

ESSAY

An Explicit Connection between Faith and Justice in Catholic Legal Education: Why Rock the Boat?

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INTRODUCTION

I remember the panic set in during the summer between my first and second year of law school. Shopping for a dark and uncomfortable-looking suit, my mind raced with images of the first week of law school, watching the second-year students nervously prepare for interviews for hoped-for "summer associate" positions in large law firms. "That will never be me," I had thought at the time. "I came to law school for the tools I would need to work for justice for the poor."

And yet here I was preparing my resume for a battery of interviews with large law firms that represented, for the most part, large corporations. After struggling with pre-Windows computer formatting, I handed a draft resume to the wise and caring professor who had generously agreed to a mock interview. As he noticed the contrast between the twelve-point font body of the resume and the miniscule eight-point font of my name, he looked up over his glasses and gently asked, "Feeling a little ambivalent about this?"

"Why am I doing this?" is a question which haunts many law students as they merge into what feels like a herd in pursuit of private-sector legal

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jobs. Some feel pushed into the pack by the reality of now-staggering student debt. Facing the impending doom of loan repayment, and for some, increasingly complex family responsibilities, all of a sudden survival on a public interest salary appears near impossible. Others are simply overwhelmed and frustrated by the competitiveness of the public-sector job market and the fact that many public-sector employers will not spend their frugal budgets on salaries for lawyers with no previous training or experience. Still others find themselves unexpectedly drawn toward areas of legal practice that they never imagined could be at all interesting prior to law school.

My first week of law school conviction—I came to law school to learn how to work for justice for the poor—haunted me throughout the entire interviewing process and beyond. When I went for the call-back interview with the firm that would eventually become my employer for several years, I entered the elevator of the mid-town Manhattan skyscraper and pressed the button that shot me up to the 34th floor at such a high speed that my ears popped. As I stepped into the firm lobby and looked out at the breathtaking panorama of New York City, I battled within, "What am I doing here? Am I really going to sell out? How can I work for justice from the 34th floor?"

Much of legal education—in all law schools, including Catholic law schools—pushes students to frame their dilemma in similar terms. Many students perceive the universe of legal jobs as divided into distinct "all or nothing" camps: on the "good" side, public interest lawyers crusade for any number of causes which further social justice and equality; on the "bad"—or at least "not good"—side, big firm lawyers pursue the generally greedy profit-seeking agenda of Corporate America, except for that usually tiny sliver of time devoted to *pro bono* service to the larger community.¹

If for whatever reason—student loans, family obligations, the tight public-sector job market—I cannot dedicate my legal career to public interest work, I am doomed, at least initially, to work in a job which has little to do with my first week of law school hopes to learn the law in

1. I realize that this stark rhetorical contrast is over-simplified in many respects, not least in that it leaves out the vast majority of legal jobs—those that serve individual rather than business clients, and the vast terrain of government and regulatory work. While this description of course fails to capture the complex *reality* of legal practice, I do believe it effectively illustrates the tension that many students *perceive* as they attempt to map out their career paths. For a similar discussion of the negative impact of the "business-profession" dichotomy, see Russell G. Pearce, *The Professional Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U. L. REV. 1229, 1266 (1995) ("The reinterpretation of business as a worthy endeavor, together with the acknowledgment that law practice has the characteristics of a business, suggest a new understanding of the framework for the delivery of legal services."). For a thoughtful discussion about the ways in which religious values and commitments might inform service to and interaction with individual clients, see generally JOSEPH G. ALLEGRETTI, *THE LAWYER'S CALLING: CHRISTIAN FAITH AND LEGAL PRACTICE* (Paulist Press 1996).

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pursuit of more idealistic aims. Perhaps, with luck, one day I will be able to move on to more public-spirited projects—although I must admit a gnawing fear that at some point I may be bound by the "golden handcuffs" of a lifestyle which requires a more-than public interest salary. For now, however, everything about the view from the 34th floor feels like I am about to "sell out" on the ideals that brought me to law school in the first place.²

Many law schools in the Roman Catholic tradition recognize the dilemmas and pressures that law students face as they venture forth into their legal careers. Acknowledging the power of the law to change social structures and building on a rich heritage of social justice and service to the poor and marginalized, many Catholic law schools have extensive programs and clinics which expose students to injustice and encourage them in various ways to pursue public interest career paths. In light of the overwhelming pressures, it seems that Catholic schools should be satisfied if even a small percentage of students devote their careers to public service and the large majority emerges from law school with at least some commitment to *pro bono* service. Isn't that enough?

This essay suggests that the heart of the mission of a Catholic law school requires more. Catholic law schools should aim to provide students with at least the opportunity to reflect on how faith traditions might provide a robust and profound intellectual and cultural resource which can inform commitments to justice while working in any career—even in the course of ordinary day-to-day legal work for large companies.

Part I describes a few of the cultural and professional obstacles which have for the most part blocked many Catholic law schools from drawing robust connections between faith and justice in their curricula and programs. Part II describes the path that many Catholic law schools have chosen in response to these obstacles, to draw an *implicit* connection between faith and justice; and discusses why they should consider moving toward a more *explicit* connection. Part III outlines a few practical suggestions, based in large part on our experience at Fordham University School of Law, for how to implement a more explicit connection between

2. For the part of the story which grapples with how to work for justice from the 34th floor, see Amelia J. Uelmen, *Can a Religious Person Be a Big Firm Litigator?* 26 FORDHAM URB. L.J. 1069 (1999) (discussing a very junior attorney's efforts to integrate principles of Catholic Social Thought into various challenges encountered in the course of day-to-day large firm litigation practice). For a few practical suggestions on avoiding "golden handcuffs," see Amelia J. Uelmen, *One Case at a Time: On Being a Catholic Lawyer*, in PROFESSIONS OF FAITH, LIVING AND WORKING AS A CATHOLIC 55-66 (Martin & Langford eds., 2002) (pinpointing demands on young associates' time as the biggest challenge to maintaining a commitment to social responsibility).

faith and justice in the law school curricula, faculty colloquia and programs.

I. CULTURAL OBSTACLES TO CONNECTING FAITH AND JUSTICE

A. *The Cultural "Wall" of Separation between Religion and Professional Life*

A common initial reaction to proposals for drawing tighter connections between faith and professional life is to query: "Isn't that unconstitutional?" It is probably fair to say that in drafting the First Amendment—"Congress shall make no law respecting an establishment of religion"³—the founders were not especially concerned about the influence of religious values in the private, non-governmental work context. The overarching purpose of the United States Constitution and the Bill of Rights was to articulate the powers and limitations of the federal government, not to limit the actions of private citizens.⁴ Especially in the private sector, the real issue appears to be more cultural than legal. Perhaps the core concern about integrating religious values into one's professional life is whether it is a good idea to do so in our pluralistic society.

Often the underlying assumption is that non-religious philosophical values systems when applied to professional decisions are in some sense "neutral," and therefore not up for debate. Professionalism, the argument goes, requires lawyers to take a "neutral" approach to their work, free of external group identifications, including their religion, in order to identify and work with the rule of law.⁵ According to Professor Sanford Levinson, professionalism requires "the 'bleaching out' of merely contingent aspects of the self, including the residue of particularistic socialization that we refer to as our 'conscience.'"⁶

The professionalism project has undoubtedly shaped legal education and our perceptions about the extent to which integrating religious values into the substantive curriculum is appropriate or even permissible. In the "ordinary religion of the law school classroom," as Dean Roger Cramton

3. U.S. CONST. amend. I.

4. See generally Amy Uelmen, *Isn't That Unconstitutional? Religion and Professional Life in the U.S. Today*, 43 LIVING CITY 12-13 (January 2004) (LIVING CITY is the Focolare Movement's magazine of religion, culture and dialogue).

5. Russell G. Pearce, *The Jewish Lawyer's Question*, 27 TEX. TECH L. REV. 1259, 1261 (1996) (setting out and critiquing the "professional project" in which lawyers are fungible, and thus should not permit their religion to intrude on their professional role). See also Russell G. Pearce, *Jewish Lawyering in a Multicultural Society: A Midrash on Levinson*, 14 CARDOZO L. REV. 1613, 1629 (1993) ("rule of law implies that the quality of lawyering and of justice an individual receives does not depend on the group identity of the lawyer or judge.").

6. Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 CARDOZO L. REV. 1577, 1578 (1993).

put it, "[s]ince the lawyer is engaged in the implementation of the values of others . . . [he or she] need not be concerned directly with values questions."⁷ Instead, the lawyer's primary task "is that of the craftsman or skilled technician who can work out the means by which the client or society can achieve its goals."⁸

B. Law School is Both Too Late and Too Early to Discuss Values

In addition to professionalism's efforts to "bleach out" "merely contingent aspects of the self" such as religion, other cultural perspectives on the role of values in graduate education make it especially difficult to consider how religious perspectives might inform one's commitment to justice.

On one hand, even if the curriculum itself allowed room for discussion of values, some consider graduate school simply too late to engage in such an endeavor. By the time students start law school, the argument goes, their values have been fully formed and are not likely to change.⁹ In its initial development, professional education drew a sharp distinction between undergraduate and graduate levels. As Professor George Marsden observed in his history of the professional schools at Johns Hopkins, "administrators could refer religious supporters to their concern for the morality and even the religious life of undergraduates," while graduate education was established "on a new professionalized basis with almost no reference to religious concerns."¹⁰ Similar patterns are evident in many religiously-affiliated law schools today.

On the other hand, push-back from the students in response to discussions of the larger values that drive the legal system indicates that they think it may be too *early* to engage in moral reflection. Heightening their sense that their role as lawyers is to implement the values of others is a certain "humility" in young adults who are hesitant to make value judgments, and even more reluctant to expose such judgments to others. As students imagine their stance as first year associates, they think: "who am I to challenge the values judgments of others with more experience? It's not my place to say anything."

An informal poll from my Fall 2002 large section of Professional Responsibility illustrates this point. Discussing the lawyers' roles in the Enron scandals, we had zeroed in on Vinson & Elkins' failure to identify its

7. Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247, 250 (1978).

8. *Id.*

9. Russell G. Pearce, *Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 LOY. U. CHI. L.J. 719, 732-35 (1998) (discussing and challenging the view that "the ethical capacity of adults is relatively static").

10. GEORGE M. MARSDEN, *THE SOUL OF THE AMERICAN UNIVERSITY: FROM PROTESTANT ESTABLISHMENT TO ESTABLISHED NONBELIEF* 154 (Oxford 1994).

own conflict of interest with the client, because it was essentially evaluating its own work. From a doctrinal perspective, it was a case on the edge; it might have technically fit within the rules, but a prudential eye would have caught the potential for clouded judgment and alerted the firm. I presented the students with this scenario: the partner says to you, a fairly junior associate, that the client would really like the firm to take on this evaluation; and it would be good for everyone's billable hours if you could come up with a way around the conflict of interest rules. After doing some research, you have some serious concerns that an overly technical reading of the rules could eventually lead to problems. What determines the parameters of your research memo to the partner—your own judgment, or the answer that the partner wants? A hefty 85% of the class answered: do what the partner wants.

So in a sense, we are not even close to the point of talking about how faith commitments might inform the nuances of devotion to the common good. As Professor Russell Pearce suggests, the best place to start might be with a new Model Rule 1.0—"Lawyers are Morally Accountable."¹¹

II. AN EXPLICIT CONNECTION BETWEEN FAITH AND JUSTICE: WHY ROCK THE BOAT?

Given the formidable cultural, professional, and pedagogical obstacles, it is not surprising that the mission of many Catholic law schools is framed in terms of an implicit rather than explicit connection between faith and justice. Faith commitments may be welcomed to the extent that they fuel social activism and inspire a commitment to public service. And even for those law students attracted to the private sector, either by interest or by the need to pay off student loans, religious values may spur them to a healthy commitment to make *pro bono* legal service a priority throughout their career.

Catholic law schools, and Jesuit law schools in particular, could find solace in a surface reading of the observation by Fr. Hans Peter Kolvenbach, the Superior General of the Jesuits: "[s]olidarity is learned through 'contact' rather than through 'concepts.'"¹² In many law schools, well-developed clinics give students an opportunity to provide legal service to those in need as they develop their skills. Outreach programs provide students with myriad opportunities for "direct experience" and "personal

11. Russell G. Pearce, *Model Rule 1.0: Lawyers are Morally Accountable*, 70 *FORDHAM L. REV.* 1805 (2002).

12. Peter Hans Kolvenbach, S.J., *The Service of Faith and the Promotion of Justice in American Jesuit Higher Education*, Keynote Address at the Santa Clara University Bannan Center for Jesuit Education Justice Conference (Oct. 6, 2000) at http://www.scu.edu/news/attachments/kolvenbach_speech.html. See generally *After Justice*, *CONVERSATIONS ON JESUIT HIGHER EDUCATION* n.19 (Spring 2001) (essays reflecting on Fr. Kolvenbach's October 2000 address).

involvement with innocent suffering, with the injustice others suffer."¹³ In fact, numerous students will reflect that it was just such "contact" that brought them to law school, and they appreciate the forums that help them keep their commitments alive during their legal education. Providing opportunities for "contact," and perhaps even fostering the solidarity such contact generates, seems to be the most that can reasonably be expected of a law school in fulfilling its mission "in the service of faith and the promotion of justice."¹⁴

Further, for the reasons described above, many in law schools with a religiously pluralistic faculty and student body may find an implicit rather than explicit connection between faith and justice especially attractive because they perceive this path to be less divisive. Some law faculty members are fearful, or at least uncomfortable, with an explicit discussion of how religious values might be integrated into the substantive legal curriculum. Some perceive that such discussions will result in one's school being associated with an aura of religious indoctrination.¹⁵

13. Kolvenbach, *supra* note 12. See also Deborah Rhode, *Cultures of Commitment, Pro Bono for Lawyers and Law Students*, 67 *FORDHAM L. REV.* 2415, 2420 (1998):

Because lawyers occupy such a central role in our governance system, there is also particular value in exposing them to how that system functions, or fails to function, for the have nots. Pro bono work offers many attorneys their only direct contact with what passes for justice among the poor. To give broad segments of the bar some experience with poverty-related problems and public-interest causes may lay critical foundations for change.

See also Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 *FORDHAM L. REV.* 1929 (2002).

14. Kolvenbach, *supra* note 12. See, e.g., Jeffrey S. Brand, *Jesuit Law Schools and the Pursuit of Justice: Unique Opportunities, Unique Responsibilities*, 19 *CONVERSATIONS ON JESUIT HIGHER EDUCATION* 28, 31-33 (Spring 2001) (describing the University of San Francisco School of Law programs for ethical training, street law, service learning community service). See also Christopher Wolfe, *The Ideal of a (Catholic) Law School*, 78 *MARQ. L. REV.* 487, 494 (1995) (describing and critiquing the "social-justice model" for legal education which defines what is distinctive about a Catholic law school as "that it acts on the social justice teachings of the Church. Thus, it would, for example, offer clinical legal services for the poor and marginalized and make an effort to increase educational opportunities for the poor and minorities and expand the diversity of its own faculty and students."); David K. DeWolf & Robert John Araujo, *And God's Justice Shall Become Ours: Reflections on Teaching Law in a Catholic University*, 11 *REGENT U. L. REV.* 37, 41 (1998-1999) (critiquing descriptions of the mission of legal education at a Jesuit University as "rigorous academic work that cultivates and challenges the mind, care for the whole person; and, a commitment to service and social justice;" these elements may be laudable, but they are indistinguishable from the educational mission of many other secular schools).

15. See, e.g. Daniel Gordon, *Ex Corde Ecclesiae: The Conflict Created for American Law Schools*, 34 *GONZ. L. REV.* 125, 155-56 (1999):

If the law schools change their curricula and teaching methods to conform to known truth, doctrinal communicating pedagogy, the schools would be undermining the competency expectations of *Ex Corde Ecclesiae*. To remain competent learning experiences and not oppose Catholic moral teaching duties, the law schools would have to become independent.

In contrast, few will quibble with an agenda that allows room for law students to draw on religious values to foster an appreciation for public interest legal work and to enter practice with a healthy commitment to *pro bono*. Some may even have programs or courses that acknowledge a more fluid and inclusive "spiritual" dimension that skirts the potentially divisive impact of drawing explicit connections to organized faith communities and traditions.¹⁶ An implicit connection between faith and justice with sincere dedication to providing students with opportunities for "contact" with injustice would seem to be the smoothest course for legal education. Why rock the boat?

Because unless such experiences of "contact" are firmly anchored in intellectual "concepts" which can sustain and support a commitment to justice in a broader context, young lawyers will find themselves adrift. Equating a commitment to justice with *pro bono*, public interest law and no more leaves many practicing attorneys at a loss for how to integrate into their day-to-day work any notions of justice informed by values other than those of the market.

Certainly *pro bono* or any kind of commitment to the public good should be encouraged. Many attorneys live out their faith commitments in heroic dedication to public interest and *pro bono* work, and they embody

16. For an example of how efforts to integrate "spirituality" may be distinguished from those that integrate "religion" see, e.g., Calvin C. Pang, *Eyeing the Circle: Finding a Place for Spirituality in Law School Clinic*, 35 WILLAMETTE L. REV. 241, 245 (1999):

To clarify, "spirituality," as used here, carries a meaning distinct from religion. . . . religion is a man-made instrument that is often organized and institutionalized for the ostensible purpose of nurturing the spiritual lives of its believers. But religion is not spirituality. In fact, religion can be dispiriting, and history is replete with stories of great evil done in the name of religion. While religion waxes and wanes, spirituality remains constant, always with us even if we choose not to give it attention. Spirituality may form the heart of a religion, guiding its adherents; but, as defined in this Article, it is not religion.

See also Charles Senger, *Spirituality in Law School*, 81 MICH. BAR J. 44 (Dec. 2002) (discussing various ways in which law professors have integrated spirituality into the law school curriculum). For a description of the roots of self-identification as "spiritual, but not religious," see, e.g., ROBERT C. FULLER, *SPIRITUAL BUT NOT RELIGIOUS: UNDERSTANDING UNCHURCHED AMERICA* 5 (Oxford U. Press 2001):

Before the twentieth century the terms religious and spiritual were used more or less interchangeably. But a number of modern intellectual and cultural forces have accentuated differences between the "private" and "public" spheres of life. The increasing prestige of the sciences, the insights of modern biblical scholarship, and greater awareness of cultural relativism all made it more difficult for educated Americans to sustain unqualified loyalty to traditional religious institutions. Many began to associate genuine faith with the "private" realm of personal experience rather than the "public" realm of institutions, creeds, and rituals. The word spiritual gradually came to be associated with the private realm of thought and experience while the word religious came to be connected with the public realm of membership in religious institutions, participation in formal rituals, and adherence to official denominational doctrines.

the ideals of service at the heart not only of many religious traditions, but also of how many would like to envision the legal profession.

However, this vision of justice can be easily compartmentalized. The reality is that full-time public interest jobs are rare. While most law firms do allow time for some commitment to *pro bono* projects for the indigent and non-profit organizations, these take up a small sliver of most attorneys' day-to-day work. What happens as a consequence? Concern for the public interest can be marginalized to a particular sector of practice. *Pro bono* can become a small bubble to ease one's conscience while working unquestioningly within larger structures of injustice.¹⁷ Except for that distinct sliver of the practice, and those generally tiny projects, attorneys generally work under the professional credo that "my job is to do what the client wants"—or worse, "do what the partner wants"—regardless of the impact on the common good. In general, lawyers worry much less about their myopic commitments to their clients' interests because in the grand scheme of the profession, they rely on public interest attorneys to tinker with the system and balance it out.

When it comes to analyzing the implications of ordinary day-to-day work, many lawyers lack a robust intellectual framework which would help to challenge, or at least think about, how their work impacts the common good and the poor.¹⁸ For a few sensitive and inquiring souls, direct contact with poverty and injustice may be sufficient to provoke the kind of intellectual inquiry and moral reflection that will equip them for a probing structural critique. But many law students, feeling the tug of the competitive drive for success and security, or even just the burden of crushing debt, will set aside the critique, and latch onto the initial comfort of compartmentalizing their commitment to justice. And for many, as they put in the long and grueling hours that the legal profession often demands, their horizons and their possibilities for actual contact with injustice narrow considerably.

How might Catholic law schools respond to the challenges of today's legal profession and the dark side of professionalism? A first step would be to acknowledge that social action and socially relevant work, while

17. For a more extensive discussion, see Russell G. Pearce, *Lawyers as America's Governing Class: The Formation and Dissolution of the Original Understanding of the American Lawyer's Role*, 8 U. CHI. L. SCH. ROUNDTABLE 381 (2001); Russell G. Pearce, *Retreat of the Elite: How Public Interest and Pro Bono Undermine Business Lawyers' Commitment to the Public Good*, 23 AM. LAW. 79 (2001).

18. See Pope John XXIII, *Pacem in Terris* n. 153 (1963) ("it happens in many quarters and too often that there is no proportion between scientific training and religious instruction: the former continues and is extended until it reaches higher degrees, while the latter remains at elementary level."). See also J. Bryan Hehir, S.J., *Can the Church Convincingly Engage American Culture?*, CHURCH 5, 8 (Spring 2004) (discussing "the abiding gap between secular skills and the capacity for relating moral and religious principles and insight to secular knowledge and competency.") (CHURCH is the quarterly of the National Pastoral Life Center).

formative, vitally important and necessary, do not, as Fr. Kolvenbach observed, "add up to the full character" of a Catholic law school: "they neither exhaust its faith-justice commitment nor really fulfill its responsibilities to society."¹⁹ When students emerge from law school without at least the opportunity to begin to draw out, with "concepts," the *explicit* connections between faith and justice, we do a disservice to them and to the profession as a whole.

III. PRACTICAL SUGGESTIONS FOR DRAWING AN EXPLICIT CONNECTION BETWEEN FAITH AND JUSTICE

Given the constraints of the "ordinary religion of the law school classroom," how might one get the conversation started? This opens the door to difficult, and for some schools, explosive tensions. Thinking especially of what might be helpful in Catholic law school environments which are somewhat secularized, and in which Catholic students may not make up the majority, the curricular and programmatic ideas which follow are interlaced with three suggestions for setting an inclusive and inviting tone: first, seek out opportunities for dialogue with other religious traditions and with other disciplines; second, present students with "witnesses"—examples and experiences of lawyers and academics who have drawn an explicit connection between faith and justice; finally, tempting as it may be in a law school environment to focus exclusively on programs or projects which implement concern for social justice and the preferential option for the poor, also hold tight to the intellectual components of religious reflection.²⁰

19. Kolvenbach, *supra* note 12.

20. Many of the suggestions which follow emerge from our work at the Fordham University School of Law Institute on Religion, Law & Lawyer's Work. Fordham, a Jesuit Law School whose motto is "in the service of others," has long boasted of a robust commitment to public service, and sponsored a rich array of volunteer opportunities through which students come into "contact" with injustice. Since 1991, its Public Interest Resource Center has acted as a clearinghouse for student-initiated *pro bono* and community service projects. Every year, 700 students participate in some form of service to the poor and those of limited means in such areas as domestic violence, unemployment, housing, death penalty advocacy, family court mediation, immigration, police misconduct, environmental advocacy, and community service. Through the teaching, scholarship and service of the Louis Stein Center for Law and Ethics, Fordham Law School also expresses a long-standing commitment to integrating ethical and moral perspectives in legal practice, legal institutions, and the development of the law generally. Through the "Stein Scholars" program and public interest seminar, the school makes a concerted effort to create an encouraging environment for students to pursue a career in public interest law. Notwithstanding this deep and substantial commitment to public service, Fordham also saw the potential to encourage more systematic reflection on how religious values may inform a commitment to justice. In 1997 and 1998, Professor Russell Pearce, who is Jewish, brought together scholars, theologians, and practicing lawyers for what proved to be groundbreaking inter-faith conferences which laid the theoretical and practical foundations for what is now considered the "religious lawyering movement." Building on this foundation, under the

A. Faith & Justice in the Law School Curriculum

One area in which most Catholic law schools, in the words of one dean, "do poorly," is in drawing an explicit connection between faith and the law school academic curriculum.²¹ For myriad reasons, the notion that there might be room in the law school curriculum to present religiously grounded worldviews as a competing cultural framework which can inform the law and legal structures has been largely unexplored.²² Recently,

leadership of Dean John Feerick, in January 2001, Fordham Law School opened the Institute on Religion, Law & Lawyer's Work, dedicated to developing tools—curricula, scholarship, and programs—for students, faculty and practicing lawyers to reflect on the explicit connection between their faith and substantive areas of practice and teaching. See generally Russell G. Pearce & Amelia J. Uelmen, *Religious Lawyering in a Liberal Democracy: A Challenge and an Invitation*, 55 CASE W. RES. L. REV. at nn. 44 & 55 (forthcoming Fall 2004, manuscript on file with the author).

21. See Nicholas P. Cafardi, *Catholic Law Schools and Ex Corde Ecclesiae, Or What Makes a Law School Catholic?*, 33 U. TOL. L. REV. 7, 15 (2001), analyzing how Catholic law schools fare on the criteria in *Ex Corde Ecclesiae*, "to reflect, in the light of the Catholic faith, on the treasury of human knowledge":

Strictly speaking, this would require that our faculty and our students bring a Catholic perspective to the legal issues they discuss. It also means that our law review and the published scholarship of our faculty in other reviews would manifest this same Catholic perspective. In other words, we would be Catholic in our classrooms and Catholic in our scholarship. I suspect that, on this criterion, this law school and most other Catholic law schools do poorly.

Not all would agree that the curriculum of a religiously affiliated law school need differ from any other mainstream law school. See, e.g., Steven M. Barkan, *Jesuit Law Schools: Challenging the Mainstream*, 3 CONVERSATIONS ON JESUIT HIGHER EDUC. 6, 10-11 (1993):

[To be a part of the Jesuit educational tradition] need not mean that students are taught a distinctively Catholic approach to law . . . or that the faculty produces legal scholarship from a Catholic perspective . . . or that students and faculty are predominantly Catholic Most importantly, [it] need not mean that the structure of the curriculum, the standards for scholarship, the diversity of students and faculty, and other objective attributes are significantly different from those of any other mainstream law school.

22. See, for example, William Stuntz, *Christian Legal Theory*, 116 HARV. L. REV. 1707, 1721 (2003) (Review of M. McConnell, R. Cochran, A. Carmella, eds., *CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT*, 2001), critiquing a recent collection of essays on Christianity's contribution to legal theory:

Why the ordinariness? Why, when the topic is legal theory, is Christianity so conventional? Christianity is a theory of everything, and "everything" includes law, so Christianity ought to have something to say about law. And Christianity is different from other theories of everything, particularly the non-theistic theories that dominate in universities today. Among other things, Christianity holds that "good" and "bad" find their definition not in men's and women's choices but in God's character. One might think that would have a fairly powerful impact on how Christians see the law of contracts, or securities regulation, or criminal procedure, or anything else in the wide world of legal study. Yet the differences revealed in *Christian Perspectives* are mild, sometimes nonexistent. Non-Christians might be excused for wondering why the transcendent God seems to think like a typical American law professor. What gives?

however, several scholars have been working to develop both scholarship and curricula to probe how religious values and perspectives may contribute to the chorus of various currents of critical legal theories which expose how the professionalism project's seeming "neutrality" often has its own surprisingly well-defined agenda. Some have also begun the work of exploring how religious perspectives may offer positive and distinct models for legal theory. What follows are a few initial ideas for their potential impact on curricula.

1. Ethics: The Required Professional Responsibility Survey

Even with all its warts and challenges, the required professional responsibility curriculum can become an opportunity to openly probe the limitations of the professionalism project and to explore the surprising-for-some suggestion that it may be legitimate to bring one's own religious perspective to bear on professional decision-making, counseling, and judgment.

The beginning of the course could be one place to probe the topic of role morality. This might help move at least some of the students toward acknowledging that no approach to the profession is "neutral" and to think critically about what values would inform their approach. When I presented my Fall 2002 class with various descriptions of the professional role (for example, lawyers as advocates, lawyers as guardians of the public interest) and with various critiques (feminist, critical race, and a model in which religious values could inform one's approach and choices), I had a large group – about 23 out of 107 (20%) identify with the religious model. In choosing readings to describe the religious model, particularly when the student body is largely non-Catholic, articles about lawyering informed by Catholic Social Thought can be presented side-by-side with articles about how Jewish, Muslim, or other the religious values of other traditions might inform the practice.²³

Second, show them live examples, "witnesses." Give the students opportunities to meet, listen to, and talk with, attorneys who take their faith seriously, and who struggle with the questions that religious values and traditions pose for their particular practice area. For a pluralistic student body, a panel of lawyers from different religious traditions can form the basis for an enriching and inclusive exchange. These discussions can illustrate that attorneys who wrestle with the hard questions posed by

See generally GEORGE M. MARSDEN, *THE OUTRAGEOUS IDEA OF CHRISTIAN SCHOLARSHIP* (Oxford U. Press 1997), especially chapter four, *What Difference Could It Possibly Make?* and chapter five, *The Positive Contributions of Theological Context*.

23. For readings which explore how religious values may be integrated into various areas of practice, see ALLEGRETTI, *supra* note 1; Pearce, *The Jewish Lawyer's Question*, *supra* note 5; Uelmen, *Big Firm Litigator*, *supra* note 2; Uelmen, *One Case at a Time: On Being a Catholic Lawyer*, *supra* note 2; and Azizah al'Hibri, *On Being a Muslim Corporate Lawyer*, 27 TEXAS TECH L. REV. 947 (1996).

conflicts between their "personal" morality and what seem to be their clients' desires have not only retained their jobs, but have also developed the kind of judgment required of anyone who assumes a position of responsibility.

If possible include not only those seasoned by years of practice, but also attorneys with relatively little experience and power in law firm hierarchical structures. For law students—not generally described as risk-takers—a few words from a near-peer who took a few steps off the beaten path and was not instantly fired will speak volumes more than any lecture.²⁴

Finally, the survey in professional responsibility can also be a forum for drawing out the explicit intellectual connection between faith commitments and one's approach to the legal profession. For example, discussions about *pro bono* legal service to the community can include caveats about its potential to become a deceptive salve to ease one's conscience while working unquestioningly within larger structures of injustice.

With regard to substantive topics in ethics, Catholic Social Thought's discussions of the common good and of solidarity can help to recast the debates about client-centered counseling, and to sharpen a critique of the extent to which some approaches to counseling tend to focus myopically on economic dimensions rather than the full array of human interests; and how even the economic dimension tends to focus on short-term rather than long-term interests. Catholic Social Thought's articulation of the respect to be accorded to the dignity of each person could also enrich discussions about the moral limits to the principle of zealous advocacy. Articles on each of these can be tucked into the reading on service to corporate clients and on client counseling.²⁵

2. *Religious Lawyering Seminars*

Several law schools further the conversation about the extent to which religious values may inform a lawyer's approach to the profession and the practice in the context of specialized seminars in "religious lawyering" which could be categorized either as legal ethics or as jurisprudence. Here, too, dialogue among faith traditions can make the conversation more open and less threatening for a pluralistic student body. To team up with a

24. As Pope Paul VI observed, people today listen "more willingly to witnesses than to teachers, and if [they] do listen to teachers, it is because they are witnesses." Pope Paul VI, *Evangelii Nuntiandi* n. 41 (1975) (On Evangelization in the Modern World).

25. Readings on these topics included a text by Thomas L. Shaffer, *The Legal Ethics of Radical Individualism*, 65 TEX. L. REV. 963, 963-70, 976-78 (1987) (included in DEBORAH RHODE & DAVID LUBAN, LEGAL ETHICS 466-74 (2001); Uelmen, *Can a Religious Person Be a Big Firm Litigator?*, *supra* note 2 at 1092-1102 (discussing the application of principles of Catholic Social Thought in the context of corporate counseling).

faculty member of a different religious tradition is perhaps one of the best ways to insure a rich and inclusive conversation.²⁶

In fact, as professors and students articulate for those outside their own tradition their beliefs and their sense of connections between religious values and legal practice, one may be surprised to find that some of the most significant and interesting "fault" lines appear *within* any given religious tradition. The course may help students not only to appreciate the possibility for common ground and dialogue with religious traditions other than their own, but also to situate themselves within the varieties of their own traditions.²⁷

The initial part of the class may be dedicated to clearing the ground of perceptions, biases, and the cultural "overbuilding" the constitutional wall of separation, so that students can begin to imagine the ways in which religious values can be integrated into the practice of law. In the second part, one may wish to explore the distinctive perspectives of different religious traditions on ethics and justice. Even more than in a required ethics class, the seminar discussions give students the opportunity to tussle with the argument that all views of justice are value laden—so there should be room for a variety of worldviews, and to draw out ways in which application of alternative values need not conflict with the rule of law nor with provisions of professional codes of ethics.

Specialized seminars may also explore similar jurisprudential themes against the backdrop of specific religious traditions. For example, many Catholic law schools offer seminars in Catholic Social Thought and the Law, perhaps one of the best ways to help students to focus on the intellectual component, to draw out radically different cultural perspectives, and to discuss the implications for practice.

For law professors with limited expertise in the breadth and depth of Catholic Social Thought, team-teaching with a professor from the philosophy or theology department is one way to work around the problem,

26. For ideas about the "religious lawyering" seminar, I am deeply indebted to Howard Lesnick, one of the path-breakers in the development of "religious lawyering" scholarship, who has taught the Religious Lawyering Seminar for a number of years at the University of Pennsylvania Law School. After team-teaching with Lesnick, whose background is Jewish, at both Fordham (Spring 2003) and Penn (Fall 2003), I am enamored of an inter-faith team-teaching approach to this course, as it can provide students with a living example of how religious differences may serve as a vehicle for mutual respect, understanding, and enrichment rather than division—in both religiously affiliated and secular schools. For a tiny sample of Lesnick's profound "religious lawyering" scholarship, see Howard Lesnick, *No Other Gods: Answering the Call of Faith in the Practice of Law*, 18 J. L. & RELIGION 459 (2003); Howard Lesnick, *The Religious Lawyer in a Pluralist Society*, 66 FORDHAM L. REV. 1469 (1998).

27. Howard Lesnick deserves credit not only for this observation, but also for his example in drawing out during classroom conversations the beauty and depth of the variety within religious traditions.

and this approach can also present a positive example of lawyers in dialogue with other disciplines.²⁸

3. *Explicit Connections between Faith & Justice Pervasively*

As discussed above, it is now not so rare to encounter legal scholarship which works to draw out more explicit connections between faith and various legal disciplines. To paraphrase anthropologist Clifford Geertz, such scholarship defines human culture not so much as customs and institutions but as interpretations, "not just how people behave, but how they look at things."²⁹ Religiously grounded legal scholarship rests on "the conviction that the values one holds are grounded in the inherent structure of reality, that between the way one ought to live and the way things really are there is an unbreakable inner connection."³⁰

Such scholarship holds extraordinary promise for every aspect of legal theory, and therefore every course in the law school curriculum. If Catholic law schools hope to provide students with the opportunity to reflect on how faith traditions might provide a robust and profound intellectual and cultural resource which can inform commitments to justice in any area of legal practice, the intellectual project of drawing explicit connections between faith and justice pervasively, throughout the curriculum, should become the heart of the mission.³¹

28. Fordham's Spring 2004 seminar in Catholic Social Thought & the Law was team-taught by myself and the chair of Fordham University's Philosophy Department, Rev. Joseph Koterski, S.J.. Villanova Law School takes a similar approach.

29. CLIFFORD GEERTZ, *ISLAM OBSERVED: RELIGIOUS DEVELOPMENTS IN MOROCCO AND INDONESIA* 97 (Yale U. Press 1968).

30. *Id.*

31. Villanova Law School has been especially systematic and creative in its efforts to encourage scholarship on how Catholic Social Thought might influence every area of legal theory. The papers from Villanova's October 2003 Conference on *Catholic Social Thought and the Law*, which cover a wide range of legal disciplines, will serve as an invaluable resource to anyone interested in exploring Catholic Social Thought pervasively. See Mark A. Sargent, *What's Law Got to Do with It? Introduction to the Symposium on Catholic Social Thought and the Law*, 1 VILL. J. OF CATHOLIC SOCIAL THOUGHT 201 (2004). For the Dean of Villanova's map for developing the Catholic mission of the law school, see generally Mark A. Sargent, *An Alternative to the Sectarian Vision: The Role of the Dean in an Inclusive Catholic Law School*, 33 U. TOL. L. REV. 171 (2001). For other discussions by legal academics who see the promise of scholarship on faith and justice pervasively, see, e.g., Daniel J. Morrissey, *The Catholic Moment in Legal Education*, 78 MARQ. L. REV. 413, 421 (1995):

Almost every course in substantive fields of law involves issues of social justice that could be examined from Catholic and other sources . . . even more prosaic subjects like corporate law and wills and trusts could include considerations of how moral duties involving societal or family resources should be expressed in law.

See also Joseph P. Daoust, S.J., *Legal Education in a Catholic University: Mission and Possibilities*, 78 U. DET. MERCY L. REV. 27, 33 (2000) (discussing how in a property course a Catholic perspective may inform a description of "how the very processes of the common

Here, too, is the potential not only for a rich dialogue with other religious traditions, but also for dialogue with other disciplines. For example, various disciplines—psychology, sociology, anthropology, and philosophy—offer myriad arguments and in depth research to challenge the tendency of some legal theories to exaggerate the role and importance of economic analysis. In a sense, religious perspectives on legal theory can be seen as part of an inter-disciplinary chorus which can challenge some aspects of legal theory to move beyond its fascination with seemingly simple and objective methods for measuring and balancing—toward a more honest and complete cultural assessment.³²

B. Faculty Colloquia on Faith & Justice

This brings us to the elephant in the living room. The key "witnesses" for the intellectual endeavor of drawing out the explicit connections between faith and justice are legal scholars who themselves take seriously the idea that religious perspectives might indeed, to paraphrase Geertz, describe "the inherent structure of reality" and thus inform "the way one ought to live." The crucial question for Catholic law schools today is *who* will draw out the explicit connections between faith and justice? If the "ordinary religion of the law school classroom" is to proceed as if students need not be concerned directly with values questions, the ordinary credo of law school faculties is that while a sociological account or critique of religious belief is acceptable, scholarship from within a faith perspective is suspect at best. Finding law faculty who have the background, the interest, and the guts to draw out the intellectual connections—"hiring for mission"—is perhaps the most daunting task for any school that might consider defining their mission as described above.³³ In this brief essay, I will simply acknowledge the elephant, and flag as a topic for much more extensive analysis the ways in which sensitivity to inter-faith dialogue might ease some of the tensions inherent in hiring for mission.

But even in schools where hiring for mission is not on the near horizon, an ongoing series of faculty colloquia on religion and the law school can probe some of the tenets of the "ordinary religion of the law school classroom" and perhaps even acknowledge scholarship from within

law are rooted in the search for substantial social justice," in stark contrast to "libertarian notions of absolute individual property rights.")

32. See, e.g., Amelia J. Uelmen, *Toward a Trinitarian Theory of Products Liability* 1 VILL. J. CATHOLIC SOCIAL THOUGHT 603, 610-12 (2004) (discussing how Catholic Social Thought may inform robust critique of law-and-economics dominated products liability theories, and noting parallel critique in various disciplines).

33. See, e.g., Sargent, *An Alternative*, *supra* note 31, at 187-88 (discussing how Catholic identity includes having a "critical mass" of faculty whose Catholic identity will contribute to the mission).

a faith perspective as one of many contributions to a law school's interdisciplinary venture.³⁴

C. Programs Drawing an Explicit Connection between Faith & Justice

As discussed above, many Catholic law schools are not short on programs which expose students to injustice and provide them with opportunities to hone their legal skills as they work for change. What may be less evident in their approach is a more explicit connection to faith commitments. In the past few years, several Catholic law schools have stepped up their efforts to probe through lectures, workshops, and conferences, explicit connections between their faith traditions and their particular areas of practice.

The programs at Fordham's Institute on Religion, Law & Lawyer's Work run along two "tracks"—inter-faith and faith-specific. The inter-faith track includes conferences and lectures which bring together attorneys and scholars from different faith traditions so that they may appreciate both the differences in approach, as well as the potential for common ground across faith traditions. After two initial conferences which explored more generally the extent to which religious values might inform law practice,³⁵ the Institute now dedicates its annual inter-faith conference to probing the intersection of religious values with a particular area of practice.³⁶ Its

34. Since Fall 2001, Fordham's ongoing faculty colloquia on religion and the law school, have been fertile ground for exploring some of these questions. Voluntary participation and the opportunity to set for themselves the agenda of topics to be explored has attracted 25% of full-time law faculty to an open, honest, challenging and productive dialogue. Topics for discussion have included *Ex Corde Ecclesiae*, a study of how Fordham Law School has described its religious identity throughout its 100-year history; and various readings on how Ignatian spirituality might inform graduate, and specifically legal education.

35. The articles from the June 1997 Conference, *The Relevance of Religion to a Lawyer's Work*, are collected in 66 FORDHAM L. REV. no.4 (1998). For more background on the developments leading up to the conference, see Russell G. Pearce, *Foreword: The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 FORDHAM L. REV. 1075 (1998). The articles from the December 1998 Conference, *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent*, are collected in 26 FORDHAM URBAN L. J. no.4 (1999). See generally Pearce & Uelmen, *supra* note 20 at nn.26-35.

36. The papers from the January 2002 Conference, *Religious Values and Legal Dilemmas in Bioethics*, are published in 30 FORDHAM URBAN L. J. n.1 (2002). See Amelia J. Uelmen, *Foreword*, 30 FORDHAM URB. L. J. 5 (2002). The papers from the January 2003 Conference, *Religious Values and Poverty Law: Clients, Lawyers and Communities*, are published in 31 FORDHAM URB. L. J. n.1 (2003). See Amelia J. Uelmen, *Foreword*, 31 FORDHAM URBAN L. J. 1 (2003). The papers from the February 2004 Conference, *Religious Values and Corporate Decision-Making*, will be published in the FORDHAM JOURNAL OF CORPORATE AND FINANCIAL LAW (forthcoming Spring 2005). The February 2005 Conference will explore the topic *Strangers No Longer: Immigration Law & Policy in the Light of Religious Values*. See generally Pearce & Uelmen, *supra* note 20 at n.42.

three-part inter-faith speaker series also provides an opportunity for attorneys to explore topics of common interest.³⁷

The "faith-specific" track provides a forum for attorneys to delve into particular aspects of their own faith traditions. At this point the Catholic Lawyer's Program³⁸ and the *Jews & Justice* lecture series³⁹ are the most developed; at the moment we are working to expand a Christian Lawyer's Program, and to encourage promising developments in conversations for Muslim attorneys and students.

Even though these conversations might at times feel like a tentative work in progress, it could be helpful for students to observe the ways in which practicing attorneys work through the cultural obstacles and lay the groundwork to develop the "concepts" they need to integrate a faith perspective into the issues they face in particular areas of practice.

CONCLUSION

As one might guess, the charted course is neither easy nor smooth. But for the sake of those law students struggling to integrate their faith commitments into their legal careers, and for the sake of the legal profession, so in need of robust cultural and intellectual resources which can enrich a profound commitment to justice, it is well worth rocking the boat.

By developing the "concepts" which can break through the rigid compartmentalization of the professionalism project, students can discover their faith as an important resource to inform a substantive critique of many current professional trends, and to sustain a commitment to justice in all areas of practice.

37. Co-sponsored by the Auburn Theological Seminary and the Jewish Theological Seminar, recent themes for the annual series have included various faith perspectives on, "Religious Conflicts and Religious Freedom"; "Legal Ethics in a Post-Enron World: Religious Values as a Resource?"; "Religious Lawyering: Against the Tide?"; "Love of Neighbor and the Law"; and "Is There a Common Ground for Legal Ethics?" See generally Pearce & Uelmen, *supra* note 20 at n.37.

38. The Catholic Lawyers' Program was inaugurated in October 2001 with a lecture by esteemed theologian Avery Cardinal Dulles on *Catholic Social Teaching and American Legal Practice*. The lecture is published together with responses by Dean John Feerick and Jennifer Mone, Esq., at 30 *FORDHAM URB. L.J.* 277-303 (2002). Other events have touched on topics of whether it is appropriate to bring religious values into corporate counseling; the dilemmas Catholic lawyers face when handling divorce cases; Catholic teaching on work-life balance; and the role of lawyers and the legal system in the clergy abuse cases.

39. Distinguished speakers in the *Jews & Justice* lecture series have included Justice Aharon Barak, President of the Israeli Supreme Court on "Israel as a Jewish and Democratic State"; Alan Dershowitz on "Jewish Lawyers and Justice"; Michael Walzer on "Ethics of Warfare: Jewish Perspectives" as well as a panel to discuss Jewish and Christian perspectives on Mel Gibson's *The Passion of the Christ*.