

JOHN AND JUNE MARY MAKDISI: AN INTELLECTUAL AND MORAL JOURNEY

SIEGFRIED WIESSNER* AND ROZA PATI**

And now these three remain: faith, hope and love.

But the greatest of these is love.

1 CORINTHIANS 3:13

John and June Mary Makdisi have been our friends and treasured colleagues for many a year. It is with exceptional delight that we present these lines and this volume of intellectual contributions of friends, in the global university tradition of an *hommage*, a *Festschrift* celebrating their professional and personal contributions to our St. Thomas Law family on the occasion of their retirement. This *Festschrift* is also a vessel of admiration, respect, gratitude, warm wishes and prayers for God's grace and blessings for the magic of their new journey.

John and June Mary are towering figures in the academy. Not only there. They both are pillars of the community, in which through their exemplary personal lives and service they have left indelible marks. They will be sorely missed as they leave the Sunshine State to live closer to their children and grandchildren in North Carolina, whose state motto of *esse quam videri* (to be rather than to appear to be), quoted from Cicero's *Essay on Friendship*, befits them squarely. Virtue is essential to John and June Mary's state of being. John and June Mary's deepest roots are in their faith. Their lives personify this commitment.

Both of John's parents, George and Margaret Makdisi, were strong Catholics who raised him in their image with parochial school training through eighth grade. Dedicated early on to specializing in

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law in order to promote justice, it did not come as a surprise that John chose philosophy as his undergraduate major during his freshman year at Harvard College. He switched to economics in his sophomore year because, in his eyes, it offered a more feasible task of examining one of the ways in which society functions. He enjoyed economics and graduated *magna cum laude* in 1971. He entered the University of Pennsylvania Law School that same year and took most of the criminal law courses the school had to offer. Criminal law presented to him the pursuit of justice in its rawest form. Popular TV shows such as *Perry Mason* contributed to this decision. By his third year, however, he realized that his talents and interests lay more in the field of comparative law. These interests grew during long walks with his father, an eminent scholar in the field of Middle East Studies. Enjoying languages, John decided to specialize in Islamic law, a field largely unexplored at the time. After graduation from law school in 1974, a judicial clerkship and work with a law firm allowed him to prepare for this new field by learning Arabic. He obtained a fellowship to study Arabic in Cairo, Egypt during the summer of 1976, and a fellowship to study Islamic law in Paris, France during academic years 1976-77 and 1977-78. He was on his way to becoming a leading scholar of Islamic law in this nation.

These exciting, formative years for his career were only surpassed by his marriage in 1975 to June Mary Zekan, his fiancée of three years. This marriage was truly made in heaven. June Mary met John when she was seventeen. Her parents had left Communist Czechoslovakia after World War II to live in freedom in the United States and to practice their Catholic faith. In their home, religion was part of everyday life. Her mother, Josephine Yalch Zekan, instilled in her the primary moral command: “love one another.” She even wrote those words on a door in their home as a guiding principle for her brother, sister, and her. Her father, Julius Zekan, was a family physician strongly interested in politics. Discussions at the kitchen table turned on medicine, science and moral dilemmas arising in these fields. For how long should one continue to resuscitate a patient whose respiration had ceased? Is withdrawal of food and water from terminally ill patients the right thing to do? These and related concerns in morality and science fueled June Mary’s lifelong interest in

bioethics, which was to become a focus of her path-breaking research and writing throughout her academic career. Following in her father's footsteps, June Mary entered the University of Pennsylvania as a pre-med student, but though she never applied to medical school, her interest in holistic healthcare—physical, mental, spiritual—never faded.

And when the stars aligned, she met John—a handsome Catholic young man dressed in Church clothes, with a long black coat and a black umbrella. She was impressed by his intelligence, his ambition, his courage, his desire to have a family, to raise children. He was someone who would always be there for her, and she for him, someone who didn't care primarily about money, but for a life well-lived. Someone who shared her faith. John was her perfect match: June Mary has been his soulmate and rock-solid support ever since. He is clear: he would not be where he is today without her. Their family is, and has always been, at the core of the happiness in their lives—an experience that can have but inspired the passionate dedication to traditional marriage expressed in their contribution to this volume and which you will have the opportunity to appreciate against the backdrop of who they are and what they represent in mind and soul. Both are dedicated to the faith that brought them together: they have been teaching the Catechism to several classes of parishioners since the 2000s, as well as the Rite of Christian Initiation of Adults (RCIA) on the concepts of the Trinity, the Commandments, the History of the Church, the Beatitudes, the Creed, and the Mass.

John and June Mary had their first child, Marianne, before they went to Paris, and they returned to the United States in the summer of 1977 to have their second child, Michael. Later on, in the 1980s, they would have two more children, Susan and Joseph. Those children completed their lives in a circle of love and joy. Their years in Paris were unforgettable, a memorably happy time of new adventures, excitement and artistic and intellectual enrichment. To date, the Makdisis reminisce about them fondly.

John's career took a significant turn when he met Erwin Griswold, the former Dean of Harvard Law School. Dean Griswold invited him to pursue the S.J.D. degree at Harvard. His teacher and mentor in Paris, Chafik Chehata, had passed away while they were in

Paris. So John accepted the offer and returned to the States in 1978 to complete his studies and work on a dissertation in Islamic law. A year later, he took a fellowship to study Islamic law in Cairo, Egypt, returned to Harvard for a year, and then took a faculty position at the school of law of Cleveland State University. He ultimately completed his dissertation in 1985.

At Cleveland State, he developed a core of scholarship primarily in the areas of Islamic law and American property law. His research revealed a surprisingly sophisticated legal system in Islam in the late Middle Ages when other legal systems were in their infancy. He ultimately traced the origins of our own common law system to Islamic institutions of law received through Sicily in the twelfth century. His book-length article on *The Islamic Origins of the Common Law*, 77 *NORTH CAROLINA LAW REVIEW* 1635 (1999), offers a startling new theory for connections between Islam and the West. In the area of property law, he was fascinated by the area of estates and future interests, triggered by his law school mentor, George Haskins, an expert in colonial America. This interest led to the production of several workbooks for students which has evolved through several editions and attracted the collaboration of Daniel Bogart, a property scholar in his own right who kindly added his own appreciation to John to this volume. In a lecture for a natural law symposium at Cleveland State honoring John Finnis, John first explored an area transcending positive law, one that would address the issue of morality and law concerning the justification in killing an innocent person. This lecture was published in the *CLEVELAND STATE LAW REVIEW* in 1990. In 2018, John returned to this topic in an article on *Aquinas's Prohibition of Killing Reconsidered*, to be published in the *JOURNAL OF CATHOLIC LEGAL STUDIES*.

In his academic career, John took on leadership roles in legal education and, in 1987, accepted an associate deanship under incoming Dean Steve Smith at Cleveland State. After learning the ropes of administrative leadership in this role for three years, he became Dean at three different institutions, always guided by the quest for academic excellence. At each of these places, he offered something that made them better and had them grow. At Loyola University New Orleans College of Law, he helped turn around a

financially difficult situation; at Tulsa, he improved the scholarly fiber of the faculty, and attracted luminaries such as Professor Bernard Schwartz to the institution, a legendary scholar in the field of administrative law.

John is particularly proud of the LL.M. Program in Intercultural Human Rights at St. Thomas University School of Law, a program which has grown, in his eyes, with the addition of the J.S.D. Program and the *Intercultural Human Rights Law Review*, 6th in the world among human rights journals for academic impact, into an internationally acclaimed center for scholarship and for the education of students from around the world to become responsible leaders fighting for an order of human dignity. He considers this program his crowning achievement.

One of the authors of this piece, the founder of the LL.M. program, is grateful for the opportunity John opened up at the turn of the millennium to start this exciting academic adventure. He fondly remembers the start of their friendship in a 1992 ABA Workshop in Lodz/Poland, where they instructed young academics in the transition from Communism to the novel democratic future—John teaching intellectual property law, and he human rights law, integrating civil rights under the American Constitution, all so needed at that time for building the new Poland.

The other author, a former politician from Southeastern Europe, came to St. Thomas as a student of the Charter Class of the LL.M. program to be hired by John as Director of Program Development right upon her graduation and to be promoted to Executive Director shortly after. She is forever grateful to John, who opened up to her the opportunity to live and work in the best country on Earth. John and June Mary guided and supported her further in the challenging, but rewarding successful journey toward a tenured professorship.

The LL.M./J.S.D. Program welcomes the world to an intercultural program that recognizes the dignity of every human being no matter what color, what religion, what place of origin, inviting dialogue across cultures based on knowledge of others' background and frame of mind. We cannot thank John enough for his wisdom and far-sighted leadership: the LL.M./J.S.D. Program in Intercultural

Human Rights remains the lodestar of the mission of our Catholic institution to respect, protect and promote human dignity and social justice. We are grateful to John and June Mary for the unfailing support for the program—a support that came in all forms and shapes: intellectual, academic, administrative, and also financial by supporting LL.M. students with generous scholarships year after year.

After fourteen years of law school administration, including a year as interim vice-president of academic affairs for St. Thomas, John returned to full-time teaching and scholarship, his first love among the academic endeavors. He passed the bar in Florida to take on pro bono cases and became more involved in his parish. Disappointed by the increasingly secular nature of our society, his goal now became to enhance the moral foundations of our legal system—foundations which, in his view, were undermined through the imposition of subjective preferences under the false guise of an objective moral barometer. Considering himself sufficiently uninformed about moral philosophy and theology, he turned to formal training in these fields—a decision rarely taken by people at his station in life and career. Despite the financial sacrifice this decision brought with it, and the extra effort to learn the German language, he took the plunge back to student status due to the steadfast support of June Mary and the fact that their children had left the nest of home. After spending two years to obtain an M.A. degree in theology from St. Vincent de Paul Regional Seminary in Boynton Beach in 2009, he took off two years from teaching at St. Thomas to do the residency for a Ph.D. degree in moral theology at The Catholic University of America in Washington, D.C. He returned to teaching in 2011 and continued work on his dissertation until he received the degree in 2017.

John's dissertation went deep into theology and natural law. Its topic was the object of the moral act, addressing the understanding of St. Thomas Aquinas through the work of famed theologians Steven Long and Martin Rhonheimer. In the 1993 encyclical *Veritatis Splendor*, Pope John Paul II had stated that the “morality of the human act depends primarily and fundamentally on the ‘object’ rationally chosen by the deliberate will.” Since that time, the interpretation of the moral object has garnered increased attention among Thomist scholars. Through critical analysis of both theologians' views,

informed by the original texts of St. Thomas Aquinas and the writings of some of his precursors, John concludes that subject to some misinterpretations of Aquinas the contemporary scholars are largely faithful in their respective interpretations. John has continued his writings in the field of natural law, which had informed his earlier critique of a decision of the Wisconsin Supreme Court. John concluded, in a precise statement delineating the proper relationship between law and morals: “Behavior that is truly moral is done in freedom. The law cannot force a person to be moral, nor should it. Yet the law performs a beneficial role in society when it encourages moral behavior. . . The law has a role to guide and educate persons to make the choice for human flourishing in the form of caring much as the Parable of the Good Samaritan guides us to love our neighbor.” (John Makdisi, *Uncaring Justice: Why Jacque v. Steenberg Homes Was Wrongly Decided*, 52 JOURNAL OF CATHOLIC LEGAL EDUCATION 111, 142-143 (2012)).

A most important upcoming article of his will be on *A Thomistic Perspective on Natural Law Reasoning in the Supreme Courts*, to be published in the OHIO NORTHERN UNIVERSITY LAW REVIEW. Mindful of the possible abuse of natural law, he presents the Thomist perspective on eight of the Ten Commandments and analyzes its actual use by the highest courts of the states and the federal government throughout the history of this country. Not only retrospective, this paper imagines a future of actual decision-making which may guide a drive toward a stronger integration of natural law into the positive law’s decision-making process.

This work, particularly in the latest articles, inspires John and allows him the opportunity to provide a greater understanding of what the legal system needs by way of morals to flourish. He understands this quest as essentially an interdisciplinary one, allowing the critique of law from a religious perspective – an objective morality the compliance with the tenets of which leads to the greater good of individual and collective happiness.

John has remained a leader of the faculty and St. Thomas University. On April 13, 2018, he was awarded the well-deserved honor of the Presidential Medal for Distinguished Service. He still lends his wisdom to the institution as Chair of the Law School’s Strategic Planning Committee.

Original also in the inclusion of morals in the law, but from a different perspective, has been the writing of June Mary. Her goal, informed by her upbringing, is to make sure legislative and administrative leaders, lawyers, courts and scholars understand that decisions in the field of science are essentially affected by considerations of morality. One example would be human cloning, where a governmental commission would just ask and assess *how* such cloning could be done, not *whether* it should be done at all. Scientists, she realizes, often hide their agenda under a veil of objectivity—a myth long ago destroyed by Swedish scholar Gunnar Myrdal. Scientific results are often already pre-determined by the question asked, and the manner in which it is asked. Focusing on the moral implications of science, early on in her career, as a teacher at a Catholic high school, June Mary created a bioethics unit for her students and several labs. At Cleveland State, as Editor-in-Chief of the Law Review, she wrote an award-winning research paper on the moral dilemmas of the withdrawal of food and water from terminally ill patients.

In 2015, in this very forum, she published a thought-provoking article entitled *The Affordable Care Act: Does It Improve Health and Does It Live Up to Human Rights Principles?* 10 *INTERCULTURAL HUMAN RIGHTS LAW REVIEW* 117 (2015). Focusing on the right to healthcare as enshrined in Article 25 of the Universal Declaration of Human Rights, she diligently analyzes the requirement of equal care for everyone, but she does not shy away from moral considerations of various aspects of the law, from the perspective of various religions. Concentrating on the ACA-approved plans with provisions of artificial contraception and voluntary sterilizations, the forced coverage of IUDs, Plan B, and ella, she asks the question: “How does that promote informed choice, which is critical in a matter so fundamental to human flourishing?” (*id.* at 143), and deplores the imposition on employers of the facilitation of an act that they would otherwise consider immoral. Upon thorough analysis and research, she concludes: “Assessment of health is much broader than a mere consideration of whether there is affordable access to appropriate treatments for physical and mental ailments. It encompasses a holistic view of human flourishing. A core aspect of human flourishing includes spiritual health . . . Severing the morally objectionable portion of the ACA . . .

will improve health and more closely align it with human rights principles promoting human flourishing.” (*id.* at 152). Human rights and the integral development of all human beings as well as the whole human being in all of his or her dimensions—physical, mental, spiritual—conspicuously fuel her scholarship.

As treasured tenured member of St. Thomas’ law faculty, she has taught, *inter alia*, classes on law and medicine, health law and bioethics, always centering on the moral issues accompanying certain procedures, particularly those at the edge of scientific progress. In an unsolicited remark, one of her students who had taken the Bioethics course a couple of years ago noted: “Professor June Mary is a true intellectual and one of the kindest people I have ever met – two traits seldom present in one and the same person. Each and every of her classes were invariably engaging and intellectually challenging. What an amazing teacher!” (Elfrid Pati, Esq., J.D. 2017). The same sentiment is echoed by a present student, a foreign lawyer, also in an unsolicited comment stating “Professor June Mary Makdisi . . . was my first ‘American Professor’ when I took the Health Law Seminar and now I am in her Family Law course. Being her student is a privilege not only because of her knowledge but also for the passion and humbleness with which she faces every discussion. We may not have similar views on many issues, but I always left her classes thinking. That is something that only great teachers do.” (Maria Florencia Cornu Laport, J.D. 2019).

The foundational classes of torts and family law, masterfully taught, exposed her to the entire student body. June Mary, or “Mama June” as students call her in endearment, is beloved by her students. So is she by her peers, academic and non-academic staff alike, who, conscious of June Mary’s flawless display of excellence call her “a class act and a true professional” (Professor Patricia Moore, email exchange, December 5, 2018). Her students remember her fondly, many years after their first encounter, for her focus, her precision, her kindness, her ability to listen, her interest in them as persons, not just as the recipients of the wisdom and knowledge she delivers. Anonymously, on the Rate My Professors website, they rate her as a “no-nonsense” professor, one who employs “the Socratic method how it was intended” to be, “not easy” but “helpful.” Her students encourage the rest of us, her colleagues, “to watch her in action” and

“to emulate her excellent teaching methods.” All encapsulating is probably this line from another anonymous remark that June Mary is “the sweetest *lady ever*.” It is no coincidence that this student uses the words “lady” and “ever” to portray in superior and timeless prose a dimension that sets June Mary apart: her noble being.

John joins her in the passion for teaching. In awe-inspiring fashion, he aims to elevate students to his own level, never believing they can’t reach it. He takes them on an intellectual journey, and is particularly proud of his students’ publications, both in the J.D. and J.S.D. program. He is also proud of having earned 1L Professor of the Year Award for 2013-2014. He taught one of the toughest subjects in law, Property, with delight in sharing the logical exertions, e.g., in the rule against perpetuities, publishing instructive examples in his books on estates and future interests. It is anecdotal among students that if one has taken Property with John Makdisi, preparing for the bar on this subject is a piece of cake. Seeing the limitations of logic and positivism, and its neglect of morality, though, he trended, in the last years ever more, to the teaching of natural law, toward the integration of law and religion, as highlighted above.

These introductory pages are not enough to do justice to John and June Mary. They are the salt of the Earth. We humbly invite the reader to consider these lines as but the scaffolding, the prelude to the exciting and variegated essays and articles that follow. They will add the deserved elegance to this issue centered on the importance of morals to law—the guiding light of John and June Mary. To us, they are irreplaceable pillars of support. To each other, they are the whole world—a world they want to see embraced in love and for which they join in the favorite prayer of June Mary, the prayer that has inspired her entire adult life:

The Peace Prayer of St. Francis of Assisi

Make me a channel of your peace,
Where there is hatred let me bring your love,
Where there is injury your pardon Lord,
And where there’s doubt true faith in you.

Make me a channel of your peace,
Where there's despair in life, let me bring hope,
Where there is darkness, only light,
And where there's sadness, ever joy.

O Master grant that I may never seek,
So much to be consoled as to console,
To be understood as to understand,
To be loved as to love with all my soul.