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Recommended Citation

Thomas L. Shaffer & Mary M. Shaffer, *Character and Community: Rispetto as a Virtue in the Tradition of Italian-American Lawyers*, 64 Notre Dame L. Rev. 838 (1989)..

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Character and Community: *Rispetto* As a Virtue in the Tradition of Italian-American Lawyers

Thomas L. Shaffer*

Mary M. Shaffer**

"Hell is what a person does to himself when he goes against the grain of his own character. . . ."

- Helen Barolini¹

We Italian Americans of professional rank are in danger, I think, of Respectability. Perhaps it is no great harm that we have taken to bringing useless chafing-dishes instead of flexible cash as wedding presents. But it will have been very great harm indeed if we turn and look back at ourselves after long, active, chatty careers and can only see . . . well-established, upwardly mobile, endlessly aspirant dullards [who put] . . . our dignity before our conscience or our desire to be accepted before our desire to tell the truth.

- Robert Viscusi²

Our project is to contemplate a discrete piece of applied ethics in the American legal profession, a piece of what one might call Italian-American legal ethics.³ We propose to describe a moral value for which we will use the Italian word *rispetto*. Our understanding of *rispetto* is that it is a virtue, a good habit, through which the person learns, practices, teaches, and remembers his place within the family. We will argue here that the practice of this virtue will allow a modern lawyer to be in and of his or her civic and professional community without loss of dignity and a sense of self.

Rispetto has to do with community. It is the skill to love in the family. We do not understand family to be restricted to blood relationships, but the organic group that is the family is, nonetheless, our point of reference. The organic family is the usual school for virtue and moral reality, particularly so in Italian-American culture. Among Italians, and in our use of the word family, the blood-related, nuclear, and extended family controls any serious analogical or metaphorical use of the word family to describe neighborhood, town, parish, school, and professional association.⁴

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¹ H. BAROLINI, *UMBERTINA* 414 (1979) (remarks of Tina Morosini).

² Viscusi, *The Semiology of Semen*, in *THE ITALIAN AMERICANS THROUGH THE GENERATIONS* 185, 194 (R. Caporale ed. 1986).

³ This Article; Shaffer, *The Legal Ethics of Belonging*, 49 OHIO ST. L.J. 703 (1988); and Shaffer, *Lawyers as Assimilators and Preservers*, 58 MISS. L.J. 405 (1988), are pieces of a book in progress which is tentatively titled *Lawyers and Their Communities*.

⁴ We use the Italian word "*rispetto*" rather than the English word "respect" to avoid the corruption the English word has suffered in stories about organized crime. Such stories tend to deni-

This paper has a past in my work, some short account of which might illuminate the focus of this Article. I argue for an emphasis in the study of ethics in the professions that is based on notions of character more than on notions of right and wrong.⁵ My argument is focused on persons more than on acts,⁶ on virtues (that is, good habits) more than on rules,⁷ on stories more than on dilemmas,⁸ on formation more than on choice,⁹ and on relationships rather than rights or individual autonomy.¹⁰ My argument is that the human person is not simply the product of his choices. We *belong* first and then we *choose*; this priority is valid both descriptively and normatively, both in terms of potency and in terms of origin. We choose because of where we belong, we do not choose where to belong. When it appears that we have chosen where to belong, our movement has been (in Michael Novak's phrase) more a matter of coming home than a matter of choosing where to be.¹¹ I have made this argument in reference to the Canadian and American gentleman-lawyer¹² in the small-town south¹³ and in northern commercial practice;¹⁴ in reference to the English gentleman-lawyer and gentleman-physician;¹⁵ and in reference to professional renegades and dissenters, both those who enjoy respectability and those who do not.¹⁶

My current project is to follow this argument into the lives of American lawyers whose proximate ancestors immigrated to this country in the

grate Italian Americans and to reduce their communitarian heritage to a mobster stereotype—to a mysteriously alien honor among thieves. See Russo, *The Hidden Godfather*, in SUPPORT AND STRUGGLE: ITALIANS AND ITALIAN AMERICANS IN A COMPARATIVE PERSPECTIVE 255 (J.L. Tropea, J.E. Miller & C. Beattie-Repetti eds. 1986). Cf. M. MUSMANNO, THE STORY OF THE ITALIANS IN AMERICA 194-205 (1965); Ferrara, *Re-Emerging*, in CENTER FOR IMMIGRATION STUDIES, IMAGES: A PICTORIAL HISTORY OF ITALIAN AMERICANS 235 (1981). See also L. COVELLO, *infra* note 76, at 391.

5 T. SHAFFER, FAITH AND THE PROFESSIONS ch. 1 (1987).

6 Shaffer, *Legal Ethics and the Good Client*, 36 CATH. U.L. REV. 319 (1987).

7 Shaffer, *On Being a Professional Elder*, 62 NOTRE DAME L. REV. 624 (1987); Shaffer, *Should a Christian Lawyer Serve the Guilty?*, 23 GA. L. REV. 1021 (1989). See also T. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER chs. 5-9 (1981).

8 T. SHAFFER, AMERICAN LEGAL ETHICS xxi-xxix, app. II at 1-3 (1985).

9 Shaffer, *The Legal Ethics of Radical Individualism*, 65 TEX. L. REV. 963 (1987); Shaffer, Book Review, CHRISTIAN LEGAL SOC'Y Q., Winter 1987, at 32 (reviewing R. BELLAH, R. SULLIVAN, A. SWINDLER & S. TIPTON, HABITS OF THE HEART (1986)); Shaffer, Book Review, 33 AM. J. JURIS. 241 (1988) (review of four recent books on narrative).

10 Shaffer, *The Legal Ethics of Radical Individualism*, *supra* note 9; Shaffer, The Tension Between Law in America and the Religious Tradition, in Law and Our Life Together (R. Neuhaus ed. unpublished); Shaffer, *Levinson Builds the Kingdom: Comment on 'Professing Law'*, 31 ST. LOUIS U.L.J. 73 (1986).

11 Novak, *In Praise of Cynicism (Or) When the Saints Go Marching Out*, in T. SHAFFER, *supra* note 8, at 584.

12 Shaffer, *The Return of the Gentleman to Professional Ethics*, 10 QUEEN'S U.L. REV. 1 (1984); Shaffer, Book Review, CHRISTIAN LEGAL SOC'Y Q., Number 3, 1985, at 32.

13 Shaffer, *The Moral Theology of Atticus Finch*, 42 U. PITTS. L. REV. 181 (1981), reprinted in T. SHAFFER, *supra* note 8, at 3-57.

14 Shaffer, *Henry Knox and the Moral Theology of Law Firms*, 38 WASH. & LEE L. REV. 347 (1981), reprinted in T. SHAFFER, *supra* note 8, at 367. See T. SHAFFER, *supra* note 8, at 21-29, 137-39, 159-60, 427-32 (discussions of lawyer characters in William Dean Howell's novel, *A Modern Instance*); Shaffer, *The Unique, Novel, and Unsound Adversary Ethic*, 41 VAND. L. REV. 697 (1988).

15 T. SHAFFER, *supra* note 5, at 111-72; T. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER 57-91 (1981) (some of Anthony Trollope's lawyers); Shaffer, *The Professional Ethics of Individualism and Tragedy in Martin Arrowsmith's Expedition to St. Hubert*, 54 MO. L. REV. 259 (1989).

16 See T. SHAFFER, *supra* note 5, at 1-38.

twentieth century: Eastern-European Jews such as Fanny Holtzmann;¹⁷ Irish lawyers such as George V. Higgins's sleazy Boston criminal-defense lawyer, Jerry Kennedy;¹⁸ fictional Italian-American lawyers such as Louis Auchincloss's Mario Fabbri;¹⁹ and, now, in partnership with Mary M. Shaffer, Italian-American lawyers. This paper varies my story-ethics method in that it builds less on particular stories²⁰ and more around the practice of a virtue, as that practice is revealed in the rich story of the Italian-American family. I have completed a parallel project on the Italian-American lawyer (and, perhaps, by extension, the lawyer in and of other American cultures) as an agent of assimilation, making moral arguments to the vulnerable immigrant culture, in behalf of the dominant white Protestant culture, and vice versa.²¹ Both projects are especially appropriate in a Roman Catholic university in the United States, since our religious culture is a culture formed and preserved by the late immigrants.²²

The metaethical proposition implicit in our approach to applied ethics is (in Iris Murdoch's phrase) that seeing is a moral art.²³ We do not accept the Enlightenment separation of fact and value. We reject the notion that ethics is a discipline in which one uses her senses to describe reality then shifts gears and uses her mind to make moral arguments about reality. Students of law may recognize this operation as similar to the way judicial opinions are written. We will assume that morals are more heavily at work in what we see, and in our description of what we see, than in the arguments we make after we have bracketed the facts and propose to evaluate them. (We have therefore made extensive use of first-person accounts from Italian-American lawyers; those accounts are examples of seeing as a moral art.) This approach—dogma, if you like—is generally accepted as essential among those who "do story ethics," because it alerts us to the presence of self-deception. Witness Robert

17 *Id.* See T. BERKMAN, *THE LADY AND THE LAW* (1976); Harriman, *Miss Fixit*, *THE NEW YORKER*, Jan. 30, 1937, at 21-25; Feb. 6, 1937, at 22-25, reprinted in T. SHAFFER, *supra* note 8, at 624.

18 See T. SHAFFER, *supra* note 5; G.V. HIGGINS, *KENNEDY FOR THE DEFENSE* (1980); G.V. HIGGINS, *PENANCE FOR JERRY KENNEDY* (1985).

19 Shaffer, *The Legal Ethics of Belonging*, 49 OHIO ST. L.J. 703 (1988); see *infra* note 74.

20 See T. SHAFFER, *supra* note 5, at 1-38.

21 Shaffer, *Lawyers as Assimilators and Preservers*, *supra* note 3.

22 Shaffer, *Mission of a Church-Related Law School: The Catholic Tradition*, 22 VAL. U.L. REV. 669 (1988); Shaffer & Rodes, *A Christian Theology for Roman Catholic Law Schools*, 14 U. DAYTON L. REV. — (forthcoming 1989).

23 I. MURDOCH, *THE SOVEREIGNTY OF GOOD* 1-45 (1985). She relates her argument about perception to the ethics of virtue: "Where virtue is concerned we often apprehend more than we clearly understand and *grow by looking*." *Id.* at 31. But she comprehends also an ethics of choice: "I can only choose within the world I can see, in the sense of 'see' which implies that clear vision is a result of moral imagination and moral effort." *Id.* at 37. She does not, though, accept what I take to be the essential teaching of Kantian ethics—that morality resides in the will:

Will and reason . . . are not entirely separate faculties in the moral agent. Will continually influences belief, for better or worse, and is ideally able to influence it through a sustained attention to reality. . . . As moral agents we have to try to see justly, to overcome prejudice, to avoid temptation, to control and curb imagination, to direct reflection. Man is not a combination of an impersonal rational thinker and a personal will. He is a unified being who sees, and who desires in accordance with what he sees, and who has some continual slight control over the direction and focus of his vision.

Id. at 40.

Viscusi's fear of drifting into a life of comfort and dull aspiration, a life in which dignity clouds conscience as (and because) acceptability cripples truthfulness. Truthfulness is important to an account of *rispetto* because, as we will argue, the practice of place within the family depends on a person being able to see and to say what is going on in the family: "[My] family was . . . an emotional support group, and therapy center . . . with few secrets and frequent, open discussions about the range of human feelings, [and] their expression and resolution. . . . Job fulfillment . . . did not seem to be a priority; fulfillment in family was the ultimate priority."²⁴

I. Italian Culture in America

The social scientists and historians who describe Italian-American culture show how the social operation of the virtue of *rispetto* works. They describe how individuals are formed in the family, neighborhood, and church by the virtue of *rispetto*, and how the practice of the virtue has affected the development of associations of Italian Americans and of older American associations that now include Italian Americans (such as the legal profession).

The constant in Italian-American life is the family.²⁵ The family is consistently described as the nursery of Italian-American values. It has operated in this immigrant culture in a distinctive, decidedly non-American way. In contrast to the Italian-American family, the Puritan-republican American family in the nineteenth century, as the southern Italian immigrants found it when they came to America at the end of the century, was the product of a divisive settlement between men and women. The settlement defined a "woman's sphere" of domesticity and training of children in individualistic virtues, and claimed for men control of the negotiations between the home and business, government, church, and voluntary civic organizations.²⁶ Home was the woman's sphere and the world was the man's.

This division was not characteristic of the Italians. Italian virtues were also home virtues; training in virtue was a shared enterprise—shared across the immediate family, and shared across generations.²⁷ It could not, for example, be entrusted to American public schools. Negotiation with the world outside the family was a project for every member of the family. Respect for the family, as the world looked at it from outside, was inseparable from respect for the individual who represented

²⁴ Quotations without citation are from interviews and letters we have gathered from Italian-American lawyers. These are on file in my office at the Notre Dame Law School. They were obtained under a policy of not attributing quotations.

²⁵ D'Andrea, *The Social Role Identity of Italian American Women: An Analysis and Comparison of Familial and Religious Expectations*, in *THE FAMILY AND COMMUNITY LIFE OF ITALIAN AMERICANS* 61 (R.N. Juliani ed. 1983); Krase, *The Italian American Community: An Essay on Multiple Social Realities*, in *THE FAMILY AND COMMUNITY LIFE OF ITALIAN AMERICANS*, *supra*, at 95.

²⁶ N. WOLOCH, *WOMEN AND THE AMERICAN EXPERIENCE* 97-150, 267ff (1984); T. SHAFFER, *supra* note 5, at 40, 141.

²⁷ D'Andrea, *supra* note 25; Viscusi, *Il Caso della Casa: Stories of Houses in Italian America*, in *THE FAMILY AND COMMUNITY LIFE OF ITALIAN AMERICANS*, *supra* note 25, at 1.

the family. The individual was the family, for most external purposes.²⁸ Italian immigrants expressed the impermanence and insecurity of life, not in terms of rugged individuals overcoming obstacles to individual achievement, but in a familial and eventually "tribal" encounter with commerce,²⁹ with the Irish-dominated Roman Catholic Church in the United States,³⁰ in lives led by adult children as they drew away from the family,³¹ in American politics,³² in collaborative forms of recreation,³³ in

28 This is a recurrent theme in Italian-American literature and in literature about Italians in America. H. BAROLINI, *supra* note 1, is an example in the first category; see also THE ITALIAN AMERICAN NOVEL (J. Cammett ed. 1969). Arthur Miller's play, *A View from the Bridge* (1955), is an example in the latter category, as are the novels of Mario Puzo, particularly, *The Fortunate Pilgrim* (1965). See also Hall, *Italian Americans: Coming Into Their Own*, N.Y. Times, May 15, 1983 (Magazine), at 28.

29 J. LOPREATO, PEASANTS NO MORE: SOCIAL CLASS AND SOCIAL CHANGE IN AN UNDERDEVELOPED SOCIETY 210-23 (1967); Vecchio Wilson, *Assimilation and Ethnic Consolidation of Italians in Cortland, New York, 1892-1930*, in THE FAMILY AND COMMUNITY LIFE OF ITALIAN AMERICANS, *supra* note 25, at 183; S. LA GUMINA, FROM STEERAGE TO SUBURBS: LONG ISLAND ITALIANS 201-13 (1988); Eula, *The Structural Basis of the Uneasy Shopkeeper: Italian Americans of the Contemporary Northeast*, in SUPPORT AND STRUGGLE, *supra* note 4, at 143, 146-49.

30 Krase, *supra* note 25; Tricarico, *The Italians of Greenwich Village: The Restructuring of an Italian Community*, in THE FAMILY AND COMMUNITY LIFE OF ITALIAN AMERICANS, *supra* note 25, at 133. See also D. TRICARICO, THE ITALIANS OF GREENWICH VILLAGE (1984). D'Andrea, *supra* note 25, at 65, says that in 1918 there was one Italian priest for each 5,600 Italian-American Roman Catholics. Roman Catholic priests who served the Italian immigrants and their families were Irish. Very few Italians turned to other denominations. See also Meloni, *Italy Invades the Bloody Third: The Early History of Milwaukee's Italians*, 10 MILWAUKEE HISTORY 47 (1987); Vecoli, *Cult and Occult in Italian American Culture*, in IMMIGRANTS AND RELIGION IN URBAN AMERICA 25 (R. Miller & T. Marzik eds. 1977).

31 Through four generations of her family, Barolini's defiant immigrant, Umbertina, *supra* note 1, struggles for her family's prosperity and, as much or more, to keep her family together, which means keeping it Italian. Once economic security is more or less under control and her children are adults, established in business in America, her effort is to keep them from pulling away from one another: "She became the grandmother in the kitchen, the old woman dressed in black with wispy gray hair straggling from the knot on top of her head, a household fixture standing at the stove. . . . Now her sons, as was right, were in the forefront, and she spoke only to keep loyalty and solidarity among them." H. BAROLINI, *supra* note 1, at 127, 133. The main burden of the novel is how this solidarity among adult children is tested over three generations of Umbertina's Italian-American female descendants. See also Gambino, *Italian Americans Today*, in A DOCUMENTARY HISTORY OF THE ITALIAN AMERICANS 428, 430-32 (W. Moquin & C. Van Doren eds. 1974).

32 S. LA GUMINA, *supra* note 29, at 184-200; Cavaioli, *Chicago's Italian Americans Rally for Immigration Reform*, in THE FAMILY AND COMMUNITY LIFE OF ITALIAN AMERICANS, *supra* note 25, at 35; N. FERBER, A NEW AMERICAN: FROM THE LIFE OF SALVATORE A. COTILLO, SUPREME COURT JUSTICE, STATE OF NEW YORK (1938); M. CUOMO, DIARIES OF MARIO M. CUOMO: THE CAMPAIGN FOR GOVERNOR (1984); G. FERRARO, FERRARO: MY STORY (1985); *The Making of a Trailblazer: A Winner's Nature and a Plucky Mother Set Geraldine Ferraro on the High Road to History*, PEOPLE, July 30, 1984, at 24.

33 D. TRICARICO, *supra* note 30.

school,³⁴ neighborhood,³⁵ and parish,³⁶ and even with regard to organized crime.³⁷

It was the family, not the individual, that moved from the highly protective enclave of the old way (*la via vecchia*) to concern (*campanilismo*) for place of origin (*paese*) and for the extended family that eventually resulted from this broader community of concern (*paesani*). It was the family, in a web of *paesani*, not the individual, that moved from this sort of "tribalism" to characteristic mutually beneficial societies, to eventual ethnic identification as northern or southern Italians, thence to identity as Italians in America,³⁸ and finally, to more typically American associations in local politics,³⁹ parish,⁴⁰ civic betterment,⁴¹ economic interest group,⁴² and profession.⁴³ None of these movements succeeded until

34 J. LOPREATO, *ITALIAN AMERICANS* 161 (1970).

35 S. LaGUMINA, *supra* note 29; LaGumina's argument is that the suburban, Italian-American neighborhoods of Long Island were in this sense collaborative from their beginnings during the era of immigration. See also LaGumina, *Marconiville U.S.A.: The Rise of an Italian American Suburban Community*, in *THE FAMILY AND COMMUNITY LIFE OF ITALIAN AMERICANS*, *supra* note 25, at 81; Velikonja, *Family and Community: The Periodical Press and Italian Communities*, in *THE FAMILY AND COMMUNITY LIFE OF ITALIAN AMERICANS*, *supra* note 25, at 47. D. TRICARICO, *supra* note 30, demonstrates, as to Greenwich Village's Little Italy, that the cultural movement was from "family neighborhood" through a series of affiliations, beginning with commercial transactions and progressing through recreational affiliations, "peer group" associations, school-parent groups, etc.; but always, he says, with the ideal of having a neighborhood suitable for the family, and, to that end, "the neighborhood was always Italian."

36 D. TRICARICO, *supra* note 30; Moss, *Family and Community: Voluntary Association in South Italy and Detroit*, in *THE FAMILY AND COMMUNITY LIFE OF ITALIAN AMERICANS*, *supra* note 25, at 11; Vecoli, *Cult and Occult in Italian American Culture: The Persistence of a Religious Heritage*, in *IMMIGRANTS AND RELIGION IN AMERICA* 25 (R.M. Miller & T.D. Mazik eds. 1977).

37 D. TRICARICO, *supra* note 30. See Meloni, *supra* note 30. See also J. MARTORI, *STREET FIGHTS* (1987).

38 Moss, *supra* note 36; Femminella, *The Ethnic Ideological Themes of Italian Americans*, in *THE FAMILY AND COMMUNITY LIFE OF ITALIAN AMERICANS*, *supra* note 25, at 109; Zucchi, *Paesani or Italian: Local and National Loyalties in an Italian Immigrant Community*, in *THE FAMILY AND COMMUNITY LIFE OF ITALIAN AMERICANS*, *supra* note 25, at 147. Zucchi notices two schools of thought among the social historians: (1) that *campanilismo* broke down in America and became a consciousness of being either northern or southern Italians; and (2) that it survived into the modern identification as being from Italy—period. Both would agree that the moral value of loyalty within the family, among the *paesani*, and eventually among Italian Americans, survived the change. He compares the change in the United States with a similar development, which he attributes to the influence of the Roman Catholic clergy, in Toronto.

39 Cavaoli, *supra* note 32; D. TRICARICO, *supra* note 30.

40 D. TRICARICO, *supra* note 30. The "second phase" in the development of Italian-American culture was one that occurred within Irish dominance of the Roman Catholic Church in the United States and, in almost all cases, of the parish church that served the Italian neighborhood. Italian ethnic identity grew more certainly within that environment than within the "first phase," the pre-dominance of *campanilismo*. See also Meloni, *supra* note 30.

41 Velikonja, *supra* note 35; LaGumina, *Marconiville*, *supra* note 35; Zucchi, *supra* note 38; Sortentino, *Organizing the Ethnic Community*, in *THE FAMILY AND COMMUNITY LIFE OF ITALIAN AMERICANS*, *supra* note 25, at 165.

42 Notarianni & Raspa, *The Italian Community of Helper, Utah: Its Historic and Folkloric Past and Present*, in *THE FAMILY AND COMMUNITY LIFE OF ITALIAN AMERICANS*, *supra* note 25, at 23; Vecchio Wilson, *supra* note 29.

43 D. TRICARICO, *supra* note 30; Hall, *supra* note 28, at 31:

Is there a single thread that runs through these people? If anything, it is the unusual propensity to merge, rather than separate, the professional and the personal. Borrowing from a culture in which the extended family can easily include 30 to 40 "close" relatives, Italians thrive on community. They are accustomed to large numbers of people, and they seem to have developed an emotional facility in dealing with them. Even in large companies, they have a knack for keeping things on a human scale. "The professional community," explains one Italian-American psychotherapist, "becomes the next family."

Italian Americans came to the view (mistaken perhaps) that the movements could occur without threat to the health of the family and that they could be undertaken from within the family and not outside it.⁴⁴

The disposition, characteristic, habit, or skill that made this movement possible was *rispetto*. *Rispetto* is a way "to acknowledge publicly one's position . . . and thereby to incur a set of obligations."⁴⁵ One's position as having incurred obligations was a position within and from the family—so that the family, too, incurred obligations. It was possible to incur obligations because one had learned in the family the disposition, characteristic, habit, or skill that made possible association without loss of self. It was important, given the preservation of unity without separation into male and female spheres, and given the incurring of obligations without harm to the family, that each member of the family be formed both in the ability to be in the family and in the ability to be in the family without loss of self.⁴⁶ Such formation made it possible to be in other associations and to be present there as the family, in an effective, realistic way, without loss of self, self-respect, or respect for the family.

Our point of departure is radically different from the individualistic and republican or contractarian premises on which communitarian theory in modern jurisprudence and social ethics rests.⁴⁷ The individual's situation in the group has focused, for Italian Americans, on (i) family, (ii) *paese*, and (iii) ethnic group—in that historical order. The immigrants at first drew a curtain of protection around their families. Later they expanded the protection (and mutual aid) to include southern-Italian immigrants from the same place in the old country; social historians call this practice *campanilismo*. And still later they came to think of themselves as Italians in America. This situation has not been interpreted, at any point along this historical progression, in terms that might be used by a contractarian argument for communitarian policies. Italians did not consider family membership, *campanilismo*, and ethnic identity as something the individual chose, as a way of life compared with other ways of life, or even as a choice based on a conscious awareness of the common good.⁴⁸

The preconscious or even subconscious "shared sense of peoplehood"⁴⁹ that is beneath and prior to conscious identity as Italian is a given; it is inevitable; it is fated. Common ways of thinking, behaving, and feeling, from this Italian point of view, are matters of fact—even burdensome matters of fact—before they are matters of either ideology or theory. One copes with these givens in a web of relationships and, in coping, learns to strive, as Eric Ericson put it, "for a continuity of personal character" and the "maintenance of an inner solidarity."⁵⁰ Words from philosophical and theological ways of describing the virtues, such as

44 Viscusi, *supra* note 27; Notarianni & Raspa, *supra* note 42.

45 Notarianni & Raspa, *supra* note 42, at 31.

46 D'Andrea, *supra* note 25. See R. GAMBINO, BLOOD OF MY BLOOD 160-62 (1974).

47 Shaffer, Book Review, *supra* note 9.

48 Notarianni & Raspa, *supra* note 42.

49 Femminella, *supra* note 38.

50 *Id.*

habit, skill, and disposition,⁵¹ work better than "idea" words, or "right and wrong" words, to describe such a moral situation.⁵²

Francis Femminella lists twenty elements in Italian culture which he calls "ethnic ideological themes." Among these themes are several dispositions, characteristics, or skills that provide insight into the way *rispetto* has worked to bring about the movement of Italian-American culture, from an exclusive focus in the family,⁵³ to a focus in the immediate community, to, as Leonard Moss put it, "an accentuation [on] . . . the contributions of the group to the broader host culture."⁵⁴ These include:

- (1) a sense of place (*paese*), an inheritance from the generation of immigrants who expanded the protection of the family to include fellow villagers (*paesani*);
- (2) independence, the desire and skill to act on one's own "and in the event of a real need for help [to go] to one's family";
- (3) courage, for which Femminella invokes Dante—*segendo in piume in fama non si vien ne sotto coltre* (fame does not come to one who lies on feathers under a blanket);
- (4) self-respect—*fare bella figura*—which necessarily includes respect in and for the family;⁵⁵ and
- (5) respect for the place of the outsider, when one is in the outsider's place, so that one does not flaunt one's own ways in the presence of strangers.⁵⁶

What Italian Americans have done with these and the other elements of *rispetto*, in Femminella's account, is to employ them, more than southern Italians have, toward material and social goals (which means to take the regard of outsiders more clearly into account, but to do that without loss of self), toward the future, and toward personal achievement. They became, Femminella says, more "responsible and hopeful, . . . more mature, reasonable, and affiliative" than their immigrant ancestors were. The claim one can make for the moral value of *rispetto*, then, begins in an anthropology of the person as seen in earthy, given, fated association

51 See T. SHAFFER, *supra* note 5.

52 Femminella, *supra* note 38, quotes an article by Gino Speranza, published in 1922, which refers to the "body of traditions" that is present in the Italian immigrant—in his "habits of life . . . invisibly, in habits of thought."

53 *Id.* What Femminella describes is useful here, but his words are troublesome. What he is talking about is not really ethnic, if by ethnic he means what in common parlance has to do with "roots." Ethnic identity, as Italian, is, for Italian Americans, a consequence of adaptation to America; they were not consciously Italian when they came here, but rather they thought of themselves as Sicilians or Calabrians, or even citizens of villages or neighborhoods. Italy at the time they left it was imperfectly unified, a single nation for less than a generation, and many of the immigrants or their families had resisted unification and resented the effects of unification on the south. See S. SALADINO, *ITALY FROM UNIFICATION TO 1919: GROWTH AND DECAY OF A LIBERAL REGIME* (1970). Nor is the point one about ideology, in the sense that word usually has, of theory or principle. What Femminella identifies is less ideological than cultural and, as to both words, "ethnic" and "ideological." See Femminella, *supra* note 38 (Femminella's own account); Moss, *supra* note 36.

54 Moss, *supra* note 36, at 16. D. TRICARICO, *supra* note 30; Venturelli, *Tuscan-American Families, in THE FAMILY AND COMMUNITY LIFE OF ITALIAN AMERICANS*, *supra* note 25, at 69.

55 Viscusi, *supra* note 27, speaks of the house of the Italian-American family, which "values itself where and as it stands."

56 Femminella, *supra* note 38, at 115-16. *Che paese vai, usanza che trovi.* (Wherever you go, follow the customs you find.). This is explained both in terms of respect for the other—when in Rome, do as the Romans—and in terms of protecting what is one's own. Femminella quotes an Italian-American mother: "[T]hey have no right to 'our good ways.'" *Id.* at 116.

with other persons, and ends in an acquired (and inherited) skill for preserving self in community. This claim is a theory of virtue. It is both a denial of the anthropology of individualism and an alternative to its unjustified optimism.⁵⁷ An Italian-American communitarian program would begin with the given and the earthy. It would resemble the procedure Stephen Post recently described as the opposite of the contractarian program:

[M]ost people spend much of their time in various familial roles, or in friendships generally. The very fact that these relations are termed "special" [in modern philosophical accounts of community] is . . . problematic, because this presupposes that relations of equal-regard between strangers stripped of both personal history and social-biological embeddedness are "normal." In fact, were it not for the questionable vision of the moral domain inherited from Enlightenment philosophies of the self in which the familial is more or less ignored . . . we might progress to the point of seeing that . . . familial life [is] . . . "normal," while universal relations of equal pull are "special" and in need of careful justification.⁵⁸

Such an "affirmation of traditional expressions has not been assigned a value by the managers of modern economy," as del Russo and Tropea put it; *rispetto*, in its cultural context, is a process of "normative binding." It happens through mutual respect within the organic group, and it happens through an acceptance of responsibility that does not suppress individual dignity but *exalts*, *protects*, and *celebrates* it. Modern America has threatened the ability of the family to form its members in this way. The Italian American, in her family, like all the rest of us, "has been courted by pervasive liberations for individuals: individuals 'freed' from such bonds are more malleable for becoming that which the state and commerce require,"⁵⁹ not to mention that which both Enlightenment liberal political theory and the American republican vision require.

Italians' earthy, "historically viable distrust" of others—that is, the protection of the family, *l'ordine della famiglia*—is weakened, by "the open wiles of [the] alluring ideology" of individualism. Both individualism and the notion that the reality of community is primarily an issue about governmental, or even fiscal, policy would have been viewed by the first Italian Americans "as befitting an empty sack . . . someone without family." Certainly, there is many an Italian-American lawyer who sees himself as assimilated to the place where he is "a historical, abstracted individual[]" who has "freedom to choose with no criteria for choice." His immigrant ancestors would have dismissed this sort of person as *un nuddu miscantu cu nenti* (a nobody mixed with nothing).⁶⁰ We non-Italian Americans share in the assessment. It is for all of us, we think, to notice that "[t]he possibility for a recovery of a coherent culture and rational

57 See Hauerwas, Levinson & Tushnet, *Faith in the Republic*, 45 WASH. & LEE L. REV. 467 (1988) [hereinafter *Faith in the Republic*].

58 Post, *Communion and True Self-Love*, 16 JOURNAL OF RELIGIOUS ETHICS 345, 359 (1988).

59 del Russo & Tropea, *Identity and Contradictions: La Via Vecchia ed i Giovanotti*, in THE FAMILY AND COMMUNITY LIFE OF ITALIAN AMERICANS, *supra* note 25, at 177, 179 (quoting R. GAMBINO, *supra* note 46).

60 *Id.*

agreement is dependent on not only philosophical argument, but also actually being embodied in the practices of ongoing communities dedicated to the virtues and to the common good. . . . [L]iberal society, morally bankrupt as it is, is not likely to develop such communities"⁶¹

II. The Italian-American Lawyer's Historical Situation

Most Italian-American lawyers are third-generation Americans. They are the granddaughters and grandsons of poor farmers and artisans from southern Italy (Calabria and Sicily predominately) "who sold their cattle and kitchen utensils, scraped, saved and borrowed money from their friends and relatives, packed their belongings in sacks, bundles, and handkerchiefs, and crossed the big pond wondering how much that they had heard, they would find to be true in America."⁶² Their old world is Sicily and the Mezzogiorno, "the place where the sun always shines, where it's always the middle of the day. . . . In the north is the industry, the education, the high culture, the refinement. My people and Matilda's come from the Mezzogiorno, and things have not changed here much since they left."⁶³

Most of these lawyers were the first people in their families to reach the professions, and many were the first in their families to complete, or even begin, a university education. Many of them were raised in an inner-city "Little Italy" and have lately moved to ethnically-mixed suburban neighborhoods. From the perspectives of influence and prominence, these lawyers are visible in the second decade in which Italian Americans have gained, or will gain, prominence in law firms, on the bench, and in public elective office; their parents did not see Italian-ancestry contemporaries in high national executive positions, as ambassadors, university presidents, bishops, or baseball commissioners. By comparison, the descendants of Irish immigrants became influential half a century ago and the descendants of late-immigrant Jews before that.⁶⁴ Compare, for examples, Geraldine Ferraro with Al Smith, Antonin Scalia with Felix Frankfurter, Cardinal Bernardin with Cardinal O'Connell and other Irish bishops of sixty years ago. It became fashionable to be American and ethnic twenty years ago, but only in the last decade has it been cautiously fashionable to be Italian. "Now it's sort of neat to be Italian. Well, that's *not* how it was in the fifties and early sixties. It was neat to be Irish back then."⁶⁵

Italian Americans are no longer as much the objects of the public, even official, hostility and prejudice their immigrant grandparents and their American-born parents encountered.⁶⁶ They are no longer so openly exploited, mistreated, and rejected. That is one of two factors

61 Jones, *Should Christians Affirm Rawls' Justice as Fairness? A Response to Professor Beckley*, 16 JOURNAL OF RELIGIOUS ETHICS 251, 263 (1988).

62 G.L. QUILICI, THE ITALIAN AMERICAN LAWYERS OF CHICAGO 32-33 (1968). H. BAROLINI, *supra* note 1, paints a compelling picture of what Judge Quilici had in mind.

63 M. CUOMO, *supra* note 32, at 55.

64 R. PATAI, THE JEWISH MIND 497 (1977); H.R. WEISZ, *infra* note 95, at 63.

65 See *supra* note 24.

66 H.S. NELLI, FROM IMMIGRANT TO ETHNICS 184 (1983). See *infra* note 102.

that makes it realistic to distinguish, as we have, between Italian culture and Italian-American culture. The other factor is the fact that Italian Americans have developed an immigrant culture that has been separate from its Italian counterpart since the immigration of Italians was checked by Congress in 1924.⁶⁷

Italian Americans have become patriotic, in peace and war. They have become consumers, watchers of television, and practitioners of American sentimentality. None of this was true before 1920. The immigrants' reaction to America was disgust and even horror: "'Americans are joyless, for joy is a fruit that the Americans eat green.' They are a people . . . 'pickled in the sour juices of Puritanism.'"⁶⁸ Americans were seen by the Italian immigrants as crude, materialistic, superficial, and even immoral. Italian immigrants did not come to America for culture; they were Italians in America; they brought their culture with them. Most of them did not come to find a new home. They came for work and for survival—*pane e lavoro*, bread and a way to earn money. They intended to work for a while, to save, and then to go home to Italy. Half of them did return: more than two-million Italian immigrants were repatriated between 1899 and 1924.⁶⁹ Those who changed their minds and stayed here did not care about becoming American, or sending their children to American schools, until years later, as they or their children gradually began to accept the new world as a home.⁷⁰

Italian immigrants lived in barracks and tenements at first, often in indentured service to Irish and Italian work bosses. They were frequently the victims of banks, steamship companies, and gangsters. Most of them later found blue-collar jobs and homes in working-class neighborhoods, and some moved from slums to more pleasant and less crowded areas.⁷¹ Often they had stores, shops, or businesses, such as the gelato and pastry shop Justice Salvatore A. Cotillo's father owned in Harlem's Little Italy. (Justice Cotillo, who came with his parents to New York from Naples, was unusual, though. He was an example of what Humbert S. Nelli characterized as following the late-immigrant Jews in moving into the professions: father owns a store or small business, and then sons go to college and become professionals.⁷² The Italians usually spent two or three generations in the store.)

Italian Americans in the second generation (first generation American-born) were more vulnerable to American culture than their insular parents had been. This generation balanced itself between two worlds. Some Italians, anxious to become American, even repudiated their parents and the old way, *la via vecchia*.⁷³ They were like Auchincloss's Mario

67 The Immigration Act of 1924 § 11(f), 8 U.S.C. § 211(f) (1982) (repealed 1952); see Nelli, *Italians*, in HARVARD ENCYCLOPEDIA OF AMERICAN ETHNIC GROUPS 545 (1980).

68 M. LA SORTE, *LA MERICA: IMAGES OF AN ITALIAN GREENHORN EXPERIENCE* 147 (1985).

69 Nelli, *supra* note 67, at 547.

70 J. W. BRIGGS, *AN ITALIAN PASSAGE: IMMIGRANTS TO THREE AMERICAN CITIES, 1890-1930* 273 (1978); Barolini's novel, *UMBERTINA*, *supra* note 1, is to the contrary, but it is about only one family.

71 Nelli, *supra* note 67, at 549; S. LAGUMINA, *supra* note 29.

72 H. S. NELLI, *supra* note 66, at 186; N. J. FERBER, *supra* note 32.

73 Gambino, *Italian Americans Today*, Chicago Tribune, May 7, 1972, § 1A (Perspective), at 1, in A DOCUMENTARY HISTORY OF THE ITALIAN AMERICANS 428 (W. Moquin & C. Van Doren eds. 1974).

Fabbri, who "became an Episcopalian and treated his homeland as an exotic memory rather than a present-day inspiration."⁷⁴ According to Nelli, this group constituted a minority of the second generation; but it included the more ambitious members, and perhaps the ones most like the mythic melting-pot American whose parents were immigrants. These were the rare Italian Americans who first became managers, professionals, and white-collar employees.⁷⁵

In any event, the first American-born generation had to be able to cope with both communities. Those who could cope skillfully enough were culturally prepared to enter the professions without losing their Italian character, although few of them did so. And very few Italian professionals had emigrated from Italy. In 1902, less than one-half of one percent of southern-Italian immigrants had come from professional occupations in Italy.⁷⁶ The few Italian professionals who emigrated found they were not able to work as professionals in America, sometimes because their English was poor, or because of professional and cultural differences, but more often because Italians were excluded by prejudice from any but the dirtiest, dullest, hardest, and most menial work. Whatever status they enjoyed at home counted for nothing in America; they were "wops," and all wops were alike: "[I]t was not unusual to find two men laboring shoulder to shoulder in a sewage ditch, one illiterate and the other with his head full of Dante and Virgil."⁷⁷

Only toward the middle of the century did education become a practical, realistic, and acceptable alternative, and a feasible ladder of vertical mobility⁷⁸ for working-class Italians. World War II veterans' benefits, beginning in 1944, brought Italians to college and professional schools—largely because they removed the choice between education for vertical mobility and acquiring property for business or home; World War II veterans' benefits provided both.⁷⁹ After World War II, Italian Americans began to get an education and move to the suburbs.

In this way, the Italian family in America has moved into (and in some cases out of) an Italian-American way of life. One of the lawyers who helped us, an Italian-American lawyer who grew up in an Italian neighborhood in Brooklyn, is an example. He was the child of parents who migrated from Abruzzi some ten years after their brothers and sisters came to Brooklyn. When his parents got to Brooklyn, his uncles and aunts were already moving out of the Italian neighborhood there. His parents' family got to the ladder of vertical mobility late; as a result he had cousins in suburban New Jersey: "When I first went to their homes,

74 From Auchincloss's short story, *The Fabbri Tape*, in L. AUCHINCLOSS, *NARCISSA AND OTHER FABLES* 149, 153 (1983), reprinted in T. SHAFFER, *supra* note 8, at 599. See *supra* note 19.

75 H. S. NELLI, *supra* note 66. See *supra* note 24.

76 L. COVELLO, *THE SOCIAL BACKGROUND OF THE ITALO-AMERICAN SCHOOL CHILD* 276 (1967). N. GLAZER & D. MOYNIHAN, *BEYOND THE MELTING POT* 184 (1963), say that three times as many northerners as southerners were professionals, but that is still a minuscule percentage of all Italian immigrants.

77 M. LA SORTE, *supra* note 68, at 194.

78 J. W. BRIGGS, *supra* note 70.

79 H. S. NELLI, *supra* note 66, at 173-74.

they were American homes. They looked like Walter Cronkite and his little Father-Knows-Best kind of families."⁸⁰

Although they were accustomed to the American way of life, many second-generation parents (first American-born generation) sent conflicting messages to their children: "be successful but not too successful" and do not forget the old ways altogether. Richard Gambino calls this the "compound dilemma" of third- and fourth-generation Italian Americans, of whom there are some ten million living and working in the United States today.⁸¹ These Italian Americans, most of the current generation of Italian-American lawyers, are characterized by Gambino as suffering from pressures from parents both to succeed and to adhere to traditional values: they are inspired by one pressure, hemmed in by the other. In a situation typical of the conflict, a second-generation, working-class couple gives their daughter in law school the message to "get an education" and "do better" while they express the fear that vertical mobility will "harm her morals." They want her to maintain the balance that they have had to maintain between cultures, to juggle two cultures, and at the same time keep pace with the relatively liberated generation of young American women.⁸²

Gambino defines the generation which this young Italian American belongs to as both ambitious and with less family and cultural guidance than their parents had. They have, in his view, less moral formation on which ambition can be pursued and defined. Third- and fourth-generation Italian Americans often cherish, instead, the cultural myths—Puritan rigor and frontier individualism—of the old white-Protestant-American establishment which treated their immigrant ancestors as outcasts and criminals.⁸³ One of our contributing lawyers might agree: "It has always made me laugh to read formula books on picking juries, where they say to pick Italians because they all tend to be warm and sympathetic. Quite frankly, the attitude that a lot of my family would have sitting jury duty would be, what is this person trying to do by insisting that he is not guilty; obviously he is guilty or he would not be here; or, in a civil suit, the guy must be lazy . . . and his quadriplegia has nothing to do with his not working."

It was not so for children born to the immigrant generation: "When Pretty Boy Floyd was hiding out after the Union Station Massacre, my grandfather was sent for to cut his hair. He needed a good barber with discretion. When someone was stealing some motorscooters he rented, my grandfather wouldn't let a neighbor shoot at the young thief—better to lose the property than hurt the kid. Go figure."

While such changes in attitude are culturally significant, and indicative of assimilation, they seem to have had less effect than one might suppose on the practice of place within the family that is our focus in considering *rispetto*: "I can remember overhearing heated discussions

80 See *supra* note 24.

81 Gambino, *supra* note 73, at 431.

82 *Id.*

83 *Id.* at 432. See *infra* note 102.

(which in a non-Italian family would have been flat-out arguments) in which certain of my uncles were promoting Franklin D. Roosevelt for sainthood, while others wanted him cast into the fiery depths. One of my uncles was as close to a Marxist as anyone I have ever known, and other members of the family were probably John Birchers. Interestingly, though, none of the political disagreements affected the base of affection⁸⁴ that everyone had for one another. The trouble, of course, is recognizing that a friendly discussion between Italians can often appear as quite close to open warfare when seen and heard by persons of other ethnic backgrounds.”⁸⁵ The endurance of *rispetto* into the third and fourth generation indicates to us that it is a stubborn Italian-American virtue; we will explore that indication more fully below.

III. Instances of the Virtue

Political discussion is consistent with *rispetto*, even heated discussion. The issue for professional ethics, within the practice of the virtue, is the issue of belonging; whether success demands that one move his deepest dependence on others to an individualism that is practiced outside of the family, and without the family. Dispute, even rancor, has not raised as much of an impetus to this movement as vertical mobility has. To return, then, for a moment, to the situation of the ambitious child who is both held onto and inspired upward by her Italian-American culture, and who must find form and nourishment from the culture for the skills she needs to negotiate the tension:⁸⁶

“I never intended to be a lawyer. As far back as I can remember, I wanted to be a librarian, because I loved books and spent most of my free time reading them or daydreaming about the stories in them. Although I always did very well in school, I was not particularly ambitious or competitive. This may be attributed in part to my background. My father was the youngest of nine surviving children of two Italian immigrants. I was the first of twenty-two grandchildren to go to college (my brother and sister being the second and third). My parents always encouraged me in my schoolwork, but I never got the feeling it was the most important aspect of life. In fact, clearly the most important thing in life was family; family affairs were like Holy Days of Obligation—required.

“Almost from the start, I hated law school. People were openly competitive (something I had not experienced at Colgate) and the sub-

84 Please pause over this word “affection”; it has ontological significance, Zizioulas, *Human Capacity and Human Incapacity: A Theological Exploration of Personhood*, 28 SCOTTISH JOURNAL OF THEOLOGY 401 (1975). See *infra* note 163 and accompanying text.

85 See *supra* note 24.

86 In this case, as in the appendices to Parts IV, V, VI, and VII, *infra*, we offer comments by Italian Americans who are in law school, in law practice, and on the bench. We do not offer these as social-science evidence for the assertions we make here and in subsequent parts of the paper, but rather as reflections, by lawyers who agreed to think about these matters. Our request to them for comment presented broad, open-ended statements of subject matter roughly equivalent to the topic headings in this paper. We did not provide our own hypotheses, and this paper was not drafted when we contacted these lawyers. We endeavor to simulate here a conversation with our helpers, well aware that our helpers will not in all cases agree with the social historians, and that neither will, in all cases, agree with us. This is, after all, a paper about Italians. See *supra* note 24.

ject matter was difficult for me. I felt very out of place at Columbia, in law school; most of my classmates seemed to me to come from wealthier and better educated backgrounds and to be highly competitive rather than socially and family-oriented. Although I interviewed at some of New York's big firms, I did not feel comfortable with the idea of working at such a place. My first summer I didn't even do legal work; my second year and summer I worked for a tiny customs-import specialty firm. I had decided that labor law was the most attractive area to me, and after law school I went to work for a medium-sized firm specializing in the representation of airline management in labor disputes.

"When I called up my father to tell him I had a job offer, and how much they were paying me (\$26,000—far less than most of my classmates but a large sum to me) he started to cry. I had only seen him cry twice before—once, when he left me at college for the first time, and once when he left me in London after flying over for a visit. He said, 'That's more money than your mother or I ever made in our entire lives.'

"Throughout this time, I considered myself very Italian American. I studied Italian in college, and made two trips to Italy to visit relatives and soak up the atmosphere. I felt far more at home in Italy than in America; even the body language was eerily identical to my parents'. I constantly corrected the pronunciation of my last name, and usually the first information I would give someone was that I was Italian American. I began to go to the opera (my maternal grandmother had been a devotee); I often cooked Italian food for myself and friends; I spent a great deal of time with my family.

"At the same time, I felt constantly divided between my professional life and my personal life, with my professional life impinging on the latter. My parents simply did not understand the enormous pressures created by my career. I remember a bad fight the day I had to work on Mother's Day, and my mother's angry question, 'Doesn't your boss have a mother?' I remember my parents' incomprehension of my irritability, my unavailability, my hyper behavior. As for me, I grew to resent the pressure and the devotion the profession demanded. In addition, I disliked the competitiveness and the combativeness. I wasn't cut out to be someone's warrior. I tried changing firms, to see if that was the problem, but, after working in three different places (always doing labor law or litigation), I became so unhappy that I knew I couldn't continue. Law was too harsh, too demanding, and too draining. I felt trapped. I did a great deal of soul searching. I decided I just didn't want to make law my career. I felt I had sacrificed a personal life to something that really did not give me much satisfaction. I looked for a scaled-down legal job which would allow me the time and energy to pursue other interests and live like a human being.

"I now work forty hours a week, which in my firm is about half what all the other associates work. I told the firm from the beginning I wasn't interested in partnership, and wanted time to pursue personal goals. Although I didn't have the excuse of a family and children, my terms were accepted. I enjoy the intellectual stimulation of my current posi-

tion, shudder at the pervasive atmosphere of tension and pressure, and leave at five without a moment's regret. The values of my culture—of interpersonal relationships, of family, of music, art, enjoyment—appear to me irreconcilable with practicing law. It is these cultural values which have become more and more important to me as I grow older, and which I am no longer willing to sacrifice in the name of 'success.' ”

Both of these situations—*rispetto* practiced in the midst of disputes in the family and *rispetto* in the crises of vertical mobility—are typical among the lawyers, young and old, who helped us. We conclude from comparing them that *rispetto* is comfortably practiced in the first situation, the conduct of disputes within the family, including disputes that are personally stressful. But, *rispetto*, the practice and the memory of place in the family is put to a starker test when the agenda is the material ambition that is characteristic at some point in most immigrant families. Since material ambition in America usually involves skills and credentials gained in schools, it may illuminate the difference we notice here to turn more carefully to the formal education of Italian Americans.

IV. American Schools and Italian-American Families

Italian Americans in the first two generations made less use of formal education, at all levels, than other late immigrants. As late as the 1960 census, the median years of school completed by immigrant Italian Americans was 5.9 years, as compared to 8.5 years for all of the foreign born. The median for the second generation was 10.9 years for Italian Americans, who were 14 years of age or older, well short of a standard American high school education.⁸⁷ The conventional account has it that there are two reasons why Italian families used schools less than, for example, the Irish or late-immigrant Jews: the belief among Italian-American parents that school did not have as much economic value for the family as going to work did;⁸⁸ and a cultural hostility to formal education, which was a product of the late nineteenth-century *risorgimento* in Italy.⁸⁹

87 J. LOPREATO, *supra* note 34, at 161. See Egelman, *Italian American Educational Attainment: An Analysis Based on Current Population Survey Data*, in *THE ITALIAN AMERICANS THROUGH THE GENERATIONS* 197 (R. Caporale ed. 1986).

88 Egelman, *supra* note 87. J. LOPREATO *supra* note 34, at 106, lists four or five explanations, two of which involve training for more remunerative work (a motive the American schools supported, particularly for the children of Italian immigrants). See also Egelman, *supra* note 87, at 197. Cf. J. W. BRIGGS, *supra* note 70, at 242, 272-74. E. C. SARTORIO, *SOCIAL AND RELIGIOUS LIFE OF ITALIANS IN AMERICA* 48-75 (1918), reported that when he sought citizenship the Bureau of Naturalization encouraged him to learn English and to endeavor to be a good citizen, so that he could get a better job. The Bureau did not mention the job Sartorio already had. Sartorio was offended, he says, because the letter said nothing about the duties and responsibilities of citizenship and made no “higher appeal” to his motives for wanting to become an American.

89 S. SALADINO, *supra* note 53. The cultural-hostility theory centers on L. COVELLO, *supra* note 76, and to a lesser extent on Covello's autobiography, *The Heart is the Teacher* (1958). Covello's scholarship on American schools and Italian-American children was impressive, but the thrust of his cultural argument was assimilation. See Shaffer, *Lawyers as Assimilators and Preservers*, *supra* note 3; L. COVELLO, *supra* note 76, at 391. Two of Lopreato's reasons, *supra* note 88, summarizing Covello's position, relate to cultural hostility: Italian-immigrant parents were broadly hostile to intellectuals of any stripe, and white-Protestant American school teachers (as intellectuals) routinely returned the contempt. Immigrant parents saw no value in formal education as such. The latter reason has to be understood, we think, in terms of the distinction between formation and training, *infra* note 95. See also Egelman, *supra* note 87, at 197; J. LOPREATO, *supra* note 34, at 153-54.

The economic explanation has it that Italian immigrant families saw the best financial promise in vocational instruction after elementary school, maybe because that was the system in southern Italy. Skilled jobs gained with vocational credentials were attractive—they paid more and they were relatively novel and promising. Immigrants who had skills but no credentials had been almost relentlessly excluded from such jobs in America.⁹⁰ Italian-American families also placed a high and competing value on obtaining ownership of the land on which their homes and businesses sat. The use of the earnings of teen-aged children to that end was the practice in Italy, and they were no doubt an attractive resource for Italians in the United States, as was true for other immigrants.⁹¹ Even those who disagree with the thesis that Italian immigrants were culturally hostile to formal education admit the economic argument: the cultural historians generally agree that the majority of Italian immigrants came to America to find work; they intended to return to Italy with money they could not earn in Italy, and nearly half of them did.⁹² The possibility that later immigrants were more cordial to formal education, and the fact that second- and third-generation Italian Americans gradually lost their aversion to schools, are explained by the one camp as assimilation and by the other as evidence that Italians were not hostile to formal education in the first place.⁹³

The argument that Italians were hostile to formal education begins with the fact that late nineteenth-century Italian formal education was

90 Arthur Miller's drama on Italian immigrants, *supra* note 28, has as a subplot the issue of the job Catharine, at age 17, will take after she finishes stenography school. In Mario M. Cuomo's diaries, *supra* note 32, at 432 (the beginning of a talk to an Order of the Sons of Italy Convention), he writes: "A young Italian immigrant, at the close of the last century, wrote to his family: 'Before I came here, they told me the streets were paved with gold. When I came here, I learned three things. First, the streets were *not* paved with gold. Second, the streets were not paved at all. Third, they expected me to pave them.'"

91 W. CATHER, MY ANTONIA 228 (1918): "One result of this [immigrant] family solidarity was that the foreign farmers in our county were the first to become prosperous. After the fathers were out of debt, the daughters married the sons of neighbors,—usually of like nationality,—and the girls who once worked in Black Hawk kitchens are to-day managing big farms and fine families of their own; their children are better off than the children of the town women they used to serve."

92 M. LA SORTE, *supra* note 68, at 197: 5,000 Italian immigrants were returned to Italy from Boston in 1906, at the expense of the United States government. Many others were returned from Boston at the expense of the Italian government, which subsidized the repatriation efforts of the Boston Immigrants' Society. Notarianni & Raspa, *supra* note 42, describe the repatriation efforts of railroad and mining companies after Italian-immigrant miners became active in unionization efforts in Utah. J. LOPREATO, *supra* note 34, at 158, reported that, of Italian immigrants who were in the United States for twenty to thirty years, less than half had sought United States citizenship.

93 See Nelli, *supra* note 67, at 553. A principal source for the argument that Italian Americans never were hostile to formal education is the content of the early Italian-language American press, which encouraged the immigrants to send their children to school and usually argued from motives that included the noneconomic—e.g., American patriotism, loyalty to the culture of the old country, support for Italian-immigrant communities. H. R. WEISZ, IRISH-AMERICAN AND ITALIAN-AMERICAN EDUCATIONAL VIEWS AND ACTIVITIES, 1870-1900 398 (1976). J. W. BRIGGS, *supra* note 70, at xxi, argues that Italian Americans resisted or rejected American formal education for specific, situational, political reasons—because the activities of the school reformers were aimed at the preservation of class or narrow professional interests—"to preserve the class structure, secure the future of the children of the already privileged, and prepare the rest to function efficiently and quietly in their preassigned places in the individual order." Italian-immigrant parents recognized that the school was being used as a "cultural weapon and resisted its influence." This aversion was no doubt related to similar use and abuse of the public schools in southern Italy. See *supra* note 89.

inflicted on southern Italy as a device in the drive from the central government in Rome for nationalistic unification, and was imposed in a biased, class-based manner. The traditionally clannish, suspicious, and difficult Calabrians and Sicilians consequently resented and avoided state schools when they were available and resented their absence when they were not available.⁹⁴

The southerners also made a distinction between education and instruction. Education was moral formation and initiation into the culture and tradition. It was the responsibility and the preserve of the family; an attempt by the central government—which, to the Calabrians and Sicilians, meant the north—to impose education, in this cultural sense, was an assault on the old way, *la via vecchia*, and on *l'ordine della famiglia*. It was resisted in the same ways (largely with apathy and avoidance) that the southern Italians had used for centuries to overcome the corrupt influence of alien invaders, *gli stranieri*.⁹⁵

Instruction, as distinguished from education, was useful economically and, when confined to training for work, was acceptable to the southerners. The standard Italian system, at least for peasant children, had been five years of elementary schooling, followed by vocational training and, by about the age of thirteen, entry into the labor market.⁹⁶ Formal instruction, in either country, was not perceived by southern Italians as economically useful, beyond that age. The principal complaint of the peasant south, on this score, was that such instruction was often not available to their children.⁹⁷

Italians who came to this country discovered that the dominant white-Anglo-Saxon-Protestant culture was as inimical to traditional southern-Italian moral values as Rome had been. American culture was even more materialistic, crude, and corrupting than northern-Italian cul-

94 Nelli; *supra* note 67; H. S. NELLI, *supra* note 66; L. COVELLO, *supra* note 76, at 273, 402. Cf. J. W. BRIGGS, *supra* note 70, at 51, 191. See generally S. SALADINO, *supra* note 53.

95 H. R. WEISZ, *supra* note 93, at 367. L. COVELLO, *supra* note 76, at 274; Covello, *id.* at 416, also argued for the preservation of Italian culture through teaching Italian language in the American public schools, but it is not clear that the immigrants were interested in that benefit from public education. See *supra* notes 88-89. See H. BAROLINI, *supra* note 1, at 93:

Oh, no, Sister, not Italian! It is American our children need. They have to go out and earn their living in America and they have to read and write for us who have no learning. Leave the Italian to us at home, and teach them the language of how to do business in this country. . . . Paziienza, Sister Carmela. The culture will come after we make a living, God willing. Covello's point is that this decision by immigrant parents reflects not contempt for education in the sense of moral formation, but the claim, by the family, that it, not the school, is the source of moral formation, L. COVELLO, *supra* note 76, at 274:

To the peasant, education consisted of transmitting to the young all the cultural, social, and moral values of his society through the medium of folklore, as represented in the wisdom of his ancestors and vested in the memories of the older members of *la famiglia*. It was natural that he should consider the home as the best institution for transmitting this knowledge in a manner calculated to maintain compliance to, and conformity with, the mores of his social group. The desire for security in his way of living was directly opposed to education from outside the home and its immediate environment.

96 J. LOPREATO, *supra* note 34, at 155-56; L. COVELLO, *supra* note 76, at 274; J. W. BRIGGS, *supra* note 70, at 37: However, only twenty percent of southern-Italian children between ages six and nine were in school; six percent of those eligible to be in the fourth year of elementary school, and less than one percent of those eligible to be in the sixth year, were in school in Italy.

97 J. LOPREATO, *supra* note 34, at 155-56; L. COVELLO, *supra* note 76, at 247. See also J. W. BRIGGS, *supra* note 70, at 4.

ture. America undermined the family and challenged the family's claim to be the exclusive source of moral formation and education in the cultural sense. "My two boys went to school against my will," one of Leonard Covello's respondents said. "And what do I see now? By having forced them to learn things they do not need, their health is gone, and they are just two stupid donkeys, who cannot take care of themselves; have no use for what they learned, and even forgot long ago whatever they did learn in school. In Italy they would have been healthy young men, with a sense of dignity; responsible men. *Men*, I say, because this schooling made them children."⁹⁸

Roman Catholic parochial schools drew as much cultural hostility as public schools did: they, too, were strange to southern-Italian experience; southern Italy did not have parochial schools. Church schools in America did not even carry the traditional authority of the Italian Church—such as that authority might have been among the frequently anticlerical southern Italians. American parochial schools were dominated by the Irish, who discriminated against Italians, and who had not resisted Americanization.⁹⁹ In fact, Irish Catholics put their faith in the institutions (including the church) that southern Italians had learned to resist. The Irish wanted their political and religious associations to make assimilated Americans of them.¹⁰⁰ If the Italians did not generate hostility to schools out of their own experience and culture, the schools and the civic and religious communities that ruled the schools provoked Italian hostility.

Covello, the principal scholar in the field, concluded in 1944 (when most Italian-American families were into the second American-born generation): "The Italo-American parent has not accepted the American schools as a real educational institution; nor has he accepted its philoso-

98 L. COVELLO, *supra* note 76, at 319. J. MARTORI, *supra* note 37, at 106-07:

The biggest threat to our families has always been the . . . educational system in this country. The vast majority of Italian immigrants wanted nothing more than a new setting in which to continue their old traditions. But this anglo society had other ideas. Supposedly, the purpose of the public school system was to ensure an educated citizenry for the survival of democracy. But the sudden influx of southern and eastern Europeans gave the system a new goal—Americanize the foreigners! Our response was resistance. Italian children brought into their homes ideas that threatened centuries of honored tradition—loyalty to the father and the family before the state. So we invented a new way out: passive aggression. We avoided Americanization. We strengthened our bonds to our families. . . .

99 J. LOPREATO, *supra* note 34, at 156; Hall, *supra* note 28, at 35, 42; H. R. WEISZ, *supra* note 93: The Italian-language press argued for sending Italian-American children to parochial schools, which (in Weisz's generalization of the argument) would "prepare children to be good citizens, lovers of their faith, of the land of their fathers and of their adopted land." *Id.* at 391. But most Italian-American children who went to school at all went to public schools. *Id.* at 398. In 1896, Weisz says (and this would be quite early in the era of southern-Italian emigration) about ten percent of Italian immigrants in Chicago sent their children to parochial schools. *Id.* at 384-85. In New York, seven Italian children went to public schools for every one who went to a parochial school. *Id.* at 399-400. Part of the reason for the difference may have been that, in southern Italy, religious instruction is in the home; part of it may be due to the fact that in southern Italy, there were no parochial schools. See J. LOPREATO, *supra* note 34, at 156. Whatever the reason, Weisz demonstrates that Irish immigrants sent their children to parochial schools in much larger numbers than the Italian immigrants.

100 H. R. WEISZ, *supra* note 93, at 375.

phy of extending formal education beyond the early adolescent period. Directly and indirectly, he imbues his children with the same attitude."¹⁰¹

Italian-American public school children were chronic truants. Teachers in American schools showed contempt for Italian family customs; they punished Italian children for what their parents had trained the children to do.¹⁰² A large proportion of children in the first two generations of American-born Italian Americans did not go to school at all.¹⁰³ The level of illiteracy in Italian-American communities must have been about what it was in southern Italy. There was little chance, for this reason and for deeper cultural reasons, that Italian-American school children would fall under the influence of supportive teachers, counselors, pastors, or relatives who could guide them to the university and to professional schools.¹⁰⁴

Prior to World War II, six percent of all Italian Americans went to college. After the war, as educational benefits began to flow under the G.I. Bill (along with, and not instead of, Veterans Administration loans for homes and businesses), that number increased to twenty percent.¹⁰⁵ The ability to afford college—and, beyond that, to afford college without risking avoidable economic dependence outside the family—was doubtless a factor here, but the culture changed, too. Italian-American culture had come to accept education.¹⁰⁶

A. *Appendix to Part IV: Italian-American Lawyers on Formal Education*

Most of the Italian-American lawyers who helped us are beneficiaries of their culture's changed attitude toward higher education. Our respon-

¹⁰¹ L. COVELLO, *supra* note 76, at 391.

¹⁰² J. LOPREATO, *supra* note 34, at 155-56. The attitudes the children faced in school are reflected in the prejudice against Italian immigrants that abounded in the popular press. In CENTER FOR IMMIGRATION STUDIES, *supra* note 4, at 50-51, for example, a newspaper cartoon from *The Illustrated American*, April 7, 1894, shows three Italian children sitting on the sidewalk playing a game. Further along the sidewalk is a group of five or six women with three smaller children clinging to and being sheltered by two of the women. The text: "Pests imported from Europe." In the same publication, *id.* at 69, is an editorial cartoon from a 1909 issue of *Life* magazine: an Italian man with an immigrant's hat—small in stature, dark in complexion—stands, gun in hand, over the body of another man, who has been shot in the head, his hat and cane close by. The Italian is thumbing his nose, with his blood-covered hand, at a figure of Uncle Sam, who is leaning against the fence and not looking at the Italian immigrant or at his victim. On the fence, near Uncle Sam, is a handprint, and under it the label, "Black Hand." The caption on the cartoon: "Wake Up, Sam!"

¹⁰³ N. GLAZER & D. MOYNIHAN, *supra* note 76, at 199-206; Eula, *supra* note 29, at 150 (speaking of 1979): "Italian American males aged 25 and older recorded the second lowest high school completion rate of all . . . single-ancestry groups . . . [and] Italian American females, aged 25 and older, had the highest high school dropout rate of all ethnic groups. The same was true for the men in this age group."

¹⁰⁴ *Id.*

¹⁰⁵ C.L. JOHNSON, *GROWING UP AND GROWING OLD IN ITALIAN AMERICAN FAMILIES* 39 (1985): Half of all Italian Americans at the time of Johnson's book had finished high school; seven percent had college degrees; and five percent had finished graduate education. The change in attitude is arguably not accounted for by a weakening of Italian-American culture: intermarriage into more school-respecting cultures will not, for example, explain the change. As late as 1982, fifty-two percent of nearly twelve million Italian Americans (by Johnson's count) had no ancestry other than Italian. See also Hall, *supra* note 28, at 50; Egelman, *supra* note 87, at 199.

¹⁰⁶ The argument that the children of the latest waves of immigrants (1918-1922) were less hostile to formal education than were immigrants between 1890 and 1918 seems implausible in a comparison of enrollment statistics we have cited in this Part with probable ages of the first generation of American-born children.

dents also gave some support to an argument, contrary to the social historians' argument, that respect for schooling was greater in the first American-born generation of parents than among the immigrants. Finally, and clearly, some of the lawyers who helped us (ranging in age from the early twenties to eighty-plus) were from exceptional families:¹⁰⁷

"Because my father had no education, he insisted that I get the best education available. To my dad, that did not mean the local public or parochial school. He went to his own lawyer to get a recommendation on the grammar school I should attend. The result was a private Catholic academy located about 15 miles from our home. Every day, from K through eight, my mother would drive me to school and either my mother or father would pick me up. The school was known as the best Catholic grammar school in Buffalo. And because my father had little, if any, contact with business people from Ivy League backgrounds, he never heard about the private secular schools which may have had a better academic reputation than the Catholic academy.

"After grammar school, I again went the private, Catholic route to a Jesuit high school, also located about 15 miles from home. Until I obtained my driver's license, my mother or father chauffeured me to school every morning. My father encouraged me to interact with children from professional backgrounds and made it a point to take me with him to meetings with his own lawyer, stockbroker, or insurance agent, to give me the exposure. He always told me that he wanted me to work with my brains, not with my hands.

"When the time for college came, my dad went to a business friend, a manager with Bethlehem Steel, and sought his counsel as to what school would be best for me. Dad knew his own limitations, and he wanted to insure my future through the finest education he could provide."

* * *

"I can recall my parents being very serious about my siblings and me getting a good education. My father felt that [education] was the only way one could ultimately succeed in this society. Neither he nor my mother had had the benefit of a great deal of formal education. My father had only gone to the sixth grade. My mother graduated from high school but did not have the funds to go to college. Both had desperately wanted college educations for their children and, as it turns out, all four of their children have graduated from college. It was my father's wish that I have a profession, since it was obviously my intention not to follow in his footsteps as the proprietor of the general store. . . . I believe that he was very happy that I had chosen the law as a profession and was even happier when Dean [Joseph] O'Meara [of Notre Dame] gave his son a scholarship to go to law school (and worried for the entire three years that I might somehow blow that scholarship)."

* * *

"Although my parents were very proud of me, they also were apparently threatened by the education I was receiving. My first two years

107 See *supra* notes 24 & 86.

were punctuated with remarks like, 'Now that you're a big shot in college, I guess you can't talk to us.' Since I felt no shame in my parents, at first I didn't know how to respond. After a while I just made it clear that I was proud of them and had no intention of denying or abandoning my cultural heritage just because I was being 'educated.' Nevertheless, I felt during this time a social schizophrenia, having to be one person at college and another at home, and not feeling totally comfortable with either."

* * *

"There wasn't a lot of emphasis on education in any of the families in my neighborhood. My father was just hooked on education, even though he wasn't educated himself. He figured it out somewhere along the line that education was the key; all four of the boys in our family went to college; my older brother is a lawyer also. When I look at my cousins, though, I don't know if you'll find another college degree. One of them is married to a lawyer, although she didn't go to college. They didn't see education as worth the effort, or the financial commitment. When you got out of twelfth grade in Brooklyn, you were a man, you went to do some physical labor; if you were a woman, you had children and made pasta."

* * *

"I don't know where my dad's thrust for education came from. It totally went against the grain of our community; it was not a high priority there. But I never knew a time when my parents didn't talk about 'when you go to college [or] . . . when you finish college.' They had not finished high school. They were nineteen and seventeen when they got married. Maybe education was a unique kind of chemistry that they put together; none of their siblings was much into education. I have thought about it a lot. My mother told me, after I applied to Notre Dame and Holy Cross, 'If you can't get into one of those two schools you can work in the shoe store with your father.'"

* * *

"I knew no professionals, with the exception of the two doctors who had their practice in my little town. My father had profound respect for those doctors and considered both of them friends. They were the only people I knew who had college degrees, who could provide me with some idea of what college was all about. . . . The high school was oriented toward teaching industrial arts, since most of the graduates entered the work force. Only a small number of students were college-bound. Counseling was almost nonexistent. You pretty much had to make your own way and figure out what the future entailed for you. . . . I discussed college with some of the teachers I knew in high school and even had a conversation with one of the doctors."

* * *

"On my father's side of the family, there seems to be less emphasis on going to school; however, a lot of that has to do with the ages of my older cousins coinciding with the draft age during the war. On my father's side, I am the only lawyer, aside from some second and third cous-

ins who are attorneys in Italy. It should be understood, of course, that an attorney in Italy is less often a lawyer, as we think of it, but is more of a government bureaucrat. Despite the fact that on my father's side there was less of a tendency to attend college, my father always put an emphasis on going to school. He dealt with several business people who had law degrees as a background. My father was always fascinated by courtrooms and the legal profession. His theory was that to go to law school was the best thing one could do."

* * *

"My parents had enough dealings with lawyers to know that lawyers have big offices, and they are well educated, and they are respected, and they wanted that for me—maybe because they've never had it. My father's mom was born and raised in Jersey City, and she's a pretty tough cookie right now, at age seventy. But back then, obviously, she was even tougher. Her respect for law and order is clearly defined. They are all very proud of me and I'm glad they are around to be part of this, and even when they're not I've absorbed like a sponge for the past twenty-three years what it takes to make them proud."

* * *

"My interest in studying law developed in high school, because my older brother was going to law school. My parents thought it was fabulous, even though my mother said she would rather I would be a doctor; in her mind that was the top of the heap. My father had a friend who was a cop, and who became a lawyer. He was moving along, well respected, not that he was above anybody else, because he was an Italian American. He was very unassuming and self-effacing, but he spoke better than everyone else and had a certain bearing in an unassuming kind of way. He was held in high regard by my father and my family. In my neighborhood, though, if you needed a lawyer, you'd go to a Jewish lawyer; they'd take care of you. You might have gone to a Jewish lawyer because you thought all lawyers were Jewish."

* * *

"Dad became a merchant tailor and had his own business of making tailor-made men's suits, until the end of World War I introduced mass production of men's clothing after the companies were geared up for the manufacture of uniforms during the war. My father then was selected as a deputy coroner of Allegheny County and became in a short time a known expert in legal medicine, dealing with homicides and suicides, although he was neither a lawyer nor a doctor. He was soon elevated to the position of chief deputy coroner, a post that he held during thirty of his thirty-three years in the office.

"There is no doubt that my father's participation in the law was an inspiration to me to study law. My brother became a physician; my sister served as assistant dean of women at the University of Pittsburgh following graduation there. My father's two sisters, who also settled in America, collectively produced two lawyers, one dentist, one engineer, [and] one dental hygienist. Only two of their children did not graduate from institutions of higher learning."

* * *

We are comparing two contexts in which *rispetto* is practiced: one is dispute which ranges from intense, not-merely-recreational political argument to family decisions about marriage, vocation, and most of what we mean when we talk about personal "destiny." *Rispetto* operates comfortably—that is, habitually—in that context. Italian Americans know how to argue, how to claim and confer dignity without surrendering truthfulness. The conventional understanding of the Italian-American family as insular and patriarchal ("loyalty to the father and the family before the state") is not, we think, challenged by our understanding of how *rispetto* works in family disputes. *Rispetto* is not a virtue of obedience or even of subordination; it is, rather, a way to negotiate issues about obedience and subordination without loss of self, as it is also a way to negotiate disobedience or subordination and at the same time honor authority.

Family arguments do not push the virtue of *rispetto* to the narrative prominence that would show what virtue is like when the daily habit, formed in small matters, becomes evident because the virtue is tested, displayed, and described. *Rispetto* then becomes like other virtues in American lawyer stories—courage,¹⁰⁸ truthfulness,¹⁰⁹ or friendship¹¹⁰—where a virtue becomes clear as it becomes vivid in moments of dramatic crisis. The context for that crisis that seems useful is formal education. The social historians' account is that formal education was seen among southern Italians and Italian Americans to be an external force. It challenged moral reliance on the family, and moral reliance on the family was how southern-Italian culture survived. *Rispetto* is tested in this context, and that testing gives us an opportunity to describe what we mean when we say that *rispetto* is a virtue in and through which the person learns, practices, teaches, and remembers his place within the family.

The heart of the educational crisis for the Italian-American family, as for other late-immigrant families, is assimilation. This is the general conclusion among the social historians and is evident also among the lawyers who helped us. The culture the late immigrants brought with them resisted assimilation with moral force: "An assimilated [man] is a man who is ashamed of his origin, who denies his roots. He wants to make believe he is somebody else. . . . [H]e has no pride. He always wants to be where he is not wanted. . . . [T]here isn't any such thing as just a human being."¹¹¹ Among the Italian Americans, assimilation involved survival as well as identity; *la via vecchia* and *l'ordine della famiglia* were how southern Italy had survived physical, violent, corrupting invasions for thousands of

108 Shaffer, *supra* note 13; for a discussion of courage, which includes a comparison of Lee's lawyer-gentleman with Aristotle's man of practical wisdom, see AMERICAN LEGAL ETHICS 30-49, 134-36; the treatment of this aspect of Harper Lee's story is somewhat more complete in Shaffer, *Beyond the Rules: The Responsibility and Role of Continuing Legal Education to Teach Alternative Ethical Considerations*, in C.L.E. AND THE LAWYER'S RESPONSIBILITIES IN AN EVOLVING PROFESSION 493, 496-98 (1987).

109 See *supra* note 12 (discussing W. FAULKNER, *INTRUDER IN THE DUST* (1948)).

110 See *supra* note 14. T. SHAFFER, AMERICAN LEGAL ETHICS, *supra* note 8, at 149-59 compares Aristotle's description of the virtue of friendship and American lawyers' notions of professional fraternity. See also *supra* note 5, at 173-228.

111 I. B. SINGER & R. BURGIN, CONVERSATIONS WITH ISSAC BASHEVIS SINGER 60, 63-64 (1985).

years. The southern-Italian immigrants were a powerless, poor people; they survived, first, by building a wall of indifference around the family and then by evaluating external events in terms of their effect on the family. The allurements of American culture—prototypically formal education—tested *rispetto*. The moral issue was, again and again, how to come to terms with those allurements and retain the deepest—and often the only—communitarian values that made sense, the values Italians had and treasured in their families.¹¹² To become American and remain Italian, to be Italian in America, in that deeply significant way, was the issue on which *rispetto* was tested, displayed, and described.

V. *Rispetto* As an Aristoleian Middle Way

We turn next to a relatively abstract argument on how *rispetto* fits into the ethical tradition, and then to a description of its practice in America.

The structural possibilities of the number three appealed to Aristotle, as they have to generations of speculative thinkers. Aristotle used three to describe what a virtue is: virtue is the mean, the middle way, the median between excess and deficiency. Courage is the middle way between cowardice and recklessness; self-control is the mean between insensitivity and self-indulgence; magnificence is the mean between vulgarity and niggardliness; high-mindedness is the mean between vanity and small-mindedness; truthfulness is the mean between boastfulness and self-depreciation.¹¹³

There are, then, three kinds of disposition: two are vices (one marked by excess and one by deficiency), and one, virtue, is the mean. Now, each of these dispositions is, in a sense, opposed to both the others: [T]he extremes are opposites to the middle as well as to one another, and the middle is opposed to the extremes.

In the moral life, so described, awareness, and the skills to see and to say what is going on, are critical for virtue: “[A] self-controlled man seems self-indulgent in relation to an insensitive man and insensitive in relation to a self-indulgent man, and a generous man extravagant in relation to a stingy man and stingy in relation to an extravagant man. This is the reason why people at the extremes push the man in the middle over to the other extreme: a coward calls a brave man reckless and a reckless man calls a brave man a coward.” . . .¹¹⁴ In this way, and in this disciplined attention to truthfulness, *rispetto*, the disposition to practice (to learn, teach, and remember) one’s place within the family, is the mean between surrendering identity to the group and exhibiting a destructive independence from it. It is the mean between the deficiency of conformity and the excess of individualism.

As to the deficiency, *rispetto* is, in Congressman Peter Rodino’s phrase, the practice “of personal worth and dignity independent of”

112 Cf. J. A. Hostetler, *The Amish and the Law: A Religious Minority and Its Legal Encounters*, 41 WASH. & LEE L. REV. 33 (1984) (discussing community among the Amish).

113 ARISTOTLE, *NICOMACHEAN ETHICS* 44-48 (Book Two, 7) (M. Ostwald trans. 1962).

114 *Id.* 48 (Book Two, 8).

marks of external rank and status such as "money or professional status."¹¹⁵ As to the excess, *rispetto* is an habitual wariness of, what Robert Viscusi called, "respectability"—of "the manufactured simpers of the well-established, upwardly mobile, endlessly aspirant dullards we are likely to become if we insist always upon putting our dignity before our conscience or our desire to be accepted before our desire to tell the truth."¹¹⁶

The word "dignity" is important to these descriptions of *rispetto*. The way the word is used by Rodino, as a synonym for "self respect," is not the same as the way Viscusi uses the word, as a synonym for respectability. The comparison is confusing, but the confusion is useful. Like the English word "respect," dignity signals both a virtue (*rispetto*) and a vice (respectability). Rodino understands dignity to be the self-regard necessary to *rispetto*; dignity is, in that sense, necessary as well to Aristotle's understanding of truthfulness, or to the self-regard on which moral principles depend. The Golden Rule (love your neighbor as a person like yourself), is an example, as is Kant's second formulation of the central moral imperative (act so that you treat humanity as an end, and never as a means only).

But Viscusi understands dignity to be a claim on others for deference, as the consequence and manifestation of respectability. It would probably be more lucid to translate Rodino's meaning of dignity as virtuous self-regard and Viscusi's as a vicious ethic of honor and shame.¹¹⁷ The occasion to make such a translation of the notion of dignity is instructive in describing *rispetto* in professional ethics. It shows the extent to which *rispetto*, which depends on dignity as virtuous self-regard, is an *Italian-American* virtue, neither Italian nor American. This virtuous self-regard is to be distinguished (in Aristotelian fashion) from the excess of the modern southern-Italian social practice of respect for status, but distinguished as well from the deficiency of the individualistic excesses of white-Protestant culture and Enlightenment moral philosophy in America.

Fran Claro's memoir of her childhood in Italian-American Queens illustrates what we mean to claim when we say that *rispetto* differs as much from class-based deference in the old world as it does from new world white-Protestant individualism. Claro is a third-generation (second generation born in America) Italian American. Her mother Mary seemed to Fran to despise being Italian; Mary sought to be an assimilated American, through association with her Irish neighbors. And, of course, to assimilate well, Mary had to learn to deny what she was; she had, in Helen Barolini's phrase, to go against the grain of her own character: "Because her parents were not educated, she grew up listening to Italian soap operas and being entertained at street festivals. She rebelled against this gaudy, flashy brand of entertainment," as she rebelled against Italian-Catholic spirituality and southern-Italian family custom.

115 CENTER FOR IMMIGRATION STUDIES, *supra* note 4, at 143.

116 Viscusi, *supra* note 2.

117 See B. WYATT-BROWN, SOUTHERN HONOR: ETHICS AND BEHAVIOR IN THE OLD SOUTH (1982).

Mary's daughter Fran, perhaps out of adolescent rebellion at first, resisted assimilation. She speaks of standing to the side, but as close as her mother would allow her to stand, when the Italian-American neighborhood celebrated its annual *fiesta*: "Oh, how I wanted to be part of that parade I wanted to be on that float. I dreamed about pinning bills on The Saint. But my mother was becoming an American. 'That's not for you,' she would say. 'Even when you're old enough we're not gonna let you do that.'" Mary preferred Irish-Catholic religious culture, helping the "fine ladies" of the Rosary Society at the parish bingo games. "She thought the way they let their ice cream melt in their coffee was very stylish. She admired their appearance, so different from her very dark and very Italian beauty."¹¹⁸

B. *Appendix to Part V: Italian-American Lawyers on the Tensions That Come From Living in Two Cultures*

Italian-American lawyers, like Fran Claro, often express the contrast, between their two cultures, as inter-generational. But it is also, they say, an ambivalence within each Italian American. The lawyers who helped us provide similar evidence of stress within persons and among persons:¹¹⁹

"My mom is very religious and my father religious to a degree. He goes to church every week, gives the church money, but I don't think he has the zeal my mother does for the church. I think it's more a pattern to him than to my mother, although I still think he is a strong believer. Most of the children in our family, most of my brothers and sisters, are not very religious. My younger brother and myself, the ones that have the most education, aren't very religious at all. I believe in God to a degree but not in the way the Catholic Church puts out their belief, with the different manners, and with their laws. I don't believe in a lot of them, so I don't go to church; I'm not an active worshipper. And I don't think any of my brothers and sisters really are, although my older brothers and one of my sisters do go to church now and then."

* * *

"Pop still goes to church every morning at six-thirty. He knew where all the Catholic churches were in all the cities he would travel to while on business trips also. When an older sibling would come home for a holiday, they were expected to go to mass. I can still hear my mom yelling, 'If you're going to sleep and eat in my house, you're going to get you ass down to that church.'"

* * *

"Since most of my elementary and all of my high-school years were spent in a suburban environment, I am really a product of the suburbs as opposed to an ethnic urban neighborhood. When we moved to Woodbridge I suddenly found that not everyone was Catholic—I already knew that not everyone was Italian—and that people talked about an education

¹¹⁸ Claro, *South Brooklyn, 1947*, in *THE DREAM BOOK* 77, 79, 83 (H. Barolini ed. 1985).

¹¹⁹ See *supra* note 86.

beyond high school. My being Italian was essentially irrelevant to growing up in the suburbs."

* * *

"When I was in law school, I tried to run away from my heritage, including marrying a person who knew nothing about the traditions and values. Of course, the marriage was a disaster, as was my attempt to deny my emotions, thought processes, and style of life. Fortunately, the damage was reversible and we now have a wonderfully understanding relationship. We have two Italian-American children and my in-laws live ten minutes away. The children see their grandparents regularly and are becoming more and more aware of their heritage."

* * *

"Italian women are not encouraged to go to school. I didn't think that's what I wanted for my future. I hoped that my wife might be someone educated, who might share more of my interests and also share as far as the family would go. When I went to Notre Dame, I'd been dating a girl. The thing that soured the romance was that she wouldn't go to college, and I just couldn't understand that. I couldn't believe that we would have enough in common, given that choice. So we broke up."

* * *

"Today I have a much different attitude about my Italian background. While, as a youth, I wanted to assimilate and have parents who were like everyone else, today I feel a sense of pride about my background. My wife and I visited Calabria on our honeymoon. I saw the house where my mother was born and lived as a child. She has a sister there, and we visited with her. We went to my father's village and visited with his brother and sister. I have a large family in the New Castle area and we continue to keep in touch with them. We gather at the old homestead on major holidays, but enjoy only a few of the Italian dishes that were so prevalent when my mother cooked. My sisters and brothers have married non-Italians. . . . My wife is German and French."

* * *

"I ended up getting my first job with a five-person Italian law firm in New Haven; I was very happy there for the three years that I stayed. Eventually I left to go on my own, or, that is, with a partner my own age, in the suburb of Wallingford. I felt that's where I wanted to settle. I wanted to raise my children there, where they could have tremendous educational opportunity. In terms of clients for myself, in terms of being almost midway between Boston and New York for cultural purposes, and, generally, in terms of rustic atmosphere—I always thought of myself as wanting those things."

* * *

"If you're inculcated with the values of a group, then to reject, to challenge, to give them up means a conflict of loyalty—a kind of disloyalty. You're being untrue to your family, your parents, and your ancestral heritage. That is true of many ethnic groups. But to make that break is perhaps more of a trauma for Italian Americans than for other groups."

* * *

"The strong sense of respect for elders, for the mother and father, binds you until you fall into a pattern of 'what father wants, father gets,' and it spills over into attitudes toward people in authority. Italian Americans don't fight for things."

* * *

"I cannot tell you that I had formal exposure or training in the art of being Italian when I was younger, because I did not. However, the intrinsic values of Italian Americans were transmitted to me, my siblings, and my raft of cousins. There was a certain dignity that one was to maintain because if one did not maintain it it reflected poorly on the family and that was perhaps the greatest sin that one could commit. There was also a special bonding of the family entity (and this includes the entire family and not just the immediate family) that prompted each of us to help the other when that was necessary. In a sense this reflects the 'we against the world' situation that the older Italian Americans were faced with when they came to this country. They could only depend upon one another. While I think that is less so today, there is still a significant element in my family of being responsible to the family and for the family. Just before my father died, he made it clear to me that I was responsible for this family in his absence. He made it clear to me that, while I had my own life to live, I should never stretch myself so thin that I would not be available for the family should I be needed. Even though I live several hundred miles from my family, I maintain continuous contact with them in an effort to try and keep the promise that I made to my father before he died."

* * *

"I remember when I was a child, going to numerous weddings of cousins and other relatives which were very 'ethnic.' Like the opening scenes of 'The Godfather,' but ours were done a lot cheaper. On the other hand, my son has been to more bar-mitzvahs than he has been to Italian weddings. I have no problem with this. I want them to have a broad range of experience and cultures; however, I would like them to know something about their ancestry and take some pride in having an Italian last name."

* * *

"I love having Italian genes, but regret that assimilation has been so complete that genes are about all that is left. I enjoy Italian food and late-nineteenth-century Italian opera (particularly Donizetti), but know nothing of Italian literature or language. What little is left in me is likely to die with me. With my children, the transformation is complete. All they possess is part of a gene pool, and a diluted one at that, since their mother does not share in it. Before I joined the bench, my practice included federal Indian law. There the interest of tribes in preserving their cultural identity was paramount. Assimilation was akin to genocide. In a very real sense, the powerful forces of assimilation have resulted and will inevitably result in the loss of any identifiable persons in North America

as Italian Americans. I feel a little special because of it, a member of an endangered species.”

* * *

“I grew up in an immigrant parish, served by priests from the Italian Precious Blood order, a unique Italian neighborhood, isolated from the rest of the Italian-American experience, centered around this one parish and surrounded by Irish parishes. The priests were Italian missionaries. The pastor I had is still alive; he lives in Italy now. A missionary parish didn’t have the same priorities as a diocesan parish, and now the parish is completely gone. The building was sold and is now a Baptist church. An area of four blocks square was my entire neighborhood, surrounded by the Chicago mix of other ethnic groups. There was a Lutheran church nearby, with classes in German. The missionary priests did not see themselves as assimilators; they were a step behind. The people in the community, on the other hand, were very interested in assimilating, partly because of a remote feeling. They felt the lack of other Italian parishes around them. Their neighborhood was not like other areas, not like the Little Italies in New York, or even on the west side of Chicago. They felt very isolated, and everyone was very interested in becoming American.

“Our parish maintained a lot of customs—the big feast for Our Lady of Mount Carmel, for example, an evening procession with the statue of the Virgin carried through the streets. It wound up at the parish school yard, where the local bakery sponsored a fireworks show. There were also processions for St. Ann, St. Rocco, and St. Gerald. Each of the saints had a society that backed them. Pretty typical. The St. Rocco di Potenza Society still exists. I never belonged to any of them. My family had no involvement in any of them.”

VI. Rispetto as a Virtue of Italians in America

The sentimental movie *Moonstruck* tells about three generations in an Italian-American family, and it shows how the sense of family operating in an Italian-American neighborhood reaches out to include the grocer around the corner, business customers, suitors and the rivals of suitors, and even a potential mother-in-law on her deathbed in Sicily. At the end of the story, tensions in temporary abeyance, suitor, rival, grocer, and all three generations of blood relatives, toast their stubborn harmony with good red table wine, as they say together: *Viva la famiglia!* There is much that is distinctively Italian in such a story, but much of the distinctively Italian is characteristic more of Italians in America than of Italians in Italy. There is a sense in such a story (a) of traditional values being held on to—centrally, stereotypically, *l'ordine della famiglia*; (b) of traditional peculiarities being rediscovered, as if an American from the suburbs who had an Italian surname came upon an ethnic food festival and discovered an atavistic fondness for *sanguinaccio*;¹²⁰ and (c) of deeper values being noticed and (as Michael Novak would have it) being not so much chosen

120 J. MARTORI, *supra* note 37, at 26.

as come home to.¹²¹ All three of those ways of describing value—retention, discovery, and return—are Italian-American experiences.

We think such experiences are characteristic of being Italian in America, and that, in a characteristic way, they show that *rispetto* is a virtue of Italians in America. It is not the product of roots alone; it is the product of growth from roots. *Rispetto* is the result of being both Italian and American. It is for that reason that its practice displays something valuable for conversations about community in America.

The retained, discovered, and revived ethnic values are not the moral values that the Italian-American's immigrant grandparents had—at least not when this third-generation moral maturity is described by an Italian American who earns her living in a modern American profession and raises her family in a modern American suburb or in a gentrified urban enclave. The good habit of practicing one's place in the family (and in associations for which the metaphor of family is claimed and claimed seriously), the virtue of *rispetto*, has a quality about it that is distinctively Italian, but distinctively Italian in America. Richard Gambino, in what is likely the most widely read of all books in English on Italian Americans, *Blood of My Blood*, illustrates the argument we want to make when he talks of the directions an assimilated Italian American has before her in the late-twentieth-century United States:

"[T]hree stages of the journey," Gambino calls these. "First, there is the stage in which a group almost totally lacks access to the larger society. This stage characterized the immigrant period of Italians"¹²² Rosemary Santini's interview of a three-generation family in Queens shows this first group as grandparents waiting for their teenaged grandsons to visit them and eat some of the grandmother's homemade fettucini. The teenagers are "tall, solid, muscular young men who say they want to live farther out on Long Island, near the sea, in a house complete with a boat . . . an office nearby in town, and lots and lots of privacy." The grandparents would, even if these grandsons did live in such a place, still be waiting in the Italian neighborhood in Queens, to feed and to be visited, "eating vegetables in garlic oil with fresh Italian bread, waiting for the third generation of the family to be available from their busy life." While the grandparents wait, the grandsons are "swimming in the beach-club pool, clowning with their friends, listening to rock music, drinking soda pop, eating frankfurters, oblivious to the lifetime of dedication and hardship represented by the plates of rare and delicious fettucini"¹²³

In between the grandparents and the boys at the beach club is the first American-born generation of parents. This, Gambino says, is the "stage in which a group blames itself. It feels guilty about its differentness, shies away from contact [with its heritage], and deferentially subordinates itself to the larger society."¹²⁴ Gambino's "second stage" describes the situation of Mary, Fran Claro's mother, who retreated to

121 Novak, *supra* note 11.

122 R. GAMBINO, *supra* note 46, at 324.

123 Santini, *An American Dream*, in *THE DREAM BOOK*, *supra* note 118, at 140, 143-44.

124 See R. GAMBINO, *supra* note 46, at 324.

her room, by herself, away from the street celebrations of the annual *festa*, and read to herself from *Rebecca of Sunnybrook Farm*.¹²⁵ As Pietro di Donato, son of immigrants, said, "My father took me to the Metropolitan Opera when I was five, and he had concrete on his shoes."¹²⁶

The third generation is different: "My grandfather—and almost all of his friends—*dug*," Claro says. "I was never really sure just what they dug, although I knew it had something to do with buildings. . . . His heavy shoes would be caked with mud and plaster. His hands were hard and brittle, like plastic. His complexion was almost Indian red. On the way home from the subway, he would joke with us, half in English, half in Italian. . . . My grandfather smiled most of the time. He liked to play with us, and he felt proud when we walked with him. We loved being with him. But what I found charming about him, his daughter—my mother—found embarrassing."¹²⁷

The fidelity of the grandparents and the trauma of the parents are present in the grandchildren, because, as Faulkner said, the past is not dead; it is not even past.¹²⁸ These cultural forces are focused morally both in the grandchildren who dream of a house on the beach, whose highest ambition in life is a moored boat and lots and lots of privacy, and in the grandchildren who walk with their grandfather and finally eat the fettucini. The grandchildren foresee the comfort that comes from being in a profession in America; but Gambino and Viscusi might say of them that they do not foresee the moral differences in the paths their lives could take. They may, Gambino says, "let old values die and become jellyfish Americans, transparent souls in surface pursuits."¹²⁹ Aspirant dullards, as Robert Viscusi calls them, pursuing active, chatty careers. "Or they may revitalize their traditions and contribute them in new form to an enriched American culture."¹³⁰ The argument we wish to make for *rispetto* is that it is a traditional value, as present in the boys at the swimming club as the rock music and the sense of possibility; that it is, as habit, also a memory formed in them, that will influence the apparent choice of direction their professional lives will take; and that it is a skill they will require in their effort to contribute something Italian to American culture.

No one, as Isaac Bashevis Singer said, is "just a human being."¹³¹ Each of us comes from somewhere. The formation of the virtues that each of us has is in significant part a formation in memory; it involves the *practice* of memory. This is true perhaps of all the virtues; it is evidently true of virtues such as friendship, civility, and justice.¹³² The practice of memory is significant in this way in the formation of the virtue of *rispetto*,

125 See *supra* note 118.

126 Severo, *New York's Italians: A Question of Identity Within and Without*, N. Y. Times, Nov. 9, 1970, at 43, col. 5.

127 Claro, *supra* note 118, at 80.

128 W. FAULKNER, *REQUIEM FOR A NUN* 92 (Random House ed. 1951).

129 R. GAMBINO, *supra* note 46, at 325.

130 *Id.*

131 I. B. SINGER & R. BURGIN, *supra* note 111, at 64.

132 These three virtues relate peculiarly, on MacIntyre's account, to the internal goods from a practice, MacIntyre, *After Virtue*, in *AMERICAN LEGAL ETHICS*, *supra* note 8, at 417-24.

as we attempt here to describe it. The virtue has to do with being—with remembering—Italians in America, including the struggle for *pane e lavoro* among grandparents, and the subtle but even more painful ambivalence of parents. Memory is part of the formation of the good habit of teaching, learning, practicing, and remembering one's place within her family. This memory is the memory of being Italian in America.

The virtue is an Italian-American virtue. We non-Italians know this from stories. The distinctive quality of remembering how it is to be an Italian in America is something Italian Americans also know from stories. They and we know it from narratives, biographies, novels, drama, and the recollections of Italian-American friends. Such sources are primary in our evidence, but they need not exclude studies that purport to be more scientific—studies such as those we relied on in our survey in Part I, and studies such as Rocco Caporale's "profiles" of members of the professions in America and in southern Italy, and his conclusions about the differences between modern-day professionals in each of these two, blood-related communities.¹³³

Caporale concluded that, as professionals, modern Italians in Sicily, Calabria, and Lucania, and Italians in America, in the period 1929-1979, were "two different nations."¹³⁴ The practice of place within family, among professionals, in these two professional subcultures, is different. Teachers, physicians, dentists, lawyers, the clergy, and business managers in southern Italy are, he says, "more clearly motivated by the ethics of particularity and individual interest" than their American cousins, who "show greater sensitivity for the exigencies of more universalistic and rational modes of relating to one's own profession and to society."¹³⁵

Caporale was curious about the relative extent of "amoral familism" (the preference for family security and prosperity at the expense of the broader common good) among the two professional groups; at the attitudes the two sets of professionals had toward the Roman Catholic Church; at the areas where higher education conferred status and where it confirmed status; and at the involvement in politics by members of the two classes of professional groups. He noticed deep cultural values that, on our evidence, are as strong among Italian Americans as he says they are among modern southern Italians. He found in both places "profound attachment to the family," at least nominal affiliation with the Roman Catholic Church and remarkably little defection from this affiliation, and *campanilismo*, "a strong identification with the local commu-

133 Caporale, *The Value System of Southern Italian-American Professionals: A Comparative Profile*, in ITALIAN AMERICANS IN THE PROFESSIONS 275 (R. U. Pane ed. 1983).

134 That was, we think, too sweeping a generalization, and one that Caporale's data did not support.

135 The Italians demonstrate "values of sophistication, political savvy, and survival capability," Caporale says, while Italian Americans have "managed to absorb to a great extent the ethos of a democratic and rational social order and translate it in a mature form to professional behavior." We argue with "absorb" in that conclusion, and we think that "mature" is a tendentious judgment. We believe the Italian American's civic virtue has more to do with its formation in *la via vecchia*, in America, than it has to do with the white-Protestant culture's instilling the American "republican" vision in the Italian immigrants and their children. But Caporale also noticed an important difference, and we want to exploit it.

nity." Caporale concluded that these three traditional values are weaker in America than in southern Italy, but our evidence indicates otherwise as to family and church, and we think the comparison requires more nuance than Caporale gives it on *campanilismo*.

Caporale also found indicative professional differences. Two are important to our argument that *rispetto* is a virtue formed by Italians in America: (a) relative isolation and (b) professional status. Relative isolation was probably the most evident difference that Caporale reported. Professional groups within the communities of southern Italy practice what Caporale calls "conspicuous exemption from demands and obligations to which all other common citizens are subject. Thus a professional will seldom be expected to queue up in lines, to wait to be served in his turn at restaurants and offices, to follow routine in applying for public services," he says. "Exceptions in his favor are an everyday event, most frequently from class subordinates, but also from fellow professionals in the form of mutual exchange of favors.

"*'Il professore,' 'l'avvocato,' 'il dottore,' 'il reverendo'* are different people, entitled to priorities and exceptions, without necessarily eliciting envy or resentment in the lower classes. This system of conspicuous deference and exemption is effectively enforced by the professional class, albeit in a smooth and unassuming way. I have never observed a single case where a professional would turn down differential treatments"¹³⁶

The startling social effect of this deference and exemption in southern Italy, Caporale says, is that it *deprives* the professional person of civic power. It puts the professional in a markedly different situation than his counterpart in America—where, for example, lawyers are and have always been a republican aristocracy—and leaves him in a favorable position for narrow exploitation of his professional position (something American professionals have always denied they want to do): "[O]n the one hand the professional is prevented from exercising independent leadership, especially in the direction of change and needed reforms; on the other hand the informal system of deference and privilege granted the professional class reinforces the exploitative tendencies that characterize the Southern Italian society as a whole. . . . [T]he presence of a well educated group of professionals, highly respected by the population, made no difference as regards the solution to serious problems affecting the community. All political activity was carried out by the professional group mainly as a form of self-serving interest through a political party. The idea of the common good had as little appeal to the professionals as to the common peasants. Common good is pursued

136 Caporale, *supra* note 133, at 278-79. Mary M. Shaffer: "I observed a similar system of respect and conspicuous exemption in Tuscany, when I lived there from 1986 to 1988. According to this system, everyone is deserving of civility and an outward show of respect, regardless of class. Thus the woman who sells bread to the local doctor's wife is treated with gentle respect and formality by the doctor and his wife when they come into the bakery, and she returns their polite pleasantries. But when she sees a long line with the doctor's wife at the end of it, she indicates to her to scoot around to one side of the counter, and fills her shopping bags with the freshest bread. The woman at the bakery does this not out of friendship—between the two classes there could never be friendship—but out of deference. And the other people in the bakery don't resent this special treatment for one of the town's professionals."

only when it coincides with the individual's interests."¹³⁷ And the interests of his family—which is what the pejorative sociological label “amoral familism” is meant to suggest.¹³⁸

“In contrast,” Caporale says, “[the Italian-American professional,] though deprived of the sophistication and class consciousness of his Italian counterpart, appears much more committed to a universalistic attitude and a sense of equality and rational political action”¹³⁹ Caporale admits that his Italian-American subject “retained” what he called “a certain amount of timidity and provincialistic in-groupness that makes him identifiable as not-quite all-American”¹⁴⁰ (This suggests the nuance we would claim for *campanilismo* among Italian Americans.) But the Italian American has managed to develop “a firm commitment to rational professional standards both in his behavior and in the exercise of his skills.”¹⁴¹

One way to have put this last conclusion of Caporale's would have been to say that the Italian American has practiced his skill at functioning as a person in his family in a broader professional and social context. It has become for him a way to function in an influential and influenced way in the community and in professional associations. The contrast would then be (and we think Caporale's observations support this way of saying it) between (a) the professional person in southern Italy, who bargains for membership in a professional fraternity and maintains a position in the fraternity through a system of exchange; and (b) the Italian American whose place in a profession is somewhat analogous to his place in his family—maintained less by exchange than by what Aristotle would have called the virtue of friendship: “Professional friendship among Southern Italian professionals is, at first sight, extremely intense and satisfying: a professional friend may be at times closer than a member of one's own family. But,” Caporale says, “friendship is a very fragile commodity in South[ern] Italy: a minor violation of the unwritten rules of reciprocity (such as a withholding of the ‘saluto’), though involuntary, may cause a [professional] friendship to turn sour and, in some cases, may lead to deep enmities.” The most frequent cases, he says, are cases of failure to reciprocate professional favors. “Over half of my respondents had lost a friend . . . in this manner.”¹⁴²

“Among the Italian American professionals, on the other hand, friendship was found to be less demanding and involving, but at the same time, more enduring, fair and reliable; its lack of depth was compensated by less ambiguity and fragility. The Southern Italian professional remains at all times a political animal, keen on his personal interest and that of his family; the Italian American professional's image is that of a

¹³⁷ Caporale, *supra* note 133, at 279.

¹³⁸ The phrase traces to E. C. BANFIELD, *THE MORAL BASIS OF A BACKWARD SOCIETY* (1958). See Gesauldi, *A Documentation of Criticisms Concerning Amoral Familism*, in *THE FAMILY AND COMMUNITY LIFE OF ITALIAN AMERICANS*, *supra* note 25, at 129.

¹³⁹ Caporale, *supra* note 133, at 279.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* at 280.

social participant, less intense about his status and goals, and more open to a variety of communitarian endeavors of human import, wider than his personal interest and political sphere of influence."¹⁴³

The fraternal professional involvement of the Italian-American professional is also relatively generous: "[T]he obligations to family and profession are given almost equal consideration," Caporale says.¹⁴⁴ We think first of the typical cases of Italian-American professionals—Salvatore Cotillo, Geraldine Ferraro,¹⁴⁵ Mario Merola,¹⁴⁶ Mario Cuomo,¹⁴⁷ John Pastore,¹⁴⁸ and generations of Italian-American mayors¹⁴⁹—whose first arena of public service was an immigrant version of *campanilismo*, service in and for the surrounding Italian-American community. One of the skills necessary for such service is the skill to negotiate the conflict between *campanilismo* and fidelity to the family, and it is of course our suggestion that such a skill is learned in the family, learned through negotiating loyalties within the family. Its ethical nursery is *l'ordine della famiglia*.

Caporale suggests one of the ways the Italian-American professional-leader did this: "Involvement outside the home . . . is frequently a joint activity with the wife and occasionally the children. This is rather rare [for] . . . the Southern Italian professional, who will normally exclude the members of his family from such things as dinner appointments, participation at professional meetings, official receptions and social occasions. . . . [T]he family plays a significantly different role among the two professional groups."¹⁵⁰

In education, the obvious difference is that school became a ladder of vertical mobility for the Italian Americans, but has not functioned that way in southern Italy. In America, education confers status. In southern Italy it confirms status. In America, education "has molded the children of unskilled manual workers into full-fledged members of the profes-

143 *Id.*

144 *Id.* at 281. But in America "the case of conflict between the two roles is not infrequent. The male professional in particular is expected to participate actively in various institutions. . . ." *Id.*

145 *Supra* notes 21 & 32; T. M. Henderson, *Immigrant Politician: Salvatore Cotillo, Progressive Ethnic*, 13 INT'L MIGRATION REV. 81 (1979).

146 M. MEROLA, *BIG CITY D.A.* (1988).

147 M. CUOMO, *supra* note 32.

148 LaGumina, *John Pastore, Italian American Political Pioneer*, in *THE MELTING POT AND BEYOND: ITALIAN AMERICANS IN THE YEAR 2000* 1 (J. Krase & W. Egelman eds. 1987).

149 LaGumina, *The Political Profession: Big City Italian Mayors*, in *ITALIAN AMERICANS IN THE PROFESSIONS*, *supra* note 133, at 77. See also Pugliese, *Americans of Italian Descent in the Judiciary of Pennsylvania*, in *ITALIAN AMERICANS IN THE PROFESSIONS*, *supra* note 133, at 111; Cavaoli, *Juvenal Marchisio: Distinguished Italian American Citizen*, in *ITALIAN AMERICANS IN THE PROFESSIONS*, *supra* note 133, at 143; D'Andrea, *The Ethnic Factor and Role Choices of Women: Ella Grasso and Midge Costanza, Two Firsts for American Politics*, in *ITALIAN AMERICANS IN THE PROFESSIONS*, *supra* note 133, at 253; Paolini, *An American Italian: The Life and Times of Luigi DePasquale*, in *THE MELTING POT AND BEYOND: ITALIAN AMERICANS IN THE YEAR 2000*, *supra* note 148, at 15.

150 Caporale, *supra* note 133, at 281. The institutions to which Caporale refers, as requiring professionals' attention, include the church, higher education, and politics. Italian Americans go to church more regularly than their southern-Italian counterparts; they more frequently maintain formal membership in church organizations. Both groups express disagreement with some official Roman Catholic positions on personal morals (birth control for example) and in politics, but the Italian-American expression of dissent lacks the "cynicism and derisive criticism of the religious establishment" that is characteristic of professional attitudes toward the church in southern Italy.

sional community, often socializing them into ways of thinking, relating and producing that characterize a socially different group than the one in which they were born." In Italy, "higher education was the seal and confirmation of the privilege of belonging to the professional middle class in virtue of family tradition. . . . The basic ethical requirements (confidentiality, meritocratic system, ongoing self-improvement, rational judgment, criteria, etc.) were considered unrelated and unnecessary for professional status. But an appropriate life style, one that came close to a semi-aristocratic pattern, was considered indispensable (spacious living, distinctive furniture, valuable paintings, etc.)."¹⁵¹

* * *

Across all of these categories, as we see it, the experience of Italian professionals in America has become more communitarian than their counterparts' experience in southern Italy. This, we think, had at first to do with the fact that Italian immigrants settled in America in Italian communities, and began then to practice and to teach the importance of broadening the defensive bulwarks of *la via vecchia* to include neighbors from the same place in Italy. Helen Barolini's immigrant heroine, Umbertina, had little sympathy for what the dominant culture in America in the late nineteenth century thought of as its republican communitarian vision: "[H]er concern was only for her family, not for some abstract common good." But, still, "she despised those [not in her family] who broke strikes in order to work for low wages, who didn't speak up their grievance, were self-denying, and still dependent on a *padrone*."¹⁵² Her struggle for *pane e lavoro* in America became a struggle for her fellow immigrants, as it had been at first a typically Calabrian struggle for her husband and children. She did not speak of a theory for this gradual change, but her behavior came to describe the Old World protection of family in a way that included people who were not in her family.

In one indicative episode in the novel, a fellow immigrant, Domenico Saccà, has been politically active in the up-state New York community where Umbertina and her family have settled (with Domenico Saccà's

151 *Id.* at 282. Professional status in Italy also appeared to Caporale to have narrowed the possibilities for personal self-expression: "Though some of my respondents would have been considered intellectuals, none was found to have adopted an informal living pattern or to have included proletarian or bohemian elements in his lifestyle." In politics, professional status confirms consistent membership in an Italian political party, rather than the sort of broad, nonpartisan public leadership that is often attractive to prominent American lawyers, notably many of those who aspire to and attain judicial office or those who hold positions of public trust over long periods of time. In Italy, "[t]he political identity of all the professionals is publicly known and taken into consideration at every instance. . . . [E]ven the claim not to be affiliated with a political party becomes in itself the badge of a political grouping, namely the *independenti*. The southern-Italian professional accepts this all-pervasiveness of the political factor as a natural and rational mode of social organization and perceives no dissonance between it and the claims of professional avocation." The Italian-American professionals Caporale studied were often involved in civic issues, but, even where these issues were described as following party lines, party politics "did not play a dominant role in their pattern of social interaction and friendships." The more usual Italian-American identification in civic work was "a general humanitarian and broadly universalistic acceptance of persons and groups."

152 H. BAROLINI, *supra* note 1, at 109; Shaffer, *The Unique, Novel, and Unsound Adversary Ethic*, *supra* note 14; S. LEVINSON, *CONSTITUTIONAL FAITH* 62-63 (1988). Levinson reads the ethical argument in R. BELLAH, R. MADSEN, W. SULLIVAN, A. SWINDLER & S. TIPTON, *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* (1985), as a republican argument.

help). As often happened among early-day, Italian-American political leaders, Domenico, a cobbler, became discouraged at the lack of response from other Italian Americans, who were more interested in fellowship and small material gain than in reform of the structures that kept the southern-Italian immigrants poor. Then, "something happened that seemed to Umbertina another great lesson of life. Serafino [Umbertina's husband] burst into the store one day, excited and flushed, to say that he had just heard . . . that Domenico Saccà was at the station about to board a train to leave the country and go back to Italy. Domenico had been brooding for months over the end of his Circolo Socialista, which had come about when the old members defected and set up a new club, the Società Castagnese [named for their home village in Italy, rather than for a political cause], which was strictly social with no politics allowed. It hurt Domenico, and . . . he had . . . decided to return to Italy.

"*'Imbecille,'* said Umbertina in disgust at such a senseless act. At the same time she was moved, for despite the aggravation he provoked in her, Umbertina knew they all owed their start to Domenico. Serafino was beside himself at the thought of the shoemaker's leaving.

"*'Run to the station!'* he shouted at Ben [his son], who was in the midst of dealing with a salesman from New York. *'Keep him from getting on the train! Bring him back!'*

"Somehow Ben did it, reaching Domenico on the platform and persuading him to return with him to the store.

"*'Pazzo,'* Serafino greeted him gruffly, but there were tears in his eyes as he put his arm around the shoemaker's shoulder. *'Were you going off to spite yourself? Stay so that you can tell your grandchildren how the stupidest thing Serafino Longobardi ever did was to send his son to the station to keep you here so you could go on insulting him at Scalise's.'*"¹⁵³

C. *Appendix to Part VI: Italian-American Lawyers in America*¹⁵⁴

"The family was an emotional support group, and therapy center if necessary, with few secrets and frequent, open discussions about the range of human feelings, their expression and resolution. The family was also a recreational forum, where siblings and cousins played together every week, adults played cards, and everyone played music and danced. And despite our modest financial circumstances, there was always food, and plenty of it. Everything one needed was in the family. This was the code by which we were raised, and until adolescence, this was reality.

"Coupled with this tribal sense of family unity came a clannishness and close-mindedness towards the outside world. Friends of the family were few and carefully chosen. They were either neighbors also raising children, or families from around the corner who helped out at church functions. There were no friends from work, friends from college, or friends from the Knights of Columbus. First-generation Italian-Ameri-

¹⁵³ H. BAROLINI, *supra* note 1, at 126.

¹⁵⁴ See *supra* note 86.

cans in the 1950s and 1960s huddled together for protection and support, distrustful of outsiders.

"This family self-sufficiency and distrust of outsiders is significant with regard to the Italian-American view of the working world. My father and all of my uncles were blue-collar laborers; they worked with their hands and had regular union hours. They were always home at dinner-time, the whole family ate together each night, and they were always home on the weekends, which were devoted to household chores on Saturdays and family gatherings on Sundays. Women of my mother's generation were raised to be, and seemed content as, housewives. The Italian-American community, and certainly the extended family infrastructure, placed great importance on motherhood, and approval for raising babies was readily available and freely given. Job fulfillment in my father's generation did not seem a priority; fulfillment in family was the ultimate priority.

"Professionals such as doctors and lawyers were respected in the abstract as accomplished members of society. There were none in the family, and none that we knew in the first- and second-generation Italian-American community in which we lived. Role models were not readily available. Politicians were distrusted, disrespected, and assumed to be crooked and corrupt. Likewise, businessmen who had accumulated conspicuous amounts of wealth quickly were assumed to have achieved prosperity dishonestly, through deal-making, bribery, etc. The mob, a distinct presence in New York's Italian American community, were disrespected for their sins and refusal to earn a living honestly. The religious values of our family and community segregated, with one broad stroke, corrupt politicians and businessmen, mobsters and other criminals, from the work-hard, insular family model that ordered our lives.

"My teenage years, in a more heterogenous religious and economic community during the Vietnam era, brought with them much internal questioning, a predictable amount of rebellion and a gradual blurring of the black and white lines which so clearly set the moral boundaries of my upbringing. Still, the daily examples of parents who attended church religiously, who worked hard for an honest living, and who impressed upon us the importance of doing the same, had their effects. I expressed my own feelings about being a Christian through volunteer work in service to the community; helping mentally ill, handicapped and aged members of the community was Christ-like, I felt, and although my high school experiences with volunteer work were mostly in the guise of high-profile high school politics with many social perks, the underlying hands-on work with less fortunate members of my community brought me genuine fulfillment. My college years saw the evolution of a more personal, less publicized but ultimately more fulfilling form of volunteer service to my community which became my metaphor for living as a Christian.

"These experiences with volunteer work are germane to my decision to study law for two reasons. The Catholic school-boy grown up, as a young man, believed that being a Christian meant being like Christ with the lepers, the blind, the dying, etc. It was necessary to do something to

make society better by helping people similarly situated. My hands-on, physical contributions to those in need—*e.g.*, reading to those who couldn't, helping with physical therapy of cerebral palsy victims, playing the piano for hospital patients—translated to an intellectual ambition *vis-a-vis* a career. I would become a lawyer so I could help other people, and change society for the better. The second connection between volunteer work and law school was the appearance of positive role models. Several attorneys were involved in the volunteer organization I worked with in high school (I was in Key Club, they were in Kiwanis) and these individuals seemed to me good citizens, making a difference to people's lives.

* * *

"I think that the significant cultural impact on me is that I am compelled to be the best at what I do and I feel that my mission in life is to help the underdog. I believe that both of those stem from the feeling that Italians were at one time, and to a certain extent are now, the underdogs and that I must do well and . . . help other people who have problems.

* * *

"Since graduating from law school I have gone into the practice of law and live now in the city in which I work, Chicago. I like to think that even though I'm supposed to be a professional person I still work in a 'blue-collar' fashion. I consistently strive to bring the type of work ethic to my job that my parents, aunts and uncles, and grandparents demonstrated throughout their lives."

* * *

"I think my background would have created in me a sympathy for the underdog even if my own father had not gone to prison when I was fourteen. My feelings were set by then. I have never felt that people who violate the law are inherently evil—particularly those who commit nonviolent, economic crimes. I think many Italian Americans feel that they must be insensitive and prosecutorial as a reaction to being in a minority group that is historically associated with organized crime. I sometimes catch myself feeling that; I'm not sure it may not be warranted in some cases. Here is an essay I wrote at the age of nine:

"When I grow up. When I grow up I want to be a lawyer. I would like to be a lawyer because I could really be enforcing the law. Sometimes innocent people are punished because of unjust jurists. To be a good lawyer you must know this. Just because a person is at the scene of a crime before anyone else does not necessarily mean he committed it. I wouldn't want a person to be punished because he couldn't employ a private attorney. I would take that person's case for little or no money. I would defend the poor man as much as a rich one. I would try to make this country of ours a better place to live in.'"

* * *

"Italians-Americans are not generally rigid in terms of their professions being all-consuming — you'll seldom find a single-faceted Italian-American who devotes 20 hours a day to one narrow activity That

gives them not only a diversity of views, and a healthiness of mental outlook, but also the ability to endure problems and cope.' ”¹⁵⁵

* * *

“The whole religious experience of Catholics like myself . . . painted for us a world of moral pitfalls that needed to be avoided in order to earn an eternal peace. It was as though God had created the world as a kind of hard passage to eternity. . . .

“Of course, that’s not the way it was supposed to be. Those who were learned enough or wise enough saw in our religion even forty years ago the kind of joy and hope and affirmation that is apparent now every Sunday morning at mass. But for the simple folk of South Jamaica, in Queens County, who came from behind the grocery stores and from the tenements and from the little houses on Liverpool Street, it was often a world of guilt and repentance and renewed effort to avoid the final defeat. . . .

“I see things a little differently today. So do the modern young altar boys who have been freed from having to stumble through the *Suscipiat*. But I am sure that I will never be totally free of the tentativeness, the concern—even, from time to time, the twinges of guilt—that accompany anything I might be tempted to regard as material success. . . .

“There is also a bright side to our old-fashioned religion, for those disposed to see it. It was the joy of giving, as compared to the joy of having. If you wanted to earn that carrot and avoid that stick, you could do it by sharing, contributing, helping. That’s why they called them—those marvelous, inscrutable women, those faces surrounded in starched white linen and flowing black—the Sisters of Charity. Their whole mission at St. Monica’s and elsewhere was to teach that while you were suffering the pains of denying yourself temporary and superficial delights, you could also earn yourself an occasional moment of warmth and even, my God . . . self-satisfaction! You could do it by helping the sick, feeding the hungry, comforting the bereaved.

“It is this part of my background that has always made it difficult for me to accept the so-called conservative idea that, when it comes to government’s redistributive function, ‘God helps those whom God has helped, and if He’s left you out, who are we to presume on His will?’ And ten years of Vincentian training at St. John’s Prep and St. John’s University only reinforced my conviction that if St. Francis of Assisi were alive today, and was reckless enough to get involved in politics, he would be fighting for some kind of progressivism that sought to help people improve their lives. I just can’t see him arguing for the kind of social Darwinism that has been thrust upon us in recent years. (That some of the current believers in ‘survival of the fittest’ were altar boys with me nearly forty years ago, or were my schoolmates, never ceases to surprise me.)”¹⁵⁶

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¹⁵⁵ Hall, *supra* note 28, at 32 (Benjamin R. Civiletti).

¹⁵⁶ M. CUOMO, *supra* note 32, at 11-13.

"This interest in ethnicity, in our roots, is not just trendy. It shows the developing maturity of the American experience—revering the positive in your heritage. There's no longer any need for bravado as a defense against America. Now you can be Italian, and it doesn't mean you are any less an American. We Italian Americans under the age of fifty no longer feel the need for protection in a foreign land. We are happy to be Americans."

VII. Rispetto in the Community

The communitarian argument in jurisprudence,¹⁵⁷ in social ethics,¹⁵⁸ and in professional ethics,¹⁵⁹ has an anthropological difficulty: it is common sense to conclude that a communitarian argument is not persuasive when it is made to people who do not perceive that they are in a community.¹⁶⁰ The presence or possibility of community in America is not evident enough to support the argument that we have moral obligations outside those who appear in our domestic lives; nor is it evident enough to support the premise or assumption that we are communal creatures who ought to find or revive or somehow create such a community.

Neither of the two prevalent positions on communitarian jurisprudence and ethics is equal to these moral and anthropological difficulties. The argument for community-by-agreement, from the individualistic philosophy that has until lately dominated modern jurisprudence—our intellectual inheritance from the Enlightenment and its doctrines of abstract duties and abstract "rights of man"—lacks confidence in the earthy substance of human communities. And the response from the American republican vision—the vision that led the freethinking Thomas Jefferson and Benjamin Franklin to think of America as a biblical community, "God's new Israel"—lacks both history and sincerity. There is too much disappointed aspiration in it, too much shopworn optimism, to produce or support a moral anthropology¹⁶¹ that perceives a human person as essentially a creature who comes to be only in relation with other human persons.¹⁶²

157 S. LEVINSON, *supra* note 152, at 62-63, 112-13. I understand Levinson to generalize the modern republican argument as an argument for community as choices to be made by radically individual persons. See also *Faith in the Republic*, *supra* note 57; Sheery, *Civic Virtue and the Feminine Voice in Constitutional Adjudication*, 72 VA. L. REV. 543 (1986); Millon, *The Sherman Act and the Balance of Power*, 61 S. CAL. L. REV. 1219 (1988).

158 See Jones, *supra* note 61.

159 Kronman, *Living in the Law*, 54 U. CHI. L. REV. 835 (1987); Kronman, *Practical Wisdom and Professional Character*, 4 SOCIAL PHILOSOPHY AND POLICY 203 (1986). See Beckley, *A Christian Affirmation of Rawls' Idea of Justice as Fairness* (pts. 1 & 2), 13 JOURNAL OF RELIGIOUS ETHICS 210 (1985), 14 JOURNAL OF RELIGIOUS ETHICS 229 (1986). Cf. *supra* note 61.

160 *Supra* notes 152 & 157.

161 I. MURDOCH, *supra* note 23; C. GREENHOUSE, *PRAYING FOR JUSTICE—FAITH, ORDER, AND COMMUNITY IN AN AMERICAN TOWN* (1986), noted in Shaffer, *supra* note 19, at 707-09.

162 This is not a statement of natural-law principle. I intend it, rather, as a conclusion in moral anthropology, an argument about excellences in a particular moral culture, which we find admirable because our culture and this culture are related or at least similar. I do not depend on any assumption about human nature in general; I admit that whatever ethical generalizations are possible from my moral anthropology are culturally relative and narrative dependent. We are content here to attempt to describe a culture that has functioned, or could function, as a school for the virtues that

An anthropology of rights (if we may be allowed to use that as shorthand for the philosophical, theological, and political inheritance of the Enlightenment) is just not persuasive on the question of community. It seems always to depend on the premise that the human person is fundamentally alone. "[H]ow can one account for or legitimate the existence of a society made out of individual persons each of whom by the very nature of personhood 'is at heart an anarchist'? . . . It is difficult if not impossible to give any account of society, communion, or unity between the social atoms of modern individualism other than of an artificial and external joint venture of convenience. The most benign type of community conceivable on individualist terms is an ethical accord between individuals well disposed to one another; the more likely community is an arrangement based on mutual agreement or convenience."¹⁶³

All that such an individualist anthropology can come up with by way of describing human community is contract or (in theology) civic covenant. Such a perception of reality would—to put the test in the most realistic terms—have been of no interest to the Italian immigrants we have been describing,¹⁶⁴ and it is not plausible to those of their descendants who have helped us. In more analytical terms, individualist anthropology is the perception of loneliness and despair; in consequentialist terms it is a predicate for nihilism. Its account of freedom "must be seen as a false or illusory freedom, since to the extent it is exercised it necessarily leads to an incoherent history and thus to a diminished or disrupted personhood."¹⁶⁵ As a matter of ordinary common sense, this individualism is an anthropology which can account for organic communities—most radically the family—only in terms of choice. Its weakness as a foundation for jurisprudence and ethics "is amply illustrated by how it has led us to forget that the family has traditionally not been rooted in contract but in biology [R]elations in the family have come," as a result, "to resemble relations in the rest of society—namely, a relationship between friendly strangers. . . . Ironically, this kind of family, which was justified in the name of intimacy, now finds intimacy impossible to sustain."¹⁶⁶

have to do with the internal goods of the practice of law, as a practice in the Aristotelian sense of the word "practice." See MacIntyre, *supra* note 132; Wachbroit, *A Genealogy of Virtues* (Book Review), 92 YALE L. J. 564 (1983). Nor is my argument here the argument of H. R. NIEBUHR, *THE RESPONSIBLE SELF* (1963), that human communities build from one-on-one human relationships in the way we have described as contractual. See *supra* note 5, at 259-65. Niebuhr's anthropology is "liberal" in the sense we have attempted to identify. See *supra* note 157 and accompanying text. We are grateful to Stanley Hauerwas and James W. McClendon for helping us with this point as to Niebuhr.

163 H. J. Powell, *Persons in God* (1988) (unpublished). The objection raised by Powell is ontological as well as anthropological. That is, there is a metaphysical issue about whether the human person can be described at all in essence, in terms of being. Powell quotes and discusses J.D. Zizioulas, *supra* note 84. Zizioulas takes the philosophical position that the human person is to be described ontologically in terms of communion, freedom, and love; he then develops that point, as Powell develops his account of human personhood, in theological terms—with respect to the Christian doctrine of the hypostatic union of divine and human persons in Jesus, and with respect to the doctrine of three persons in one in the Trinity.

164 See *supra* note 152.

165 H. J. Powell, *supra* note 163.

166 S. HAUERWAS, *COMMUNITY AND CHARACTER* 159-60 (1981).

"[T]he moral language our culture supplies," Stanley Hauerwas says, "tends to distort the very experience we are trying to describe" when we speak of the family. "Nowhere in contemporary ethical literature is there discussion of the simple but fundamental assumption that we have a responsibility to our own children that overrides responsibility to children who are not ours. Although [this is] a powerful assumption, there is no adequate account in contemporary ethical reflection of why we hold it or if it is justified. Instead, the best my colleagues can offer is the doubtful thesis that children ought to have rights."¹⁶⁷ Barolini's Umbertina would probably say that her children were well out of a school that could do no better than that.

The American republican vision¹⁶⁸ is more attractive than the "liberal" understanding of the person as the subject of his own lonely tyranny, but it is no more persuasive. In the "golden era of America lawyers," who were our natural aristocrats before the late immigrants came here, cultural America aspired to be a nation of self-sufficient farm and business families who would give of their lives and of their property for the common good. They managed to entertain such an aspiration despite the facts of slavery and the subjugation of women, and they held on to it and at the same time imposed virtual genocide on the American Indian, apartheid on the freed slaves, and brutal exploitation on immigrants and their children. It is the case, we think, that the republican aspiration never counted for as much in the American conscience as prosperity, imperialism, and regional economy did. Americans, Abraham Lincoln said, were God's almost chosen people. In any event, by the time the late immigrants got here, the republican vision was little more than hollow hypocrisy, and the earthy Calabrians and Sicilians saw it for what it was. Americans hid the preservation of privilege behind the rhetoric of millennialism and opportunity; they were not to be allowed near Italian children.¹⁶⁹

¹⁶⁷ *Id.* at 156.

¹⁶⁸ *Supra* note 157.

¹⁶⁹ Shaffer, *The Unique, Novel, and Unsound Adversary Ethic*, *supra* note 14, and Shaffer, *The Tension Between Law in America and the Religious Tradition*, in *Law and Our Life Together* (R. Neuhaus ed. unpublished). The republican argument could be the product of an ethnic, even a familial culture. I do not deny the possibility, but I can see three reasons—reasons not present with regard to late-immigrant cultures in America—why such a connection is unlikely.

(1) The nineteenth-century republican claim in American social ethics rested on the hubristic theological position that God had chosen this nation-state as He chose Israel, M. MARTY, *RIGHTEOUS EMPIRE: THE PROTESTANT EXPERIENCE IN AMERICA* (1970). I am not aware of a persuasive theological justification for such a position. See S. HAUERWAS, *CHRISTIAN EXISTENCE TODAY* 171-90 (1988); Dawson, *The Religion of Democracy in Early Twentieth-Century America*, 27 *JOURNAL OF CHURCH AND STATE* 47 (1985); Shaffer, *The Tension Between Law in America and the Religious Tradition*, *supra* note 10. Notarianni & Raspa, *supra* note 42, at 30-33, provide an image and an example of the contrast between a culture that made such a claim and the culture of Italian Americans: the Mormons in Helper, Utah, built neat, symmetrical houses on neat, symmetrical plots of land, along orderly streets and roads. When the Italian-immigrant miners became prosperous enough to buy some of these Mormon houses, they improved them (particularly in the back yards) in chaotic, untidy ways. Their aesthetic disarray seemed to say that "to acknowledge publicly one's position in the universe . . . and thereby to incur a set of obligations . . . [was, to the Italian spirit the acquisition of] limited good, [a sign of] the absolute finiteness of material and spiritual resources," this in contrast to Mormon millennialism, which claimed power over nature, which was building the Kingdom, and which claimed divine authority. The Italian miners looked at this Mormon world, and decided not to tempt Fate

Since neither of the prevalent jurisprudential arguments is persuasive, the communitarian argument in legal philosophy and in ethics has to choose between being irrelevant and dealing truthfully with the possibility that America has no community to be communitarian in. (We do seem to have communities, although any we can think to mention are daily reported to be falling apart.) The alternative, in our view, is to take into account the evident and common sense primacy of organic groups: to begin with a description of membership in the communities we cannot help being in, and to see if we can build plausible common-good arguments from there. From the experience of being (or even of having been) in such communities—and perhaps even the ardent individualist would concede this—we are able to notice the ordinary and organic paradoxes of our situation.¹⁷⁰

Perhaps the ardent individualist would also concede that we human persons have in us a disposition to love and to want to be loved, and that each of us is incomplete when she is alone. If that much territory is given up from the individualist side of the anthropological debate, perhaps we communitarians would make some earthy concessions from our side—that we find other people troublesome, even, with Sartre, hellish; and that philosophy and politics have always reserved the communitarian ex-

with order. They said to themselves, "[O]ne cannot trust the world too much." See also Novak, *supra* note 11.

(2) The modern ethical claim that would most likely be connected to an organic republican culture would be the one I have identified with the modern republican communal argument, *supra* note 148 and accompanying text. But this modern manifestation has been affected by the political philosophy of the Enlightenment so much that it in effect denies that it has or even needs an organic past. It is announced without reference to a narrative tradition. See S. HAUERWAS, *supra* notes 166-67. It is made without the description of individual moral excellence on which an account of the virtues depends. It argues for radical egalitarianism and radical individualism, and therefore involves, I would argue, see *supra* notes 5-10, a vacuous anthropology. We are indebted to Anthony T. Kronman, and to the manuscript of his new book on the American lawyer-statesman, for this point.

(3) The connection between the organic community from which a republican culture may be said to have grown in America (Puritan, perhaps, or, as to my own culture, frontier and agrarian) and a discernible modern moral culture seems to me distant if not attenuated. The attenuation is evident in novels about lawyers in the metropolitan northeast, e.g., W. HOWELL, *supra* note 14; L. AUCHINCLOSS, *supra* note 74.

Compare, as to all three of these arguments, the moral culture Harper Lee and William Faulkner described in their novels about twentieth-century gentleman-lawyers in the American south. First, that culture recognized its complicity in evil. Second, it was a culture that recognized and celebrated moral excellence in its lawyer-aristocrats. The position of the protagonists in these southern novels is the position of the prophet Isaiah: "I am a man of unclean lips, and I dwell in the midst of a people of unclean lips. . . . Here I am; send me." *Isaiah* 6:5,8. See *supra* notes 12-13. Third, it was narrowly and even locally cultural, as much so as *la via vecchia*. It was not distant in memory or in conscious attribution from its cultural roots, which roots were ethnically English and low-church Protestant, rather than republican. See W. J. CASH, *THE MIND OF THE SOUTH* (1941).

170 Such as the fact that a human person is present when absent in art, or when a friend is waiting for her on a street corner teeming with strangers. Zizioulas, *supra* note 84, at 409: "[I]t is not in its 'self-existence' but in *communion* that this being is *itself* and thus is *at all*. Thus communion does not threaten personal particularity; it is constitutive of it." For the presence-in-absence examples, *id.* at 412-13, and Zizioulas's ontological conclusion, *id.* at 414:

In so far, therefore, as the human person is an entity whose being or particularity is realized by way of a transcendence of its boundaries in an event of communion, its personhood reveals itself as *presence*. But in so far as the human person is a being whose particularity is established *also* by its boundaries (a body), personhood realizes this presence as *absence*. Since both of these have their focus on one and the same entity, they represent a paradox, the two components of which must be maintained *simultaneously*, if justice is to be done to the mystery of human personhood.

cuse for the crudest human tyrannies. Our ability to argue about community without being burned at the stake, beheaded, or hanged for being wrong owes something to Enlightenment individualism, even if the fact does not count as an argument in our anthropology. That minimum amount of reciprocal scholarly respect might return the communitarian argument to the question of whether modern America has a community to be communitarian about, and then to the question that question depends on: whether we ever have.

We argue that such questions should be taken up in an earthy way, by turning to the primacy of the organic communities we cannot help belonging to, the communities that grew up at the places we come from and around the times when we were there. To our families, prototypically. The argument can, we think, then move out in two ways: we can move, in one way, being as truthful as we can, to the groups we seriously describe with family metaphors (in the typical American—and maybe Western—experience: neighborhood, town, religious congregation). We should probably stop from time to time in this process and find out how serious we are prepared to be in our use of family metaphors before we reach the sort of hypocrisy from which politicians insult the families we remember as well as the families we have. We should move cautiously but purposively when we talk about companies, agencies, religious denominations, law firms, bar associations, universities, and civic clubs as if they were families.

We might not ever be able to move beyond these relatively interpersonal associations—to the modern nation-state, for example.¹⁷¹ To the extent we cannot do that, we may have to look more seriously than most jurists today do at the importance of the “mediating associations” that justify describing themselves with family metaphors and that can stand between the person and the jurisdictions in which law and the accidents of geography place him. Even if our communitarianism never gets beyond these associations, we will have described extensions of friendship in which the virtues can be practiced. One of these might, if it is described very carefully, be some sort of legal profession.

The critical moral question in this appropriation of organic metaphors is less doing it than how it is done, which is the second way of moving out from the truthful description of the community we cannot help belonging to. This how-to issue is a matter of skill and disposition and is itself a matter of virtue. We suggest of course that the Italian Americans, who formed in their children the habit of learning, teaching, remembering, and practicing place within the family, can teach the rest of us something about disposition and skill in the truthful use of organic metaphors.

171 *Faith in the Republic*, *supra* note 57.

D. *Appendix VII: Italian-American Lawyers Speak About Law and Being Lawyers*

"The practice of law in America is often seen as productive of conflict, but such has not been my experience. For I have learned from it what is, I think, the essence of my political philosophy . . . [a]nd that is reasonableness. Not an addiction to ideology or pat phrases or canned solutions, but an intelligent application . . . to specific situations. So viewed, the truth is . . . somewhere near the middle of the straits, and effective government . . . more a matter of compromise and mediation than confrontation."¹⁷²

* * *

"I was interested in the law when I was a little girl. My father and I have a very strong relationship. He would take me into his office and teach me about the things he was doing. Although they say Italian men are very sexist—I don't believe it—at least not where their daughters are concerned. I am convinced that I never would have become the woman I am today without my father's constant support and belief in me. He always told me I could be whatever or whoever I wanted to be—and he meant it. Independence was especially emphasized as important to the girls in my family. Law to me is a combination of the things I was taught to value: dedication, honesty, intellect, and challenge."¹⁷³

* * *

"One time Judge Quilici, representing a defendant in police court, was badly abused by the judge. The incident was reported at a Justinian meeting; the judge was invited to the luncheon meeting; we all enjoyed the judge's company, the matter was discussed in a very friendly manner, the judge apologized and we all 'lived happily ever after' . . . Years ago a Justinian became careless with an Italian client's money and cases; our Grievance Committee invited him to discuss the matter; he failed to appear. As co-relator with the Chicago Bar Association, we proceeded to the Supreme Court and had him disbarred. Another attorney of Italian extraction (not a Justinian) had fleeced some of our people. We were proceeding against him, when others had him disbarred for similar reasons."¹⁷⁴

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172 M. CUOMO, *supra* note 32, at 14-15. This also involves, in his view, inclusion. For example, after Governor Cuomo had won his first election, his advisers brought up the question of how he was to deal with Mayor Edward Koch, who had been a primary-election opponent and who promised to be troublesome to the new state administration in Albany. The governor quoted from memory a little poem by Edward Markham, *Outwitted*:

He drew a circle that shut me out,
Heretic, rebel, a thing to flout.
But Love and I had the wit to win:
We drew a circle that took him in.

The realistic jurisprudential assumption we make here is that most lawyers' law is both practiced and dispensed in the law office. See Brown & Shaffer, *Toward a Jurisprudence for the Law Office*, 17 AM. J. JURIS. 125 (1972).

173 See *supra* notes 24 & 86.

174 Meccia, *Appendix E*, in THE ITALIAN AMERICAN LAWYERS OF CHICAGO, *supra* note 62, at 34-35. The Justinian Society, founded in 1921, is an organization of Italian-American lawyers who practice in Chicago.

"I think my heritage has definitely helped me as a lawyer because my heritage directs me towards people and people's concerns, and listening to people, because that's how I saw our heritage expressed. It's verbal [and] not always as demonstrative as we are pointed out to be, but generally verbal. [W]e talk about ideas frequently, as opposed to just things, and those traits—the ability to talk things out, and the ability to think and behave abstractly—I think are embedded in the culture. I remember discussions with my grandparents. They had very meager educations, but they were frequently interested in conceptual things. To be a lawyer you have to deal in concepts, and then you have to translate them to real people.

"You could walk down the street in the neighborhood where I grew up, and have to stop half a dozen times to talk to different people, pay your respects, your courtesies, and you were always tailoring what you were doing, what you were saying, to their concerns. It didn't necessarily mean that there was a close personal relationship. It was respect, and you were kind of expected to converse, carry on at least some civil discourse. I think that's very helpful as a lawyer. I deal with people; I have to try to put people at ease. I have to get the facts out of them. I have to get their goals out of them. It's not totally different from standing on the corner, talking to the old men in the neighborhood, trying to find out why he is so grouchy today, what's bothering him. These things are in my Italian spirit. They help me a lot."¹⁷⁵

¹⁷⁵ We are grateful for the generous assistance of Ruggero J. Aldisert, Benedict V. Aspero, John Attanasio, Louis Auchincloss, Mark Aultman, Harlan R. Beckley, Francis X. Beytagh, Anthony T. Bruno, Marie Butarazzi, Anthony M. Calderone, Joann M. Calderone, Philip D. Calderone, Joseph A. Camarra, Philip F. Cardarella, Henry J. Catenacci, Richard D. Catenacci, Henry G. Ciocca, Paul Collella, James J. Conte, Anne D'Errico, Philip S. DiMatteo, Lawrence D. Dinardo, Philip Faccenda, Richard H. Farina, Pier Massimo Forni, Vito Gagliardi, James D. Ghiardi, Linda Harrington, Stanley Hauerwas, Peter J. Ippolito, John J. Jiganti, Janis L. Johnston, Kenneth Kinslow, Steven J. Madonna, Paul J. Maganzini, Alfonso A. Magnotta, Frederick J. Martone, Joseph P. Martori, John F. Mezzanotte, Fred M. Morelli, Jr., Peter T. Noone, Patrick F. Pacella, Joseph R. Pagano, Anthony J. Palumbo, Jr., H. Jefferson Powell, Robert S. Redmount, Robert E. Rodes, Jr., Richard Sandy, Nancy J. Shaffer, Michael J. Slinger, Kathleen Sullivan, Steven J. Talevi, Dennis J. Tuchler, Joseph Turzi, and Frank G. Verterano.