# THE HISTORICAL FOUNDATIONS OF LAW

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We are assembled today to discuss law from different but closely related perspectives: its foundations in history, its foundations in social relations, and its foundations in morality and in religion. In introducing our discussion, I shall start with a brief analysis of the three principal schools of legal thought—positivism, natural law theory, and the historical school—that have competed with each other both in Europe and in America during the past two centuries. I do so because I believe that one of our achievements today will be to bring these three schools together in what may be called an integrative jurisprudence. I shall emphasize the need to revive historical jurisprudence in order to resolve conflicts between the two other schools, and I shall emphasize, secondly, the need to integrate the three schools in order to respond to the historical challenges that confront our legal tradition in the twenty-first century.

The positivist school treats law as essentially a political instrument, a body of rules promulgated and enforced by official authorities, representing the will, the policy, of the lawmakers. Adherents to a theory of natural law, on the other hand, treat law as essentially a moral instrument, an embodiment of principles of reason and conscience implicit in human nature. And historicists treat law as essentially a manifestation of the group memory, the historically developing ethos, of the society whose law it is. Positivists, who are today predominant among both continental European and Anglo-American legal scholars, emphasize the source of law in the rules "posited" by legislative, administrative, and judicial authorities, and analyze those rules independently of their correspondence either to moral principles or to the historical consciousness of the given polity. Only after one determines what the law "is," they say, is it appropriate to consider what it "ought to be" or what it has been in the past and is tending to become in the future. Naturalists, on the other hand, if one may call them that, emphasize the source of law in fundamental principles of justice, merging the "is" and the "ought" and analyzing legal rules in the light of the moral purposes that underlie them. Finally, historicists emphasize the source of the law that "is" and the law that

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"ought to be" in the customs and traditions of the given society—including both the previous decisions of its courts and the scholarly writings of its jurists—contending that both the meaning of legal rules and the meaning of justice are to be found in the character, the culture, and the historical values of the society.

Prior to the so-called Enlightenment of the late eighteenth century, the question of primacy among these three theories was not critical, since in pre-Enlightenment Christian Europe it was almost universally presupposed that the triune God is the ultimate source of order, justice, and human destiny. Thus it was possible to integrate, in theological terms, the political, the moral, and the historical dimensions of law. Pre-Enlightenment writers such as Aquinas, Grotius, and Locke, who, despite their diversity, are usually characterized as believers in natural law, also accepted major parts of both the positivist concept of law as a body of rules laid down by the lawmaking authority and the historicist concept of law as an expression of the customs and beliefs of the society whose law it is. Although Roman Catholic jurisprudence and Protestant jurisprudence certainly differed from each other in important respects—the one leaning more toward natural law and reason as the primary source of law and the other toward positivism and the will of the state—nevertheless both postulated that God has ordained earthly rulers with power to make and enforce laws, that he has implanted reason and conscience in human minds and hearts, and that the history of law represents a providential fulfillment of God's plan. Tensions among the political, the moral, and the historical dimensions of law were recognized, but they were finally resolved by finding their common source in the triune God, who is an all-powerful lawmaker, a just and compassionate judge, and an inspirer of historical progress, and whose "vestiges" in the human psyche, as Saint Augustine taught, are will, reason, and memory, respectively.[1]

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[1] *See* ST. AUGUSTINE, CONFESSIONS 317–18 (E.B. Pusey trans., Ernest Rhys ed., J.M. Dent & Sons Ltd. 1907).

> Now, the Three I spake of are, to Be, to Know, and to Will. For I Am, and Know, and Will; and I Know myself to Be, and to Will; and I Will to Be, and to Know. In these three, then, let him discern that can . . . how inseparable a distinction there is, and yet a distinction.

*Id.*; *see also* ST. AUGUSTINE, DE TRINITATE, LIBER XV, III, 75–78 (W.J. Mountains ed., 1968); *cf.* ST. BONAVENTURE, *The Soul's Journey Into God*, *in* BONAVENTURE 50, 80–85 (Ewert Cousins trans., 1978). Augustine's concept of "will" included intent and desire, of "knowledge" and "mind" included reason and conscience, and of "being" and "essence" included memory, which he understood as not only recollection of the past but also awareness of the present and foresight of the future. This definition of memory corresponds to the concept of "the temporally extended self" developed in the twentieth century by the eminent cognitive

With the secularization of legal scholarship in the nineteenth and twentieth centuries, the tension between the positivist and naturalist theories of law became especially sharp. In recent decades, their opposition to each other has begun to soften somewhat. Positivists today generally acknowledge that a legal system may expressly include overriding moral norms guaranteeing procedural and substantive equity and equality both in legal rules themselves and in their application. Similarly, naturalists have increasingly taken account of the moral nature of the political element in law—the virtues of legal security, including faithful adherence to statutory texts. Naturalists and positivists ultimately diverge, however, in their interpretation of legal rules. The positivist interprets them, when possible, according to their plain meaning and, when they are ambiguous, according to the policies that they represent. Law, for the positivist, is an instrument of the will of the lawmaker. The naturalist, on the contrary, considers also the implicit moral purposes of the rule, including its purposes as part of a system of justice. The naturalist assumes that it is a purpose of every rule of law that it be applied fairly and equitably and that if the lawmaker has perversely intended a gross injustice then that intent is not to be carried out. Thus, in interpreting and applying legal rules, one who adheres to a positivist theory of law will, in effect, defend above all the political order, while one who adheres to a theory of natural law will, in effect, defend above all the moral order.

What has been missing in recent generations from the debate between positivists and legal naturalists is recognition of the normative significance of the historical dimension of law. In history, as in time generally, what is morally right in one set of circumstances may be morally wrong in another; likewise, what is politically good in one set of circumstances may be politically objectionable in another. Conflict between the morality and the politics of law, between what philosophers call the Right and the Good, may be resolved in the context of historical circumstances; history, the remembered experience of society, may permit or even compel an accommodation between morality and politics. This is, indeed, a fundamental characteristic of law, which may be defined as the balancing of justice and order in the light of historical experience.

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psychologist Ulric Neisser. *See* Ulric Neisser, *Five Kinds of Self-Knowledge*, 1 PHIL. PSYCHOL. 35, 46–50 (1998).

Historical jurisprudence, which was implicit in the development of the Western legal tradition from the twelfth century on[2] and which played a critical role in the development of the English common law in the seventeenth and eighteenth centuries,[3] emerged as a separate school of legal philosophy in the nineteenth century in the context of the debate between positivism and natural law. It is characteristic of the historical school that its first explicit formulation by Friedrich Karl von Savigny was a response to a proposal made in 1814 by a prominent German professor of Roman law, A.F.J. Thibaut, to introduce a fundamental innovation in the German legal tradition, namely to adopt a civil code for the entire German nation, modeled on the 1804 Civil Code of France. Savigny's argument was not that the adoption of a civil code was inherently a bad idea but rather that Germany was not ready for such a code, that Germany at that time did not even possess a legal language appropriate for such a project, and further, that the proposal to codify the German civil law at that time reflected a basic misconception of the nature of law. Law, Savigny wrote in his famous reply to Thibaut, is "developed first by custom and belief of the people, then by legal science—everywhere, therefore, by internal, silently operating powers, not by the arbitrary will of the legislator."[4] Law, he argued, like language, is an integral part of the common consciousness of the nation, organically connected with the ideas and norms reflected in a people's historically developing traditions, including its legal tradition.

It is interesting to note that in the latter half of the nineteenth century, Savigny's arguments found acceptance both in Europe and in the United States. Indeed, historical jurisprudence became the dominant school of legal theory in the United States in the late nineteenth and into the first decades of the twentieth century, both among legal scholars and in the courts.[5]

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[2] *See* HAROLD J. BERMAN, LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION 5, 6–9 (1983).

[3] *See id.* at 5–6; HAROLD J. BERMAN, LAW AND REVOLUTION II: THE IMPACT OF THE PROTESTANT REFORMATIONS ON THE WESTERN LEGAL TRADITION 244–57 (2003).

[4] *See* FRIEDRICH KARL VON SAVIGNY, VOM BERUF UNSRER ZEIT FÜR GESETZGEBUNG UND RECHTSWISSENSCHAFT [ON THE VOCATION OF OUR AGE FOR LEGISLATION AND JURISPRUDENCE] 30 (Abraham Hayward trans., 1975) (1814).

[5] *See* ROSCOE POUND, INTERPRETATIONS OF LEGAL HISTORY 10 (1923); ROSCOE POUND, JURISPRUDENCE 63 (1959). In the debates concerning the enactment of a civil code in the state of New York in the 1860s to 1880s, David Dudley Field, principal author of the proposed code, expressly took Thibaut's side and James Coolidge Carter, principal opponent of the proposed code, expressly took Savigny's side. The defeat of the Field Civil Code was a dramatic example of the more general victory of the historical school of legal theory. *See* JAMES COOLIDGE CARTER, LAW: ITS ORIGIN, GROWTH, AND FUNCTION (1907); David Dudley Field, *Codification—Mr. Field's Answer to Mr. Carter*, 24 AM. L. REV. 265 (1890). *See generally* Stephen A. Siegel, *Historism in Late Nineteenth Century Constitutional Thought*, 1990 WIS. L. REV. 1431.

A historical theory of law was, in fact, built into the principle which the United States inherited from England, that in deciding cases courts are normally required to apply the holdings of previous analogous cases, that is, the rules of law that were necessary to the decisions in those cases. The doctrine of precedent reflects, on the one hand, the natural law principle of the generality of law, or, as the English say, the principle that "like cases should be decided alike." It also reflects the positivist principle of the objectivity of law; namely, that in deciding cases, courts are required not only to interpret and apply statutes enacted by legislatures, but also, in the absence of an applicable statute, to apply other sources of legal norms, including customary law, general principles of law, and rules of law authoritatively declared in previous cases or in leading scholarly works.[6] Thus, the doctrine of precedent is not inherently in conflict with either a theory of natural law or with positivism. Nevertheless, it is also, and primarily, an expression of the historicity of law—the theory that the past decisions of courts have a normative significance in the determination of what the law is, and further, that the decision of the court in a given case has normative significance—is a precedent for the decision of analogous cases in the future.

In the twentieth century, the historical school came under attack in the United States, as it did in other Western countries. It was attacked partly for exalting the spirit of the nation as the ultimate source of law and partly for demeaning the positive role of legislation in the development of law. In the United States, it was attacked also, and chiefly, for its assumption that judges, in deciding cases, do not "make" law but "find" it in precedents of the past, in customary law, or in other historical sources. To be sure, it had always been recognized that judges could play a creative role in adapting past precedents to current and future conditions; nevertheless, the historical school stressed the organic growth of the law, while in the twentieth century emphasis was increasingly placed on the need for innovation. This, in turn, was linked with the "will" theory of law—that judges, like legislators and administrators, decide not according to what the law "has been" or "is" but according to what they will it to be—that is, according to what they consider to be sound policy.

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[6] Article 38 of the Statute of the International Court of Justice gives a similar list of sources of international law, namely, international conventions, international customary law, and widely accepted general principles of law, but provides that judicial decisions and the teachings of the most highly qualified scholars are only "a subsidiary means for the determination of rules of law." Statute of the International Court of Justice, June 26, 1945, art. 38(1), 59 Stat. 1055, 1060, 3 Bevans 1153, 1187.

In the 1920s and 1930s, American jurisprudence was increasingly influenced by a school of so-called "legal realism," which contended that legal rules are inherently ambiguous and that judges decide cases according to their prejudices.[7] In the late 1940s, 1950s, and early 1960s, this was succeeded by a school of so-called "policy science," which analyzed the law in terms of economic welfare, political power, and other social "values," the sharing of which, according to the theory, courts in deciding cases ought to "maximize."[8] Since the late 1960s, various new jurisprudential movements, all of which, like legal realism and policy science before them, are essentially positivist in their concept of the nature and sources of law, have arisen in the United States to advance various causes: "critical legal studies," "critical race theory," "feminist legal theory," "detraditionalization," "law and economics," and others.[9] Against the positivist theory of law that underlies these movements and against the positivist theory of law adhered to by most of the more conventional legal theorists, the relatively few remaining American adherents of a theory of natural law have fought a rear-guard action. The historical school, however, has almost vanished from the academy. Occasionally, it is discussed as a relic of a bygone age. Occasionally, it is mentioned as an example of an indefensible "traditionalism." Usually, it is ignored. Indeed, not long ago a leading American legal comparatist and historian, in examining positivist and natural law justifications for the validity of customary law, expressly stated that he would not consider the approach to the matter from the point of view of historical jurisprudence on the ground that "Savigny's . . . general theory of law . . . is today universally rejected."[10]

If, in the United States, historical jurisprudence is considered to be dead, it is because it has been caricatured to death by its opponents. Savigny's true followers endorsed historicity not historicism, tradition not traditionalism.[11] Historicism is the return to the past; historicity emphasizes the element of

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[7] *See* JEROME FRANK, LAW AND THE MODERN MIND (1930); *cf.* FRED RODELL, WOE UNTO YOU, LAWYERS! (1939).

[8] *See* Harold D. Lasswell & Myres S. McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943); *see also* ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION 201–08, 212–13, 249, 253–54, 355 (1993).

[9] *See* JOHN HENRY SCHLEGEL, AMERICAN LEGAL REALISM AND EMPIRICAL SOCIAL SCIENCES (1995).

[10] *See* ALAN WATSON, THE EVOLUTION OF LAW 48 (1985). Professor Siegel has also written that "historical jurisprudence . . . grounded itself in tenets that are today wholly repudiated." Stephen A. Siegel, *The Revision Thickens*, 20 LAW & HIST. REV. 631, 637 (2002).

[11] Savigny emphasized that "this organic connection of the law with the being and character of the people is also preserved in the progress of the times . . . . This law grows with the people, is transformed with the people, and finally withers away if the people loses its unique character." SAVIGNY, *supra* note 4, at 27.

continuity from past to future in the development of the culture of a society, including its legal culture. In the words of a distinguished contemporary historian, "Tradition is the living faith of the dead; traditionalism is the dead faith of the living."[12] Rapid change, even periodic revolutionary change, has been part of the evolution of the Western legal tradition. On the other hand, historical jurisprudence is not, as some scholars have supposed, merely a sociological statement; it did, indeed, in the hands of social theorists such as Eugen Ehrlich and Max Weber, become part of a sociology of law, a study of the influence of social, economic, and ideological factors on legal development over time. As a legal theory, however, it stresses a belief *in* organic development, not just a belief *that* such development exists. It looks to the past heritage of the law as an important source of its self-conscious growth in the present and future.

If it is granted as a matter of legal theory that history, tradition, and group memory (in Saint Augustine's sense of the word "memory," that is, not only recollection of the past but also anticipation of the future)—that history, in this dynamic sense, ranks with politics and with morality, with will and with reason, as a foundation of law, then we must take the next step and ask what our own history tells us about our own law—tells us not only what to *think* about our own law but also what to *do* about our own law. Here we must look back to the past and forward to the future, asking not only what has happened in the past and what the past tells us is likely to happen in the future but also what in the past we are bound by—what our tradition requires of us now. That is what is meant by "historical foundations."

To judge from the law books that we ask our students to study, one might imagine that our legal history began in the twentieth century—the 1930s, or even the 1950s. Indeed, the twentieth century did bring revolutionary changes in our legal system. Yet, if we consider the fundamental issues that now confront our courts, administrative agencies, and legislatures, we see that they require, for their proper solution, not only a transgenerational perspective but also a millennial perspective. They include issues of family disorganization, social welfare, healthcare, education, moral offenses, and human rights, matters that approximately 900 years ago were brought into the spiritual competence of the Roman Catholic Church, its canon law, and its courts.[13] Then in the sixteenth and seventeenth centuries, Protestant Reformations

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[12] *See* JAROSLAV PELIKAN, THE VINDICATION OF TRADITION 65 (1984).

[13] *See* BERMAN, *supra* note 2, at 199–254.

outlawed the Roman Catholic Church in Protestant territories of Europe, transferring its spiritual authority to secular rulers.[14] More than two centuries later, the French Revolution, and also to a lesser extent the American Revolution, substituted various forms of Deism for traditional Christian theology.[15] In the long twentieth century, we have experienced a widespread agnosticism and relativism, and what has been called "the secularization of the secular,"[16] accompanied by increasing privatization of the religious beliefs that were a principal foundation on which the Western legal tradition was built. As a consequence the tradition itself is in crisis and is in danger of being forgotten.

The need to think in broad, historical terms of the Western legal tradition, of which our American law is an integral part, arises also from the fact that we have entered a new era in which, for the first time in the history of the human race, all the peoples and all the cultures of the world have been brought together in continual interrelationships. We live in a world economy, supported by a growing body of transnational law of trade, investment, and finance. Through new technology, we have virtually instantaneous worldwide communications, also subject to a body of transnational legal regulation. A multitude of transnational organizations and associations, formed to advance a myriad of different causes, work to introduce legal measures to reduce world disorder and overcome world injustices: to prevent destruction of the world environment and pollution of the world atmosphere, to prevent the spread of world diseases, to eliminate the abject poverty of the billion or more people of the world living on an income of less than a dollar a day, to remedy violations of universal human rights, to counter worldwide terrorism, and to resolve ethnic and religious conflicts that threaten world peace. People from all parts of the world have come together to call for the development of worldwide legal protection against these and other global scourges through the development of official and unofficial legal institutions. They have also come together to promote world travel, world sports, world leisure activities, and other kinds of good causes that affect all peoples and that require transnational regulation to be carried out in a just and orderly way. The growing body of world law includes not only public international law, that is, the law created by nation-states in their relationships with each other, including the law governing the United Nations and its subordinate intergovernmental organizations, but also

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[14] *See* BERMAN, *supra* note 3, at 176–97, 349–71.

[15] *See* Harold J. Berman, *Law and Belief in Three Revolutions*, 18 VAL. U. L. REV. 569, 616 (1984).

[16] *Cf.* HANS BLUMENBERG, THE LEGITIMACY OF THE MODERN AGE 10–11 (Robert M. Wallace trans., 1983) ("[T]he concept of secularization has itself become secularized.").

the enormous body of contractual and customary legal norms that govern relations among persons and enterprises engaged in voluntary activities that cross national boundaries. World law is a new name for what was once called *ius gentium*, the law of nations, embracing common features of the various legal systems of the peoples of the world.

The emerging world society and its accompanying body of world law are, to be sure, gravely threatened by extremists of the various world cultures. But the "clash of civilizations," in Samuel Huntington's phrase, is taking place in the background of intercultural communication and interaction.[17] Even the antiglobalists form a global network. Even the terrorists are part of a transnational conspiracy.

An integrative jurisprudence, which accepts the measure of truth residing in each of the three major schools of legal theory and which seeks to integrate them,[18] is needed to recognize, interpret, and support the growing body of world law.

Some leading adherents of positivist jurisprudence once took the position that public international law is not really law, since there is no world state and since nation-states may withdraw at will from their international legal obligations.[19] Today, however, even the strictest positivist must recognize that the 20,000 or more international treaties and conventions that are registered with the United Nations constitute legislation not only of the individual states that have ratified them but also of the international confederation of states. Thus, they constitute law in the positivist's sense of that word, despite the absence of an overriding international sovereign. Also, positivist jurisprudence today has no difficulty in recognizing the lawmaking role of some thousands of intergovernmental organizations charged with the administration of such treaties and conventions. Moreover, positivist jurisprudence has not only accepted the validity of a body of law that emanates from contractual relationships of independent sovereign states but has also contributed important techniques of making, interpreting, and applying such law.

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[17] *See* SAMUEL P. HUNTINGTON, THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER (1996).

[18] *See* Harold J. Berman, *Toward an Integrative Jurisprudence: Politics, Morality, History*, 76 CAL. L. REV. 779 (1988).

[19] *See* JOHN AUSTIN, THE PROVINCE OF JURISPRUDENCE DETERMINED AND THE USES OF THE STUDY OF JURISPRUDENCE *passim* (W.E. Rumble ed., 1995) (1832).

Also, natural law theory, which once dominated the analysis of public international law, continues to play a significant role in its formation and implementation. Public international law presents itself as an instrument of universal moral values, of human rights, and of justice. This is nowhere more apparent than in international conventions proscribing slavery, war crimes, and so-called crimes against humanity: genocide, apartheid, and torture. In addition, in the so-called private sphere of international relations, natural law theory supports the formation and application of legal norms by individual persons, enterprises, and voluntary associations engaged in transnational activities.

Above all, both the political aspects of world law, viewed from a positivist perspective, and the moral aspects of world law, viewed from the perspective of natural law, are also to be viewed from the historical perspective of the coming together in the twentieth and twenty-first centuries of virtually all the peoples of the world in continual relations with each other. This has been most apparent in the economic sphere. Business enterprises and other kinds of economic actors, communicating together from all nations to conduct their common affairs and to establish common norms of intercourse and common institutions, constitute an important element of what has come to be called a world civil society. Other constituent elements of world civil society include multinational religious associations, information and news media, educational and research organizations, professional societies, sports associations, and a host of other types of voluntary associations "made up of individuals and groups in voluntary association without regard to their identities as citizens of any particular country, and outside the political and public dominion of the community of nations."[20]

A dramatic example of the impact of a transnational voluntary association on world law is the role played by Doctors Without Borders, a transnational association of some 2500 private physicians who volunteer to combat disease in so-called developing countries. Doctors Without Borders defeated the effort of American and other pharmaceutical companies to prevent the distribution of generic AIDS drugs in South Africa, thus making AIDS treatment affordable to millions of South Africans. In 1998, thirty-nine pharmaceutical companies brought suit in a South African court, relying on universally recognized legal principles to prevent infringement of their patents. Doctors Without Borders

[20] This is the definition of world civil society given by Gordon A. Christenson, *World Civil Society and the International Rule of Law*, 19 HUM. RTS. Q. 724, 731 (1997).

circulated a petition, called "Drop the Case," signed by 285,000 persons and 140 organizations from 130 countries, asking the pharmaceutical companies to withdraw their suit.[21] Eventually, the pharmaceutical companies, under pressure of world opinion, did withdraw their suit, accepting, in effect, a principle that in countries whose populations suffer from diseases that can only be combatted by the use of patented medicines that cost more than their populations can afford to pay, the patentees of such medicines will not contest the circulation of similar less expensive generic drugs, although the circulation of such drugs would otherwise constitute an infringement of their legal rights. Earlier, this principle was invoked in Brazil, where since 1996 virtually all AIDS patients have been given access to generic drugs.[22] Ultimately, member states of the World Trade Organization ("WTO") adopted a decision in 2002 that so-called "least developed country Members" will not be obliged, with respect to pharmaceutical products, to enforce foreign patent rights otherwise applicable under the WTO international agreement on trade-related aspects of intellectual property rights.[23]

In concluding, I reassert that historical consciousness is a fundamental basis of law and that socio-political theories and moral theories of law, which draw chiefly on the role of will and of reason respectively, must draw also on memory of the past and foresight of the future in order to substantiate their conclusions. As has been said, philosophy without history is empty. But to this must be added that history without philosophy is meaningless. The history that must be invoked to gain a proper understanding of law must rest on a sound historiography—one that takes into account not only details of historical experience in given localities and short time-spans but also the larger direction of historical experience over longer periods of time. In the words of a great—and greatly neglected—twentieth-century scholar, Eugen Rosenstock-Huessy, the "scientific" historiography of the nineteenth and twentieth centuries led to the continual breaking down of the past into smaller parts and the eventual loss of any sense of direction. In placing himself outside of history, Rosenstock-

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[21] Press Release, Doctors Without Borders, Drug Companies in South Africa Capitulate Under Barrage of Public Pressure (Apr. 19, 2001), *at* http://www.doctorswithoutborders.org/pr/2001/04-19-2001.shtml.

[22] H.E. Senator José Serra, Keynote Address at the AIDS 20 Years Later Conference (Oct. 13, 2001) (delivered by Mauricio Cortes Costa), *at* http://www.pih.org/calendar/011013aids/keynote.html. By 2001, the adult prevalence rate of HIV/AIDS in Brazil had been reduced to 0.7%. *See* INDEX MUNDI, BRAZIL—PEOPLE—HIV/AIDS—ADULT PREVALENCE RATE (2004), *at* http://www.indexmundi.com/brazil/hiv_aids_adult_prevalence_rate.html.

[23] *See* Council for Trade-Related Aspects of Intellectual Property Rights, *Extension of the Transition Period Under Article 66.2 of the TRIPS Agreement for Least-Developed Country Members for Certain Obligations with Respect to Pharmaceutical Products*, IP/C/25 (July 1, 2002).

Huessy wrote, the scientific historian counts days and years but not generations and centuries.

In adding a historical jurisprudence to the prevailing schools of political jurisprudence and moral jurisprudence, one must take, I submit, a long view—a millennial view—of the Western legal tradition, which is now in crisis partly because its historical foundation in religious belief systems has been forgotten; and also a long view—again, a millennial view—of the coming together of the Western legal tradition with other legal traditions as the peoples and cultures of the world, having created a world economy, gradually form a world society and a body of world law.