary degree

Vocal and physical opposition to Morgan v. Hennigan was immediate and violent. In fact, the judge’s ruling was appealed seventeen times. However, given the moral and constitutional basis of the opinion, it was upheld all seventeen times (American National Biography).\(^{32}\) Of course, the judge was very well aware of the opposition, largely from South Boston and Charlestown. According to Marvin B. Scott, one of Garrity’s court-appointed experts on Morgan v. Hennigan, the judge read every single one of the students and parents’ letters that were sent to him, now preserved in the University of Massachusetts at Boston archives (Del Giudice).\(^{33}\) The judge did consider all opinions and acted accordingly, including modifying the bus decree more favorably for East Boston (Flaherty interview). In general, critics of the judge and Morgan v. Hennigan attacked the judge’s Irish background, Garrity’s domineering role during the busing era, the judge’s dismissal of the opposition’s Fourteenth Amendment rights, the Boston Globe’s bias in favor of busing, white flight as a consequence of busing, and the validity of busing as remedy for segregated schools.

“Two-toilet Irish” and “Brahmin:”\(^{34}\) Garrity, a Traitor to the Irish?

When the Judge was the lone visible crusader for the moral right, the majority of Boston positioned themselves as stumbling blocks in his path and placed the heavy yoke of the busing tumult on his shoulders. In his introduction to The Boston Irish, Boston College University

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\(^{32}\) I am indebted to the City of Boston Archives in allowing me to look at two cases, Callinan vs. Garrity (1975) and Katz vs. Garrity (1977) to get a sense of what appeals and legal backlash Morgan v. Hennigan and Judge Garrity had faced.

\(^{33}\) On March 22, 2012, I went to the University of Massachusetts at Boston Healey Library Special Collections and Archives. I looked through the boxes of letters the judge had kept. They were all opened, showing that they were read by presumably Judge Garrity.

\(^{34}\) These derogatory terms for the judge come from WRIT 290 class discussions and are based on a number of our readings and conversations.
Historian Thomas O’Connor quotes J. Anthony Lukas that the busing maelstrom was “a feud within the Irish political family… and Irish morality play… [amongst] various conceptions of what it meant to be Irish in contemporary Boston” (xv). Despite the extensive research he conducted, Lukas could not answer the implicit question: what does it mean to be Irish in mid-1970s Boston?

According to John R. Harris, Professor of Economics at Boston University, from 1844 to 1850, the Boston census increased from about 28% foreign born to 51% foreign born, around 85% of this foreign born demographic was attributed to the Irish.\footnote{John R. Harris, Professor of Economics with emphasis in Urban Economics and Migration Theory at Boston University. Personal interview.} The Irish saw the Beacon Hill Brahmins as the British and emphasized the Catholic-Protestant disconnect (RA Harris interview).\footnote{Brahmin is a term originated in India. The term carries a sense of heredity privilege with a scholarly tint. The Brahmins would not deal with the local classes (R.A. and J. Harris interview).} The general idea – the Yankee or Brahmin or Anglo-Saxon Protestant attitude – was that the Irish Catholics were “politically disloyal, socially disruptive…drunkards, and economically useless” (O’Connor interview). The Irish immigrants were largely unskilled workers, typified by the general idea of being useless to society unless categorized as the “other kind” (O’Connor interview). As was the case with most large immigrant populations, geographic “ethnic clustering” in Boston of the Jewish, Polish, Italian, Chinese, and Irish was driven by food and social services, and these foreign enclaves became marked by “tangible identifiers” such as churches and street intersections (J. Harris interview; Canty 6). After the turn of the twentieth century, the central cities began to lose their economic function. Transportation became increasingly reliant on automobiles, which were inaccessible to poor people. The 1930’s and 1940’s witnessed the beginning of public housing. As more educationally and economically successful people – in Boston, the Yankees – moved out into the suburbs during the 1950’s, the people left in public housing became increasingly poorer (J. Harris interview). “Of your kind” – keeping to one’s ethnic community – became the slogan for the neighborhoods and neighborhood bosses, most notably John F. Fitzgerald – “Honey Fitz” – in the South End, made sure that ethnic solidarity was kept (O’Connor interview).
The Irish are traditionally democratic. They were very politically active in Ireland and were very defensive of their rights (R.A. Harris interview). In the United States, Thomas Jefferson and Andrew Jackson were the Irish’s political heroes. Although, the Irish always voted, they were kept from getting any significant jobs in politics by Anglo-Saxon Protestant whites. The “better” Irish – Patrick Collins and Hugh O’Bryan – moved out of the city and into the suburbs (O’Connor interview). However, the Irish were the leaders in mass mobilization of the Boston Irish constituency and forming political machines (J. Harris interview). Once Honey Fitz became mayor, the Irish no longer relied on currying favor from the Yankees. By 1949, the Irish were controlling politics and the Yankees were controlling the finances. From 1950 to 1960, Mayor John B. Hynes and his “Irish Catholic managers,” educated men with some experience in politics, began trying to bring together Irish and Yankees or Catholics and Protestants. Hynes’s spearheaded collaborations helped to orient the city’s leaders towards the common good for the city of Boston. His successor, John F. Collins, continued the process of bringing together the Yankees and the Irish, redefining the typical Beacon Hill Brahmin (O’Connor interview). In that the lines between the Irish and Yankee camps in the political realm have considerably blurred by the 1970’s, how could someone claim who or what is “Irish?” Furthermore, who has the authority today to claim what is or is not “Irish?”

**Kevin White and the Busing Era**

According to O’Connor, Kevin White was “caught between the demands of the black community and the fears of the white community; between the authority of federal power and the pride of local autonomy; between the judicial gavel of Judge Arthur Garrity and the rosary beads of Louise Day Hicks” (255-267). Former Boston Globe editor Gerard O’Neill added, “He [Kevin White] first thought he could lay off segregated education on the school committee whose maladroit malevolence had created the mess in the first place” (242). But soon, White realized that busing was inevitable and could only curry favor for trying to be on Southie’s side: “‘the law is the law and civil strife hurts us all’… ‘I’m with ya but there’s not much I can do for ya’”
Mayor White did all that he could to wash his hands of the busing matter. According to Seligmann, White asked the judge to call in federal marshals. It was a political move on White’s part to deflect responsibility from the city of Boston and the commonwealth and to place it onto the federal government. Furthermore, to escape the mayhem in Boston, White vacationed extensively throughout Europe during the busing years (O’Connor interview). In addition to school committee unyielding refusal to make concessions or to develop alternatives to integration by busing, White’s public indifference showed that there simply was not “a civic leadership that was strong and committed. They were concerned with the power of their political constituents, who they thought could throw them out of power” (Jones 14). Whereas Louise Day Hicks, James Kelly, and Raymond Flynn were too blinded by their ethnic ties to take the morally and legally correct perspective, White was too afraid to take a definitive stance at all.

Lastly, anti-busers did not understand the facts supporting the busing decision. One day, an irate man, angered by the busing decision, came to the judge’s chambers. To the surprise of the patrolling federal marshals, Garrity invited the man into his chambers to talk about his concerns and gave the man a copy of the decision to take home (J. Garrity interview). Why was this man protesting a mandate that he did not fully understand? White and the school committee did not articulate the facts to the people they represented, allowing the people to be blinded by their ignorance of the truth. Instead, Hicks among others fanned the flames of the anti-busers’ anger.

“We have our rights, too!”: Southie and Charlestown’s Constitutional Claim

As Formisano contended, the anti-busers implemented many of the strategies used by civil rights activists a decade before them (4). Yes, equal protection of the laws does apply to every person living in the United States and freedom of speech and civic engagement are rights and duties of every American. However, not every form of democratic participation promotes

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37 This refers to a clip from the PBS documentary “Eyes on the Prize: American Civil Rights Movement 1954-1985” series, episode “The Keys to the Kingdom (1974-80)”
justice. Meira Levinson,\textsuperscript{38} philosopher and co-convener of the Civic and Moral Education Initiative at the Harvard Graduate School of Education, attested that the denizens of Southie and Charlestown or Irish Catholics in general have always wielded tremendous power in the public school system and Boston politics at large. More important to the Boston Irish than the busing of children and school integration, Garrity’s implementation of a multi-racial school committee usurped the control historically held by the Irish Catholic whites.

Furthermore, Formisano argues that the anti-busing opposition was a reactionary populist movement, manifesting “citizen alienation from impersonal government…anti-elitism and fierce class resentments” (3). Conflating the Southie, Charlestown, and Eastie opposition with civic participation, Formisano further contends that liberals such as Garrity “have difficulty appreciating populism when it emanates from blue-collar ethnics who live in urban villages, so the populist character of antibusing has not been much recognized” (235). However, Levinson asserts that although busing protests can be argued as a form of “democratic participation,” they were means for “unjust ends.” While the Irish Catholics maintained immense bonds to their urban villages, their private interests as factious group cannot hold a candle to the common good of integrated public schools. In legal terms, the framers of the Constitution, acknowledging for the existence of private interests, created the law so that the majority right and federal power can quash the agendas of factions.\textsuperscript{39} In 1970’s Boston, the anti-busers had no legitimate constitutional claim to violation of their Fourteenth Amendment rights.

\textbf{White Flight: Race and Class Implications in the Busing Decree}

In \textit{Rogues and Redeemers}, O’Neill gave this synopsis of Formisano’s assessment of the outcome of busing: “the lower classes did the segregating, the middle class did the fleeing, and the affluent sat it out” (331). As financially secure whites had already moved out into the suburbs in the 1950’s, the affected whites in the Southie and Charlestown and whose children attended the receivership schools were of the poor and working classes. Again, Judge Garrity looked to precedent: Operation Exodus (1965-1968), founded and organized by civil rights activist Dr. Ellen S. Jackson, bused African American students from overcrowded, pre-dominantly African

\textsuperscript{38} I am indebted to a personal interview with Professor Meira Levinson on April 12, 2012. All of the information accredited to Prof. Levinson comes from the notes that I took during our conversation.

\textsuperscript{39} Laura Grattan, Professor of Political Science at Wellesley College, in her POL4 340 American Political Thought course. Fall 2011.
American schools in Roxbury and Dorchester to under-enrolled, predominantly white schools in other Boston neighborhoods such as Back Bay (Jones 5). In a 1998 interview with the Boston Globe, the judge explained that his personal papers, now at the University of Massachusetts at Boston, detailed why he could not extend busing into the suburbs. He contended:

Despite the fact that Brookline is surrounded by Boston, you couldn’t convert Brookline schools reasonably into the Boston school system because you don’t have authority or jurisdiction to make orders against persons who are not in some fashion responsible that’s being righted. You can’t go out and drag in anyone you feel like (Zernike B12).

In being judicial and fair, Garrity did not want to involve any more parties or create more tumult than necessary (Flaherty interview). The Boston School Committee, dominated by Irish Catholics from Southie and Charlestown, perpetuated the racial segregation of Southie and Roxbury schools so those involved neighborhoods must take on the yoke of correcting the committee’s wrongs. Seeking ethnic solidarity, the whites fled to Boston’s parochial schools. However, Hubert Jones, dean of Boston University School of Social Work, contended that parochial schools privately encouraged white flight by increasing their capacity and building new buildings to take in the white students fleeing from the public school system (9).

He Said, She Said: Bias in the Media

The media played a large role in swaying opinions on Morgan v. Hennigan and the consequent busing: the Boston Herald reported in favor of the anti-busing opposition while rival Boston Globe lauded the Garrity decision. According to Formisano, “liberals, suburbanites, elite politicians, outsiders, and especially the media” touted the anti-busers as racists and “refus[ed] to anoint them with victim status” whereas the anti-busers considered themselves as “heroes and martyrs” comparable to black activists of the Civil Rights Movement (5). Gerard O’Neill, 42

40 Operation Exodus was renamed the Metropolitan Council for Educational Opportunity (METCO) program (1966 to present), which bused voluntary students from inner-city Boston to surrounding suburban schools. “A Bird’s Eye View from Within – As We See It” http://www.lib.neu.edu/archives/voices/aa-political8.htm
41 I am indebted to Henry Scannel, curator of Microtext and Newspapers at the Boston Public Library, for orienting me to the newspaper coverage of the busing era.
42 In his research, O’Neill primarily uses articles from the Boston Globe and Boston Herald. For the basis of his chapters on the busing era, O’Neill relies heavily on Lukas’s Common Ground and Formisano’s Boston Against Busing. Not surprisingly, O’Neill is highly critical of Garrity as he feels that though Boston “needed [an] Irish Catholic to handle this one…, But maybe not one named Wendell who came from Worcester” (247). As I have
former editor of the *Boston Globe*’s investigative team, maintained that although the Globe’s editor Tom Winship secured the paper’s liberal stance on the busing issue, the *New York Times* transplant Robert Phelps “made a near religion of objectivity… [and] commit[ed] to even-handed journalism” of the busing coverage (275). In its coverage, the *Boston Globe* interviewed several current school committee members and one retired superintendent. In the consequent article, the *Globe* quoted the retired superintendent: “I didn’t think they were discriminating, the kids would be better off by themselves [viz. in their own groups]” (LeClair interview). By that example, it would seem that the Globe presented the truth, which by happenstance, was unfavorable to the anti-busers.

However, wary of media’s bias and misreports at a young age, Jean Garrity remembered how one newspaper reported quotations from a hearing that was rescheduled. She recalled how her family would receive phone calls at home. One time, her brother answered the phone and talked to a reporter about the Garrity home life. The next day, the family read about their dinner of franks and beans and watching “Wide World of Sports” (Garrity e-mail). Nonetheless, the Boston Herald and Boston Globe seemed to have taken different outlooks on journalism after the busing era (J. Garrity interview). Simply drawing from these examples, it may seem that the media was simply doing their job of informing the public by peddling the people stories big and small. However, it is important to note that the media was not and should not be responsible for educating the people. When the city’s leadership and school committee had failed to perform their duty to communicate to their constituency the straight facts during the busing era, the media consequently bore the brunt of shaping the opinions of the people.

**Conclusion: “The heroes and heroines are not all dead.”**43

On April 15, 1994, Rose among others unveiled the portrait of Garrity at the courthouse. Twenty years after the decision, Garrity was still reviled as the “busing judge.” Gallows humor about the “hanging of Judge Garrity” produced a new round of articles about the judge and the

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43 Jimmy Breslin as quoted in the *Worcester Telegram*, ACHC.

already discussed the invalidity of Lukas and Formisano’s claims, I will not spend any more time explicitly debunking O’Neill’s contention here.
busing order. Even today in the twenty-first century, the busing years remain highly controversial and to some extent, a taboo topic of discussion.\footnote{Kellyann Mercer shared with our WRIT 290 class about how she had met a woman who had taught at a receiver school during the busing years. When Mercer asked the lady for an interview, she replied with a definite, “No.”}

In my philosophical analysis of Judge Garrity’s character and his ruling in Morgan v. Hennigan, I showed that the fundamental, moral issue underpinning the systematic problems of the Boston public school system needed to be corrected by someone who is equipped to grab the bull by its horns. What if... What if the school committee had cooperated with Judge Garrity and devised an effective, alternate method to correct the school systems? What if the denizens of South Boston and Charlestown had forgone their private interests for the sake of the common good of integrated schools and not reacted so violently? Although these questions may never be answered, it is my contention that if the city’s leadership and the anti-busers had looked to their moral conscience, there would have been no maelstrom in Boston in the mid-1970s. But if such is case, then I would not have had the great experience of researching on the topic.

What can be fleshed out from the convoluted case, as Harvard psychologist Robert Coles so aptly stated in an 1974 interview with The Boston Globe, is “the issue of having and not having and social and economic vulnerability, social and economic power – that’s where the real issue is” (Feeney). As LeClair claimed, “Ironically, segregation wasn’t the school system’s only problem... a lot of it was out of provision.” The schools would hire unqualified teachers and fabricate stories to the Department of Education that there was a shortage of qualified candidates. That was definitely not true because a lot of people were going into teaching to evade the draft. Many of the problems in the Boston public school system can be reduced to the internal corruption within the school committee and city council – “due to people trying to make more money” (LeClair interview). If the school committee had more qualified people, many of the systematic problems including segregation may have not existed or persisted. The ultimate goal of Morgan v. Hennigan

- Marian Wright Edelman, founder and president of the Children’s Defense Fund as quoted by Hubie Jones in his oral history interview
was not to uproot those systemic issues, but LeClair believed that the decision did, and in fact, helped to ameliorate many of the problems.

As seen in Garrity’s decision on Morgan v. Hennigan, natural law theory is pertinent to and important in matters of moral and legal right. In his teachings, Aquinas stressed how man-made law must subscribe to natural law and divine law. Aquinas maintained that each person who interacts in a community must act as a part to the whole: “wherefore nature inflicts a loss on the part in order to save the whole, so that on this account such laws as these which impose proportionate burdens are just and binding in conscience and are legal laws” (ST I-II Q.96 Art. 71). The implications and consequences from the decision were not solely found in the Constitution and legal precedents but in moral conscience – a question of whether we as a nation wanted to treat other people as ourselves. Because the Jesuitical teachings at Holy Cross stressed service for the common good of society at large, Garrity acted upon his moral duty to the Constitution and to his fellow citizen.

Overall, according to LeClair, the quality of Boston schools and the people on the school board have greatly improved since the 1970s. Now, former second class citizens – minorities – are given equal opportunities to education. Magnet schools with specialized programs in various disciplines of arts and sciences have been created. Partnerships between colleges and universities and community schools have broadened students’ educational opportunities (Garrity e-mail).

Although the Home and School Association (HSA) had always held a monopoly on parental meetings about the school system, Garrity’s citywide parent councils displaced the HSA and allowed every parent to have a voice in their children’s education (Jones 16). Participation in parent councils have strengthened links between schools and communities and are a basic institution of civic participation (Levinson interview). Trends in housing patterns, school enrollment, and ethnic settlement are simply ebbs and flows of society for which no human can account in totality. Seven centuries ago, Aquinas allotted for that fact of life: “the reason of man is changeable and imperfect, wherefore his law is subject to change” (ST I-II Q.97 Art. 1 ad.1). Therefore, one question is left to be answered: In our modern democracy, who has the responsibility to uphold and, if necessary, change the law?

According to Hubie Jones, apathy and ambivalence “was Boston’s crucible. But it was a crucible that was constructed by folks who refused to act” (13). Aside from race relations, socio-economic class differences, ethnic ties, and political leanings, Morgan v. Hennigan and its
aftermath put every citizen on trial. The outcome of that trial is a simple lesson. To test for the strength of this nation’s moral fiber, the people need to only examine themselves. The heroes and heroines are not all dead. Judge Garrity was one such hero.
Appendix

Table 1
Desegregated Private Colleges in the South in September, 1951

<table>
<thead>
<tr>
<th>State</th>
<th>City or Town</th>
<th>Institution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Georgia</td>
<td>Decatur</td>
<td>Columbia Theological Seminary</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Berea</td>
<td>Berea College</td>
</tr>
<tr>
<td></td>
<td>Louisville</td>
<td>Nazareth College</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Southern Baptist Theological Seminary</td>
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<tr>
<td></td>
<td></td>
<td>Ursuline College</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Louisville Theological Seminary</td>
</tr>
<tr>
<td>Louisiana</td>
<td>New Orleans</td>
<td>New Orleans Baptist Theological Seminary</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Loyola University</td>
</tr>
<tr>
<td>Maryland</td>
<td>Annapolis</td>
<td>St. John’s College</td>
</tr>
<tr>
<td></td>
<td>Baltimore</td>
<td>Johns Hopkins University</td>
</tr>
<tr>
<td>Missouri</td>
<td>St. Louis</td>
<td>St. Louis University</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Washington University</td>
</tr>
<tr>
<td>Texas</td>
<td>Austin</td>
<td>Austin Theological Seminary</td>
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<tr>
<td></td>
<td>Dallas</td>
<td>Southern Methodist University</td>
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<td></td>
<td>Fort Worth</td>
<td>Southwestern Baptist Seminary</td>
</tr>
<tr>
<td></td>
<td>Plainview</td>
<td>Wayland College</td>
</tr>
<tr>
<td>Virginia</td>
<td>Richmond</td>
<td>Union Theological Seminary</td>
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<tr>
<td>District of Columbia</td>
<td></td>
<td>American University</td>
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<tr>
<td></td>
<td></td>
<td>The Catholic University of America</td>
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<tr>
<td></td>
<td></td>
<td>Dunbarton College of Holy Cross</td>
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</tbody>
</table>

(adapted from A. Morisey, *New South*, Aug-Sept., 1951)

*Table 1* is replicated here as found in Charles S. Padgett’s “‘Without Hysteria or Unnecessary Disturbance:’ Desegregation at Spring Hill College, Mobile, Alabama, 1948-1954,” 172.
Table 2: Bachelor of Arts in Cursu Honoris 1937-41

**Freshman Year: 1937-38**

<table>
<thead>
<tr>
<th>Class</th>
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<td>English 3 and 4</td>
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<tr>
<td></td>
<td>Latin 1, 2, and 3</td>
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<tr>
<td></td>
<td>Greek 1, 2, 5, and 6</td>
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<tr>
<td></td>
<td>History 6</td>
</tr>
<tr>
<td>Religion 1</td>
<td>Fundamental Apologetics; Divinity of Christ</td>
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<tr>
<td>Religion 2</td>
<td>The Church of Christ</td>
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**Sophomore Year: 1938-39**

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<tr>
<td></td>
<td>Latin 6, 11, and 12</td>
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<tr>
<td></td>
<td>Greek 7, 8, 9, and 10</td>
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<tr>
<td></td>
<td>Modern Languages</td>
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<tr>
<td></td>
<td>History 7</td>
</tr>
<tr>
<td>Religion 3</td>
<td>Existence and Essence of God</td>
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<tr>
<td>Religion 4</td>
<td>God and Creation</td>
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**Junior Year: 1939-40**

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<th>Class</th>
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<tr>
<td></td>
<td>Philosophy 42 Ontology</td>
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<td>Philosophy 43 Epistemology</td>
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<tr>
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<td>Philosophy 44 Cosmology</td>
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<tr>
<td></td>
<td>Physics 41 or Chemistry 41 or Biology 43</td>
</tr>
<tr>
<td></td>
<td>Religion 45 God, the Redeemer</td>
</tr>
<tr>
<td></td>
<td>Religion 46 God and Redemption</td>
</tr>
</tbody>
</table>

**Electives**

**Senior Year: 1940-41**

<table>
<thead>
<tr>
<th>Class</th>
<th>Courses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thesis in Major</td>
<td>Philosophy 51 Natural Theology</td>
</tr>
<tr>
<td>Philosophy 52 Fundamental Psychology</td>
<td></td>
</tr>
<tr>
<td>Philosophy 53 Advanced Empirical Psychology</td>
<td></td>
</tr>
<tr>
<td>Philosophy 54 Advanced Rational Psychology</td>
<td></td>
</tr>
<tr>
<td>Philosophy 55 General Ethics</td>
<td></td>
</tr>
<tr>
<td>Philosophy 56 Special Ethics</td>
<td></td>
</tr>
<tr>
<td>Religion 57 The Sacraments and the Mass</td>
<td></td>
</tr>
</tbody>
</table>

**Electives**

**Naval Science 51 & 52**

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45 This course curriculum is derived from the college’s course catalogues from the years 1937-1941, the years Judge Garrity attended Holy Cross. Each year’s courses reflect what is written in the catalogue for the respective year. The course numbering system change for the 1940 catalog, i.e. Philosophy 1 in 1939 is the same as Philosophy 41 in 1940. For the purposes of this paper, I have only listed the course titles of the Philosophy and Religion courses. Courtesy of the Archives and Special Collections at the College of the Holy Cross.
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