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## Catholic Legal Education at the Edge of a New Millennium: Do We Still Have the Spirit to Send Forth Saints?

Randy Lee



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# Catholic Legal Education at the Edge of a New Millennium: Do We Still Have the Spirit to Send Forth Saints?

by Randy Lee\*

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### I. THE STATE OF CATHOLIC LEGAL EDUCATION

In a recent law review article, Professor Thomas L. Shaffer of Notre Dame Law School makes a haunting pronouncement about the state of church supported legal education in America: “Most — virtually all — religiously affiliated American law schools are secular.”<sup>1</sup> Shaffer goes on to suggest that perhaps only one religiously affiliated American law school embraces the challenge of inviting for its student body a community of students “who would have come to the Church to study law, who aim to go out from the Church to practice law and to return to the Church to figure out how to

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1. Thomas L. Shaffer, *The Erastian and Sectarian Arguments in Religiously Affiliated American Law Schools*, 45 STAN. L. REV. 1859, 1864 (1993) [hereinafter *Erastian and Sectarian Arguments*].

practice law.”<sup>2</sup> Such pronouncements are neither novel nor new. The point has also been clearly expressed by Professors Robert J. Araujo, Steven M. Barkan, and Leonard J. Nelson, III;<sup>3</sup> Professor Shaffer himself noted it as early as 1975.<sup>4</sup>

Professor Shaffer’s critique is not to be taken lightly. Although one might caution against judging others,<sup>5</sup> if anyone were called to judge Catholic law schools, it would be Professor Shaffer. Not only is Professor Shaffer preeminent in the bar,<sup>6</sup> in legal education,<sup>7</sup> and in the intersection of those two institutions with personal faith,<sup>8</sup> but much of his distinguished career has also been spent evaluating law schools.<sup>9</sup> Thus, when Professor Shaffer describes a problem of such magnitude, there must be something worth considering.

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2. *Id.* at 1861-63, 1871. Catholic law schools, of course, are not the only law schools being criticized. While Catholic law schools are being criticized for not being very good at being Catholic, law schools generally are being criticized for not being very good at being law schools. Teresa Stanton Collett, *Teaching Law as a Profession of Faith*, 36 S. TEX. L. REV. 109, 109 (1995).

3. Robert J. Araujo, S.J., *Legal Education and Jesuit Universities: Mission and Ministry of the Society of Jesus?*, 37 LOY. L. REV. 245, 249-51 (1991) (noting that only three Jesuit law schools publish materials that indicate strong Catholic purpose); Steven M. Barkan, *Jesuit Legal Education: Focusing the Vision*, 74 MARQ. L. REV. 99, 99 (1990) (stating that “most religiously-affiliated law schools are religious in official affiliation only; religion rarely works its way into the life of the law school”); Leonard J. Nelson, III, *God and Man in the Catholic Law School*, 26 CATH. LAW. 127 (1981); *see also* Lynn Buzzard, *Religiously Affiliated Law Schools: Macro-Dynamics in Contemporary Culture*, 78 MARQ. L. REV. 283, 284 (1995) (observing that at one Catholic law school, the “religious character was totally missing,” and most of the faculty “disdained” religion); Professor Shaffer, *The Catholic Tradition*, 22 VAL. U. L. REV. 669 (1988) [hereinafter *Catholic Tradition*].

4. Thomas L. Shaffer, *Christian Theories of Professional Responsibility*, 48 S. CAL. L. REV. 721, 721-22 (1975).

5. *See, e.g., Matthew 7:1-3; Romans 2:1-2. See also* JOHN MICHAEL TALBOT, *THE FIRE OF GOD* 157-58 (1987).

6. Professor Shaffer is a leading authority on professional responsibility for lawyers, having written extensively in the area. *See, e.g.,* THOMAS L. SHAFFER, *AMERICAN LAWYERS AND THEIR COMMUNITIES* (Stanley Hauerwas & Alasdair MacIntyre eds., 1991); THOMAS L. SHAFFER, *FAITH AND THE PROFESSIONS* (1987); THOMAS L. SHAFFER, *AMERICAN LEGAL ETHICS* (1985). He is also accomplished and published in the field of estates and trusts. *See* ASSOCIATION OF AMERICAN LAW SCHOOLS, *THE AALS DIRECTORY OF LAW TEACHERS 1995-96* 841 (1995) [hereinafter *DIRECTORY*].

7. Professor Shaffer served as the dean of Notre Dame Law School from 1971 through 1975. *DIRECTORY, supra* note 6, at 841. Furthermore, in addition to being a prolific scholar, he is a caring teacher and an eager mentor for colleagues. *See, e.g.,* Thomas L. Shaffer & Anthony J. Fejfar, *Wake the Nation: Law Student Insights Into the New Jerusalem*, 76 MARQ. L. REV. 767 (1993).

8. *See* Thomas W. Porter, *First Annual Journal of Law and Religion Award Ceremony*, 10 J.L. & RELIGION 277, 277-366 (1993/1994).

9. During his career, Professor Shaffer served on both the ABA Accreditation Committee and the AALS Executive Committee. *DIRECTORY, supra* note 6, at 841.

There is ample evidence to support his observations. The debates that currently dominate Catholic legal education appear to center on whether Catholic law school newspapers should be "so Catholic,"<sup>10</sup> and whether the crucifixes should remain on Catholic law school classroom walls.<sup>11</sup> If Catholic law schools are growing uncomfortable with even these basic signs of Catholicism, then perhaps the day to which Professor Shaffer alludes in his piece has come, when the "naive believer" would reflect on what Catholic law schools do and "wonder why the churches and religious orders that sponsor these schools bother to continue doing so."<sup>12</sup>

If we have, in fact, reached that day, then the damage we do is profound. Professor Shaffer stresses the need to teach Catholic law students to feel "commissioned" by their community: to "go with authority."<sup>13</sup> Rather than being lukewarm, they must walk "boldly" with an air of "infallibility," daring to be right and "prophetic."<sup>14</sup> Yet, in the face of such a need, we may well be teaching our students instead that they need to apologize for their Catholicism even within the Church itself. If that is indeed what we do, how can we continue doing so?

The year 1997 will mark the 500th anniversary of Saint Thomas More's entry to the bar.<sup>15</sup> One might well suggest that the appropriate tribute to this event would be to insure that Catholic law schools are training their students to walk in the image of the saint. Saint Thomas More lived in a nation where the state was at odds with the Church, and members of the Church chose to challenge the Pope<sup>16</sup>—a world not unlike our own. Yet, in a world full of turmoil, history tells us that More remained a man of integrity, charity, piety, intellect, and joy.

As a lawyer, More "gave every client true and friendly counsel with an eye to their advantage rather than his own, generally advising them that the cheapest thing they could do was to come to terms with their opponents."<sup>17</sup> As a judge in London, he often remitted his fees rather than burden parties unable to pay.<sup>18</sup> As a statesman, he provided to the world a vision of

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10. Todd A. Dickinson, *Students Angry Over Newspaper's Tone*, NAT'L JURIST, April/May 1995, at 12.

11. *Erastian and Sectarian Arguments*, *supra* note 1, at 1863-64.

12. *Erastian and Sectarian Arguments*, *supra* note 1, at 1867.

13. *Erastian and Sectarian Arguments*, *supra* note 1, at 1873.

14. *Erastian and Sectarian Arguments*, *supra* note 1, at 1875.

15. See MORE'S UTOPIA AND ITS CRITICS 173 (Ligeia Gallagher ed., 1964).

16. ROBERT BOLT, A MAN FOR ALL SEASONS (1962), *reprinted in* MORE'S UTOPIA AND ITS CRITICS 92-94 (Ligeia Gallagher ed., 1964) [hereinafter ROBERT BOLT].

17. Letter from Erasmus to Ulrich von Hutton, in *The Epistles of Erasmus, From His Earliest Letters to His Fifty-First Year* (Francis Morgan Nichols, trans.) (1962), *reprinted in* MORE'S UTOPIA AND ITS CRITICS 75 (Ligeia Gallagher ed., 1962) [hereinafter *Erasmus*].

18. *Erasmus*, *supra* note 17, at 75.

community life on a grand scale, modeled after the monastic life of his time,<sup>19</sup> and no doubt after the early days of his Church.<sup>20</sup>

More's life outside the bar never suffered for all his professional success. Throughout his life, he was faithful to family, friends, and God. Of his home life, it was said that with "kindness he rules his whole household, in which there are no tragic incidents, and no quarrels."<sup>21</sup> His friends said of him, "[i]f anyone requires a perfect example of true friendship, it is in More that he will best find it."<sup>22</sup> And as to his faith, he was described as "a steady adherent of true piety; having regular hours for his prayers, which are not uttered by rote, but from the heart."<sup>23</sup>

The image of a profession filled with such people is attractive. Still, one can anticipate at least three arguments in opposition to a goal of educating law students to practice in that image. First, one might argue that such a challenge is beyond the scope of even Catholic legal education today because the cold, analytical world of legal reasoning is anathema to the Christian virtue More represents. Thomas More himself would have disagreed, saying "[t]hat Reason is servant to Faith, not enemy."<sup>24</sup> To expand on More's argument, one could say first that law school undeniably sharpens one's ability to reason. Second, when reason is honestly shepherded toward finding truth, it will bring one closer to God. Third, as one comes closer to God, one will, like Saint Thomas More, reflect the virtues of Christ.<sup>25</sup> Thus, even today one could contend that lawyers like Thomas More could be produced if schools of reason placed students in an environment that honestly shepherded them toward truth.

One might argue that even if a Catholic law school were to commit its educational resources to such a goal, there are not enough students willing to accept the challenge for the school to survive economically.<sup>26</sup> Such a position may be addressed both scripturally and "practically." Scripturally, the concern invites as a response Christ's directive to "seek first the Kingdom of God and his righteousness, and all these [necessities] will be given you

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19. R. W. CHAMBERS, THOMAS MORE (1935), *reprinted in* MORE'S UTOPIA AND ITS CRITICS 116-17 (Ligeia Gallagher ed., 1964) [hereinafter R. W. CHAMBERS] (comparing More's UTOPIA to monastic life in More's time).

20. *Acts* 2:44-47; *Acts* 4:32-35.

21. *Erasmus*, *supra* note 17, at 74.

22. *Erasmus*, *supra* note 17, at 72.

23. *Erasmus*, *supra* note 17, at 77.

24. R. W. CHAMBERS, *supra* note 19, at 111.

25. I *John* 2:5-6.

26. See Thomas L. Shaffer & Robert E. Rodes, Jr., *A Christian Theology for Roman Catholic Law Schools*, 14 U. DAYTON L. REV. 5, 6 (1988); *Catholic Tradition*, *supra* note 3, at 671; Nelson, *supra* note 3, at 127.

besides."<sup>27</sup> The choices for Catholic legal education cannot be between a law school serving God, a law school making money, or no law school. For a Catholic law school, there are only two choices: a law school serving God, or no law school. If the exclusive concern is not to serve God,<sup>28</sup> the school in the end will not serve God, and the Catholic Church has no purpose in supporting institutions that do not do the Lord's work.<sup>29</sup> As Christ himself said:

No one can serve two masters. He will either hate one and love the other, or be devoted to one and despise the other. You cannot serve God and mammon.

Therefore I tell you, do not worry about your life, what you will eat, or about your body, what you will wear. Look at the birds in the sky; they do not sow or reap, they gather nothing into barns, yet your heavenly Father feeds them. Are you not more important than they?<sup>30</sup>

Thus, it is not legitimate for the Catholic Church to say that its legal education "product" will be defined by the student market. Its product must be defined by the parameters of the Faith, and the Church must trust that if the product is consistent with the Father's will, the Father will provide for it.

The recent success of Franciscan University of Steubenville is perhaps practical proof of this spiritual message. In 1974, the University of Steubenville, as it was then more subtly known, was a dying institution. Economic pressures abounded, both from within and without the University.<sup>31</sup> Spiritual concerns had given way to more "professional" concerns, and in an effort to retain students, campus life had become increasingly "permissive, individualistic, hedonistic, and riddled with drugs, alcohol, and sex."<sup>32</sup> That

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27. *Matthew* 6:33. Even to a Christian, Christ's words can ring hollow when faced with perceived dangers in the real world. But, as Professor Rodes says, "To live in the truth is to expose ourselves to risk. We are called to meet known evils at an unknown cost." Shaffer & Rodes, *supra* note 26, at 16.

28. This is not to suggest that being fiscally irresponsible is part of being Christian. It is to say, however, that while we are responsible with what has been entrusted to us, we are "not to rely on so uncertain a thing as wealth but rather on God, who richly provides us with all things for our enjoyment." I *Timothy* 6:17-20.

29. Shaffer & Rodes, *supra* note 26, at 6. Professors Shaffer and Rodes would add that "[t]he church, as legal education, is entrusted by God with the formation of people who will go out from legal education to be the presence of the church in the world." Shaffer & Rodes, *supra* note 26, at 12. The church must be "present in what we offer through our students and in print for the edification of the legal profession." Shaffer & Rodes, *supra* note 26, at 9.

30. *Matthew* 6:24-26.

31. FATHER MICHAEL SCANLAN, T.O.R., LET THE FIRE FALL 142-43 (1986) [hereinafter FIRE FALL].

32. *Id.* at 143.

year, rather than close the failing campus, the trustees selected a new president dedicated to shaping college life around “free praise of the Lord, spiritual gifts, commitments to one another’s welfare, and a life of prayer.”<sup>33</sup> The first practical effect of this was an expansion of Sunday morning Mass to one and a half hours to provide “extra time for singing, praise, intercession, and preaching,”<sup>34</sup> and the reorganization of student living into “houses” to promote prayer.<sup>35</sup>

If ever an approach seemed destined for failure, this was it. Yet, it did not fail. It worked. Although the road was difficult,<sup>36</sup> today Franciscan University is a viable, visible institution. The overflow for Sunday Mass has already required an addition to the chapel, and ultimately may require a much larger chapel.<sup>37</sup> The houses also create some of the students’ greatest bonds to the institution.<sup>38</sup> The Pope himself has said to Franciscan University, “I am very grateful to you.”<sup>39</sup> And while the spiritual aspect was working, the Lord provided the necessities. Today, Franciscan University “has been recognized as one of the best Catholic Universities in the country by *U.S. News and World Report*, the Templeton Foundation, *Barron’s*, *National Review*, and the *National Catholic Register*.”<sup>40</sup> The school’s future is just as promising. In 1995, almost ten thousand high school students attempted to register for the six thousand available slots at the school’s summer youth conferences.<sup>41</sup>

The message of Franciscan University is clearly not that the student harvest is too limited. If anything, it is that the harvesters are too few.<sup>42</sup> Certainly, one might attempt to distinguish the experience of Franciscan University because it is an undergraduate institution and because parents are better able to guide their reluctant children into an undergraduate program than a law school. Yet, one might argue as strongly that more mature law

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33. *Id.* at 146.

34. *Id.* at 156.

35. *Id.* at 157.

36. FIRE FALL, *supra* note 31, at 161-62 (“Renewal was purchased painfully, at a high price. Most of the pain was human”). *But see* *Isaiah* 40:27-31. “They that hope in the Lord will renew their strength, they will soar as with eagles’ wings.” *Isaiah* 40:30-31.

37. Letter from Paul X. McMenemy, Executive Director, *The Catholic Center for Liberty and Justice*, to Randy Lee (August 21, 1995) (on file with the author) [hereinafter McMenemy Letter].

38. Katrina J. Zeno, *Creating a Family Spirit*, FRANCISCAN WAY, Spring 1995, at 5-7. “When you eat, sleep, study, travel, and pray with someone for three years of your life, you become lifetime friends.” *Id.* at 6-7.

39. Father Michael Scanlan, *A Visit With John Paul II*, FRANCISCAN WAY, Summer 1995, at 4 [hereinafter *Visit*].

40. FRANCISCAN UNIVERSITY OF STEUBENVILLE 1994-95 UNDERGRADUATE CATALOG 2 (Katrina J. Zeno ed., 1994) [hereinafter CATALOG].

41. McMenemy Letter, *supra* note 37.

42. *See Luke* 10:2.

students are better able to see the value of a faith community themselves than 18-year-old college freshmen and, thus, choose a faith-filled school on their own.<sup>43</sup>

Finally, one might argue that even if lawyers like Saint Thomas More could be produced, in today's legal climate, they would be neither employable nor functional. The same was no doubt said about More as he was led to his execution. Lawyers in Thomas More's image, however, have been able to find a niche in the legal profession throughout history,<sup>44</sup> and that should be no less true today. To the extent that it is not, we should not be entertaining arguments that our justice system has no room for people of integrity. Rather, we should be demanding a wave of such people to reclaim our system of justice.

## II. THE MISSION OF A CATHOLIC LAW SCHOOL

Professor William T. Braithwaite has described "genuine education" as

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43. Given the reliance on Franciscan colleges and a Franciscan saint, one might be tempted to dismiss this as only applicable to Franciscans. Yet, Catholic lawyers who received their undergraduate degrees at Notre Dame in the sixties and seventies credit the school's former policy of three chapel visits a week as playing a role in their spiritual formation. Telephone Interview with Joseph Skelly, Partner, Ball, Skelly, Murren, and Connell (July 31, 1995). Such "spiritual enthusiasm" is not an exclusively Franciscan trait. In fact, while different orders do indeed have different bends, there is a danger in weighing these too heavily. As Paul said:

Whenever someone says, "I belong to Paul," and another, "I belong to Apollos," are you not merely human?

What is Apollos, after all, and what is Paul? Ministers through whom you became believers, just as the Lord assigned each one. I planted, Apollos watered, but God caused the growth. Therefore, neither the one who plants nor the one who waters is anything, but only God, who causes the growth.

I *Corinthians* 3:4-7.

44. For example, the views Abraham Lincoln had about what made a good lawyer in the nineteenth century are very similar to More's views. See J. Robert McClure, Jr., *A. Lincoln On the Practice of Law*, A.B.A. J., Oct. 1990, at 9, 98-99.

On a related matter, one might also argue that even if such a law school could be produced, it would not be accreditable. The ABA's consultant on legal education has indicated, however, that that is not the view of the ABA: "A law school must provide a sound legal education to enable persons to successfully enter the practice of law. . . . Only if the religious affiliation of the school impedes or distorts that basic mission, should the accrediting agency have concerns about the school's programmatic mission." James P. White, *Religiously Affiliated Law Schools: Their Role in American Legal Education*, 78 MARQ. L. REV. 371, 372 (1995). See also Douglas Laycock, *Academic Freedom, Religious Commitment, and Religious Integrity*, 78 MARQ. L. REV. 297 (1995); Robert A. Destro, *ABA & AALS Accreditation: What's "Religious Diversity" Got to Do With It?*, 78 MARQ. L. REV. 427 (1995).



“learning how to live.”<sup>45</sup> One would then expect that education provided by the Catholic Church would help students learn to live as Christians.<sup>46</sup> Not surprisingly, at least one Catholic university has thus identified its mission to provide “in an environment of free intellectual inquiry, the kind of education, that develops mature Christian men and women.”<sup>47</sup> Building on the foundation of such an education, the students of that university should be able to “enter personally satisfying careers, serve others to the best of their abilities, and develop the capacity for intellectual, emotional, and spiritual growth.”<sup>48</sup> In other words, by graduation they should have learned how to live a Christian life. Thus, if Professor Braithwaite is correct in his definition of “education,” one would expect such a mission to be fairly typical of Catholic universities generally as well as their graduate programs.<sup>49</sup> Therefore, one would expect that a Catholic law school would embrace such a mission as well.

To find a personally satisfying career, serve others to the best of one’s abilities, and grow spiritually, intellectually, and emotionally, the mature Christian man or woman must enter into a purposeful life. The *Baltimore Catechism* defines the essence of such a purposeful life as “to know God, to love God, and to serve God.”<sup>50</sup> These three directives are not separate, but as Jesus indicates in the Gospel of John, they are intertwined. Those who love the Lord serve Him, and those who love and serve Him know Him also.<sup>51</sup> Seen thus as a unit, the three may also be expressed as a lawyer in fact was led to respond in a familiar passage from Luke’s Gospel. A purposeful life is one that seeks to “love the Lord, your God, with all your heart, with all

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45. William T. Braithwaite, *Hearts and Minds*, A.B.A. J., Sept. 1990, at 70, 73.

46. Father Pedro Arrupe, S.J., former superior general of the Jesuits, described the mission in this way:

Our *teaching* will be directed towards forming the new [person], the [person] for today’s world, and we will seek out the most efficacious means to accomplish this. . . . We shall build up Men for Others, [people] whose ideal is that of service; who enrich their own personalities for the enrichment of others. . . . In our *service*, we shall be unremitting in our search for the truly important kind of service and the form that we should give it.

Araujo, *supra* note 3, at 262. See also CATECHISM OF THE CATHOLIC CHURCH § 1878 (Liberia Editrice Vaticana, English Trans., 1994) (stating that “all men are called to the same end: God himself”) [hereinafter VATICANA].

47. CATALOG, *supra* note 40, at 15.

48. CATALOG, *supra* note 40, at 15.

49. In fact, the goals of Franciscan University state the conviction that the school “should provide such graduate programs as are consistent with its mission.” CATALOG, *supra* note 40, at 15.

50. This We Believe, By This We Live, 3-4 (rev. ed. of THE BALTIMORE CATECHISM No. 3 1954).

51. *John* 14:15-17.

your being, with all your strength, and with all your mind, and your neighbor as yourself."<sup>52</sup>

On a fundamental level the mission of a Catholic law school must be to prepare men and women through the study of law to love God and their neighbor. The natural result of such preparation may seem clear enough—the preparation of a multitude of people to serve as God's hands, mind, and heart in the administration of justice.<sup>53</sup> What is not so clear, however, is the practical form which such preparation must take in a diverse, complex, and ever-changing world. Thus, additional reflection on this mission is required.

### A. *Legal Education and the Love of God*

Legal education can foster a love of God because it can help the student both to know and to serve the Lord. Legal education helps students to know God by providing them with tools by which they may obtain a fuller understanding and appreciation of His Law, particularly as it has come to be known in "the depth and richness" of the diverse manifestations of Catholic tradition.<sup>54</sup> The rigorous discipline of legal study also helps students serve God by helping them realize that the pursuit of excellence, and its subsequent reflection in their work, both proclaims and contributes to the glory of God.<sup>55</sup>

52. *Luke* 10:27.

53. This view draws on a prayer given to the Church by Saint Teresa of Avila during the sixteenth century:

Christ has no body now but yours, no hand, no feet on Earth but yours.  
Yours are the eyes with which He looks with compassion on the world.  
Yours are the feet with which He walks to do good.  
Yours are the hands with which He blesses all the world.

Paul X. McMenemy, *Feasibility Study to Establish a Law School: Franciscan University of Steubenville* 2 (1996) (on file with author). For an understanding of the life behind the prayer, see *THE LIFE OF TERESA OF JESUS: THE AUTOBIOGRAPHY OF ST. TERESA OF AVILA* (E. Allison Peers trans., 1960).

54. See, e.g., *CATALOG*, *supra* note 40, at 15. See also MOHANDAS K. GANDHI, *THE STORY OF MY EXPERIMENTS WITH TRUTH* 265 (1948) (Legal analysis aided Gandhi's understanding of theology).

55. "A soul in love with God and immersed in Him approaches her duties with the same dispositions as she does Holy Communion and carries out the simplest tasks with great care, under the loving gaze of God." SISTER M. FAUSTINA KOWALSKA, *DIVINE MERCY IN MY SOUL* 348 (1987). Such a view is by no means exclusively Catholic. In fact, it is probably best illustrated by the work of the Shaker communities. See EDWARD DEMING ANDREWS, *THE COMMUNITY INDUSTRIES OF THE SHAKERS* (1972).

### 1. Learning to Know God Through His Law

To begin the process of helping a student appreciate God's law, a legal education offers the student certain tools necessary to comprehend laws generally. The student is invited to learn how to understand individual laws, see how such laws come together to form bodies of law, and recognize how these bodies of law interact with one another. In learning these things, the student should gain a greater appreciation of the nature of words,<sup>56</sup> and a greater dexterity in organizing and presenting concepts.<sup>57</sup>

During the process, the student learns to consider not only the body of law, but the orientation of the community in which it is applied.<sup>58</sup> For example, students come to understand the way the law is affected when a community orients itself around rights and duties or economic efficiency.<sup>59</sup> Similarly, students at a Catholic law school must realize the implications on a community if it instead seeks to apply its laws in an atmosphere of love, mercy, forgiveness, and redemption.<sup>60</sup>

Once the student has the tools to comprehend various bodies of law and the social structures in which they are applied, the student must be engaged in free and open discussions of such systems so the student learns to think critically about the various approaches.<sup>61</sup> It is only through this critical

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56. See, e.g., Randy Lee, *Reflecting a King's Wisdom: Bridge-Building and Legal Analysis*, 13 AM. J. TRIAL ADVOC. 1141 (1990).

57. See, e.g., Mary Kate Kearney & Mary Beth Beazley, "Teaching Students How to Think Like Lawyers": *Integrating Socratic Method With the Writing Process*, 64 TEMP. L. REV. 885 (1991); Randy Lee, *Writing the Statement of the Case: The "Bear" Necessities*, 10 WHITTIER L. REV. 619 (1989).

58. "[A]lmost all agree the definition of justice [and similarly natural law] must encompass both procedural and substantive concerns." Collett, *supra* note 2, at 116. Therefore, it is not enough to study the outcomes laws seek; one must also study the context in which those laws are applied.

59. For an example of how the same constitutional text looks very different in different cultural contexts, see Randy Lee, *Twenty-Five Years After Goldberg v. Kelly: Traveling From the Right Spot on the Wrong Road to the Wrong Place*, 23 CAP. U. L. REV. 863, 898-921, 993-1001 (1994).

60. For a discussion of how an infusion of love and compassion affects tort law, see Leslie Bender, *A Lawyer's Primer on Feminist Theory & Tort*, 38 J. LEGAL EDUC. 3 (1988); Randy Lee, *A Look at God, Feminism, and Tort Law*, 75 MARQ. L. REV. 369 (1992) (responding to Professor Bender's position in a similar vein). For a discussion of the effect mercy and forgiveness can have on family law custody matters, see Mary Kate Kearney, *New Custody Paradigm: Looking at Parents Through a Loving Eye*, 28 ARIZ. ST. L.J. 543 (1996).

61. Law schools have not always been eager to invite students to consider critically the laws the students encountered. As Professor Mary Ann Glendon noted:

American Legal Education for much of the twentieth century has placed heavy

evaluation<sup>62</sup> that the student can fully appreciate the wisdom of the Eternal Law.<sup>63</sup> In addition, such critical evaluation allows the student to contribute to efforts to meet the need, as identified by Pope John Paul II, "to recover the basic elements of a vision of the relationship between civil law and moral law."<sup>64</sup> Once such a vision has been recaptured, the student can play a part in efforts to apply the natural law process<sup>65</sup> "to concrete, sociological and historical conditions,"<sup>66</sup> and to "raise the moral consciousness of a people by raising the moral quality of its government and laws."<sup>67</sup>

## 2. Learning to Be in Service to God

If work is "love made visible,"<sup>68</sup> then shoddy work is shoddy love. Legal education in a Catholic environment must teach its students, much as Mother Teresa teaches hers, that whatever they do, they do to and for Jesus.<sup>69</sup> The Gospels, of course, are in accord with this principle. As Jesus says in Matthew, "whatever you did for one of the least brothers of mine, you did for me."<sup>70</sup>

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stress on the distinction between law and morality. In a laudable effort to teach students to keep their personal views or prejudices from interfering with their duties as officers of the law, law schools often unintentionally promoted the notions that morality was essentially arbitrary or unknowable; and that law and morality were not only distinguishable, but entirely separate.

MARY ANN GLENDON, RIGHTS TALK 85 (1991).

62. For a thoughtful discussion of how important this is and how difficult this is for legal education in its current form, see Anthony J. Fejfar, *A Road Less Traveled: Critical Realist Foundational Consciousness in Lawyering and Legal Education*, 26 GONZ. L. REV. 327 (1990).

63. See, e.g., VATICANA, *supra* note 46, at § 1950 (stating, "The moral law is the work of divine wisdom").

64. POPE JOHN PAUL II, THE GOSPEL OF LIFE 129 (1995). In fact, natural law has been described as "man's participation in the eternal law through utilization of reason." Nelson, *supra* note 3, at 128.

65. See generally Anthony J. Fejfar, *Legal Education and Legal Scholarship: From Rationalist Discourse to Dialogical Encounter*, 20 CAP. U. L. REV. 97 (1991) (discussing the natural law process).

66. FRANZ BOCKLE, FUNDAMENTAL CONCEPTS OF MORAL THEOLOGY 63 (1968).

67. TALBOT, *supra* note 5, at 21. As Professor Collett has noted:

All of this illustrates the need for lawyers, law students, and law professors to be devoted to the search for truth. For this to occur, law schools in particular, . . . must begin with a common understanding that 1) objective truth exists, 2) some aspects of it are capable of being described accurately, and 3) those descriptions are relevant to our endeavors as scholars and as lawyers.

Collett, *supra* note 2, at 117.

68. KAHLIL GIBRAN, THE PROPHET 28 (1951).

69. MOTHER TERESA, WORDS TO LOVE BY 22 (1983).

70. *Matthew* 25:40.

If the work is done for the Lord, then the worker must aspire to make the work perfect both in form and substance.<sup>71</sup> The goal of law schools must be to instill in the student a hunger to produce work that is not merely competent or passable, but loving—drawn to the highest level by the noblest of motives. Such a hunger testifies not only to God of our love for Him, but also to our fellow human beings of our conviction to the reality of God.<sup>72</sup> Such an education cannot be compromising. Rather, it must offer the student new intellectual challenges and an invitation to exert greater levels of energy each day. Only through such progression will the student ever be able to demonstrate excellence in his legal skills—and the attainment of such excellence is essential. Catholic law schools must produce lawyers with “soft hearts,” but never with “soft minds.”<sup>73</sup>

### B. *Legal Education and the Love of Neighbor*

People look to lawyers both to heal the wounds society has inflicted upon them and to heal the wounds of society itself. A Catholic law school would be well served by allowing St. Francis to guide the particular spirit and purpose with which its students seek to accomplish this healing. Such a school could also embrace commitments both to the service of the poor, and to the evangelization that St. Francis was called to in his efforts to restore the Church.<sup>74</sup>

#### 1. Healing in the Spirit of Saint Francis

Often a client may be uncertain of her objectives, but ultimately what a legal system should be called to accomplish in any situation is peace. This peace is not merely the end of dispute, but its just resolution.<sup>75</sup> Saint Francis himself explained how one can play a part in such resolution:

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71. MARK R. SCHWEHN, *EXILES FROM EDEN: RELIGION AND THE ACADEMIC VOCATION IN AMERICA* 52 (1993) (indicating that love drives a person to their best).

72. “We are supposed to preach without preaching not by words, but by our example, by our actions. All works of love are works of peace.” MOTHER TERESA, *supra* note 69, at 72.

73. Barkan, *supra* note 3, at 116. “The essential activities of the law school - teaching and scholarship - must be done well. Indeed, ‘only excellence is apostolic.’ Jesuit education aims ‘at ever greater, more profound, more universal service.’” Barkan, *supra* note 3, at 116. It is worth noting that Loyola-Chicago enjoyed some of its greatest moot court success during a period of its greatest Catholic identification. Nelson, *supra* note 3, at 135. The same could be said for Villanova University. HAROLD GILL REUSCHLEIN, *THE VILLANOVA UNIVERSITY SCHOOL OF LAW* 26, 28 (1991).

74. TOMIE DEPAOLA, *FRANCIS THE POOR MAN OF ASSISI* 6 (1982); *see also* HELEN WALKER HOMAN, *FRANCIS AND CLARE SAINTS OF ASSISI* 105, 136 (1956).

75. *See John* 14:27.

Lord, make me an instrument of Your peace:  
Where there is hatred let me sow love,  
Where there is injury let me sow pardon,  
Where there is doubt let me sow faith,  
Where there is despair let me give hope,  
Where there is darkness let me give light,  
Where there is sadness let me give joy.<sup>76</sup>

A lawyer educated in the tradition of Saint Francis must understand that simply achieving an end will not bring about peace. If a client truly seeks peace, then her objectives must be sought in a spirit of understanding, consolation, pardon, charity, and love. One might argue that such a spirit does not lend itself to gaining one's full advantage under the law and maximizing one's material gains.<sup>77</sup> Yet, it is equally true that acting in a spirit of revenge and anger does not bring about peace. The client must decide what her objectives are, and she must make this decision fully and accurately informed of the extent of her legal rights. In deciding this, however, she must realize that she may not be able to have everything; she may not be able to maximize her material advantage and at the same time gain a peace of mind and heart.

Catholic law schools would serve the Body of Christ well if they could both address the need for lawyers called to speak and act in the spirit of St. Francis, and address the need for lawyers who can listen to, hear, and understand clients called to speak and act in that way. Given a choice, some people would like to seek peace,<sup>78</sup> but they often come to a bar that has lost the ability to believe in peace as an objective, and these clients are inevitably swept away in a river of litigious values alien to their own.<sup>79</sup> In other situations, clients struggling to resolve their Christian values with their pain

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76. See *Peace Prayer of Saint Francis of Assisi*, in *DAILY PRAYERS* 34 (Priests and Brothers of the Sacred Heart ed., 1987).

77. See *Erastian and Sectarian Arguments*, *supra* note 1, at 1877-78 (discussing how such lawyers can survive against the "Rambo lawyers" of the world). See also Patricia L. Rizzo, *Morals for Home, Morals for Office: The Double Ethical Life of a Civil Litigator*, 35 *CATH. LAW.* 79, 95-96 (1991).

78. This message of seeking peace comes through clearly in the Beatitudes, which instruct, for example, "Blessed are the merciful, for they shall be shown mercy," and, "Blessed are the peacemakers, for they will be called the children of God." *Matthew* 5:7, 9.

79. "As 'ministers of justice,' we must never be blind to the fact that we are not only professionals for our clients; we are simultaneously men and women for others." Araujo, *supra* note 3, at 275.

of being wronged do not have access to a lawyer who can understand such a conflict and wait patiently for its resolution.<sup>80</sup>

Just as not every house is a perfect fit for every family, every lawyer is not a perfect fit for every client.<sup>81</sup> Thus, some law schools should be committed to the proposition that there are people who can find a home with a lawyer who is fully informed of their legal rights, expert in communicating their positions,<sup>82</sup> and sensitive to their ultimate desire to be at peace. These schools should also be committed to the development of such lawyers.

## 2. Rebuilding Our Communities

At the outset, the early Church was called to live in community to a degree dramatically described in the Acts of the Apostles:

And all that believed were together, and had all things in common; and sold their possessions and goods, and parted them to all men, as every man had need. And they continuing daily with one accord in the temple, and breaking bread from house to house, did eat their meat with gladness and singleness of heart.<sup>83</sup>

To the legal mind, such communities would seem logical for people seeking peace. To the extent that a community acts with “singleness of heart” and each member orients every aspect of her life, her transactions, interactions, and relationships around that singleness of heart, each member is less likely to engage in a dispute with others, and one is more likely to find peace.

Yet, even in Biblical times, members of the Church were not isolated from the outside world. For example, the demands of evangelization and the regulations and concerns of unbelievers led members into outside interactions

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80. This is not to say, however, that wrongfulness does not need to be responded to and “peace” is simply “rolling over.” In fact, Christ describes a mechanism for addressing wrongs between believers. *See Matthew* 18:15-17.

81. “When it comes to political and legal activity, as a Mennonite friend of mine, a legal aid lawyer by trade, once told me, ‘There are some things we don’t do.’” *Erastian and Sectarian Arguments*, *supra* note 1, at 1870. While some might suggest that the attitude of the Mennonite lawyer would create a conflict with the representation of a client, such a conflict would only exist if the lawyer does not believe in doing something the client wants done, and any potential conflict is certainly one to which the client can consent after full disclosure and consultation. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.7(b) (1995). *See also* GANDHI, *supra* note 54, at 362 (explaining that Gandhi informed “every new client at the outset that he should not expect me to take up a false case or to coach the witnesses,” and, thus, “no false cases used to come to me”).

82. One of the gifts the Holy Spirit granted to the Lord’s servants at Pentecost was the ability to speak to each in his own language, a valuable skill for any lawyer. *Acts* 2:1-13.

83. *Acts* 2:44-46.

and often disputes.<sup>84</sup> Christ Himself recognized that we would often need to navigate dual currents inside and outside our Christian community when He said, "Render to Caesar that which is Caesar's and to God that which is God's."<sup>85</sup> However, the application of this directive is not always clear in our daily lives. Thus, the Christian community needs lawyers who can explain exactly what is Caesar's, can prevent Caesar from taking what even Caesar concedes belongs to God,<sup>86</sup> and can help believers preserve what is God's.<sup>87</sup>

In case any were to miss Jesus' command with respect to Caesar, both Peter and Paul embrace the position in their own comments concerning obedience to secular authorities. Peter says, "Because of the Lord, be obedient to every human institution, whether to the emperor as sovereign or to the governors he commissions for the punishment of criminals and the recognition of the upright. Such obedience is the will of God."<sup>88</sup> Similarly, Paul teaches, "Let every person be subordinate to the higher authorities, for there is no authority except from God, and those that exist have been established by God."<sup>89</sup> Such statements cannot be taken lightly,<sup>90</sup> particularly

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84. *Acts* 6-7. This is not to suggest that the only disputes Christians have are outside their communities. Even in the early church, the singleness of heart occasionally felt a little crowded. *Acts* 6:1 (referring to the dispute over the community's level of care for Greek widows as compared to Hebrew widows). Such disputes arise in today's Church as well. See, e.g., Suzanne Cassidy, *Vatican Rejects Steelton Appeals*, HARRISBURG PATRIOT NEWS, Feb. 2, 1996, at A1 (reporting the Vatican's rejection of a challenge to the merging of ethnic Roman Catholic parishes).

85. *Mark* 12:17. The order here is somewhat ironic since Caesar is placed first. This should not suggest that God's share is limited by Caesar's. Both the Old and New Testaments are filled with examples of people who rightfully placed service to God first. See, e.g., *Daniel* 6:8-25 (discussing the casting of Daniel into a lion's den for praying to God rather than to the king); *Acts* 4:18-20 (discussing Peter's and John's announcement that they must proclaim the Good News despite orders from the Sanhedrin not to do so).

86. The Free Exercise Clause in the First Amendment of the Constitution is one example of the state acknowledging that there are limits to how far the state can go. U.S. CONST. amend I. For an interesting discussion of the tension between that clause and the Establishment Clause, see Leigh Hunt Greenhaw, *The Paradoxical Unity of the Religion Clauses: Religious Exemptions as Civic Resistance*, 24 HASTINGS CONST. L.Q. (forthcoming Sept. 1996).

87. In the life of Saint Francis, one gets a sense of the reality for the Catholic lawyer of balancing the demands of building God's communities while facilitating peace in and with the world. See TALBOT, *supra* note 5, at 103.

88. I *Peter* 2:13-15; but see *Acts* 4:18-20. It is worth noting that Peter calls for obedience to Caesar as a way of serving God. This, at one level, eases the tension and calls to mind Dorothy Day's point that "if one gives to God that which is God's, there ought not be much left for Caesar." David L. Gregory, *Where to Pray? A Survey Regarding Prayer Rooms in A.B.A. Accredited, Religiously Affiliated Law Schools*, 1993 B.Y.U. L. REV. 1287, 1309 (1993).

89. *Romans* 13:1.

90. Although he never took these statements lightly, this was a call the Lutheran



when they come from saints who ultimately gave their lives at the hands of such authorities.<sup>91</sup>

If members of the Church are to conform to the increasingly complex commands of modern America,<sup>92</sup> however, they need lawyers to help them understand the full range and implication of those commands. Thus, a Catholic law school must train its students to provide such an understanding of the law, with particular attention to those areas of law that members of the Church are most likely to encounter.

Furthermore, such a law school must prepare its students to defend people who have sufficiently subordinated themselves to the law only to find "Caesar" demanding more than even Caesar maintains belongs to him. In such cases, people are not bound to "overpay" Caesar. Paul frequently asserted his rights as a Roman citizen,<sup>93</sup> and Saint Thomas More, a Third Order Franciscan, frequently asserted his rights as an Englishman.<sup>94</sup> Thus, members of the Body of Christ today should feel free to assert their secular rights, and frequently they need lawyers to help them assert those rights.<sup>95</sup>

The mission of a Catholic law school, however, cannot be so narrowly

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minister Dietrich Bonhoeffer struggled with, particularly toward the end of his life. Prior to confronting the full fury of Nazism, Bonhoeffer wrote uncompromisingly about this call to obedience. DIETRICH BONHOEFFER, *THE COST OF DISCIPLESHIP* 293 (1973). Later, while imprisoned by the Nazi Government, Bonhoeffer questioned such submission to a government with "evil ends." DIETRICH BONHOEFFER, *LETTERS AND PAPERS FROM PRISON* 6 (1975). For a more complete discussion of this topic, see Lee, *supra* note 59, at 991-92 n.800.

Validating the legitimacy of this struggle, Professor H. Jefferson Powell warns Christians not to confuse "Caesar with God." H. JEFFERSON POWELL, *THE MORAL TRADITION OF AMERICAN CONSTITUTIONALISM* 11 (1993).

91. TALBOT, *supra* note 5, at 94.

92. Anthony J. Santoro, *Feasibility Study to Establish a Law School: Roger Williams College* 10 (1991) (on file with author) (citing Professor Larry Barnett for the proposition that human knowledge has been increasing at a rate of 20% per year).

93. *Acts* 16:35-40; *Acts* 22:25-28.

94. ROBERT BOLT, *supra* note 16, at 95-96. "[H]e continued to the end to make familiar and confident use of society's weapons, tact, favor, and above all, the letter of the law." ROBERT BOLT, *supra* note 16, at 95-96. Professor Powell also endorses this position, indicating that Christians "need not reject out of hand one means that exists in this society by which the Christian can speak truth to power." POWELL, *supra* note 90, at 11. Powell articulates the task in this way: "Not to endorse the pretensions of power but to limit the injustice of Caesar." POWELL, *supra* note 90, at 11.

95. Religious freedom, for example, is guaranteed in the First Amendment of the Constitution, and the American Bar Association lists nine public interest law firms now helping Christians preserve that right. Mark Curriden, *Defenders of the Faith*, A.B.A. J. Dec. 1994, at 89. Other Christian families rely on the Home School Legal Defense Association to assert a Fourteenth Amendment right to guide the education and upbringing of their children. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (upholding that right).

tailored as merely to train people to help others respond to Caesar. Catholic law schools must also help people to respond to God. In the beginning, Christ called people to live in the community of Christ<sup>96</sup> and to go out into the world to evangelize.<sup>97</sup> This dynamic remained during the early Church following the Ascension.<sup>98</sup> When forming churches outside Jerusalem, Paul continued this pattern of calling the members into particularly close union with one another.<sup>99</sup>

Today, however, we find that most members of the Church live almost exclusively in the secular world and only return to the community of Christ to be evangelized themselves. The Body of Christ has come to resemble the scarecrow in *The Wizard of Oz* after the flying monkeys spread him throughout the forest. As a result, Its effectiveness has been similarly limited.<sup>100</sup> Yet, the Body longs to come together and only needs people able to facilitate the process.<sup>101</sup>

If the laws of a society are its framework, then lawyers must be the architects of societies. As such, there is an urgent need for lawyers who will assume the roles of the architects to rebuild Christian communities.<sup>102</sup> While this may involve developing alternative mechanisms for dispute resolution,<sup>103</sup>

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96. See, e.g., *Matthew* 4:18-22.

97. See generally *Matthew* 10.

98. See *Acts* 4. For an example of this today, see BRIEGE MCKENNA, O.S.C., *MIRACLES DO HAPPEN* 133 (1987). "I do not go into the world on my own. They send me out, in the name of the whole congregation." *Id.* See also TALBOT, *supra* note 5, at 153-54.

99. See *Romans* 12:3-16; *I Corinthians* 12:4-31; *Galatians* 6:10.

100. *THE WIZARD OF OZ* (Metro-Goldwyn-Mayer 1939). "Communities of people who once shared a common life divide, divide, and divide again." FIRE FALL, *supra* note 31, at 169. While the problem acknowledged here focuses on the relationships of individual Christians to one another, Father Michael Scanlan has identified the same dynamic with respect to denominations. "The Church is the body of Christ and the Church lies shattered and bleeding in thousands of pieces." FIRE FALL, *supra* note 31, at 176.

101. See, e.g., FIRE FALL, *supra* note 31, at 166 (discussing the Servants of Christ the King community and the impact its members have on the success of the University of Steubenville).

102. This calling should not seem at all ironic to a lawyer responding to the teaching of the Church. According to Vatican II, the Church is composed of "members of the earthly city who have a call to form the family of God's children during the present history of the human race, and to keep increasing it until the Lord returns." Shaffer & Rodes, *supra* note 26, at 12. Consistent with those words, Professor Collett envisions the process of forming a Catholic law school as beginning by forming a sense of a just society. Telephone Interview with Professor Teresa Stanton Collett, Visiting Professor Notre Dame Law School (Oct. 2, 1995). The process would then turn toward determining what would need to be done to create such a society and then deciding how to train people to do those things. *Id.*

103. Professor Collett has noted the importance of finding truth in the process of dispute resolution as well as in the substance of the resolution. Collett, *supra* note 2, at 116. The New Testament suggests a mechanism for dispute resolution within the Christian community. *Matthew* 18:15-17; *Luke* 17:3-4. Jesus also makes recommendations for

the need does not stop there. Christian communities must be rebuilt to embrace a wide range of roles including education, wealth distribution, neighborhood planning, and commerce.<sup>104</sup> A Catholic law school must accept the challenge of training the people who can take the vision of the Gospel, of living together in Christ, and make it a reality of modern life.<sup>105</sup>

One would expect the mission of a Catholic university to acknowledge a need to take an active part in the life of its local area.<sup>106</sup> Similarly, a Catholic law school must recognize that their neighborhoods often pose a unique opportunity to develop the frameworks upon which Christian communities throughout the world could be modeled.<sup>107</sup> In particular, the neighborhoods of many Catholic law schools offer the challenges of a changed or challenged economy and the resources of a highly charged faith community.<sup>108</sup> If Catholic law schools in America can develop ways to channel that faith into solutions for their regions' problems, those schools will

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resolving disputes outside the community. *Luke* 12:57-59. *But see* Santoro, *supra* note 92, at 10 (noting public resistance to alternatives to litigation). In any event, the Church has clearly called "all good citizens" to "abolish conflict among people and to promote harmony among all members of society." Araujo, *supra* note 3, at 259.

104. For an example of the kind of innovation necessary here, *see Erastian and Sectarian Arguments*, *supra* note 1, at 1873 (discussing a community response to a deaf child in a mainstream classroom). *See also* ROBERT COLES, *THE CALL OF SERVICE: A WITNESS TO IDEALISM* 31-61 (1993).

105. Professor Rodes provides some insight into the role lawyers can play in addressing this challenge. He notes that "there would be enough to do in our society to keep everyone productively occupied if we did not choose to get it done in other ways." Shaffer & Rodes, *supra* note 26, at 15. "Poverty and unemployment are human artifacts as surely as highways and bridges - as surely as deforestation and acid rain." Shaffer & Rodes, *supra* note 26, at 15.

106. *CATALOG*, *supra* note 40, at 16.

107. Robert Coles warns of the dynamic of "telescopic philanthropy:" In our zeal to extend boundless compassion to those an ocean away, we may behave shamelessly toward those on our own doorstep. ROBERT COLES, *HARVARD DIARY: REFLECTIONS ON THE SACRED AND THE SECULAR* 111 (1989) [hereinafter *DIARY*]. Mother Teresa simply states that "love begins at home." MOTHER TERESA, *supra* note 69, at 54.

Robert Rodes would say that it is not simply those who are closest to us who are less visible, but the poor generally. More than a danger of telescopic philanthropy, Rodes warns of a danger of "false consciousness, . . . that we will not notice the poor unless we go out of our way to do so." Shaffer & Rodes, *supra* note 26, at 17.

108. The challenge here is to see the depressed neighborhoods that surround many of our urban, Catholic law schools not as recruitment disadvantages, but as the swaddling clothes and manger into which the baby Jesus has been placed. *Luke* 2:7. There is a recent example of a clinic in a Catholic law school attempting to aid the poor. *See generally* Margaret Martin Barry, *A Question of Mission: Catholic Law Schools Domestic Violence Clinic*, 38 *HOW. L.J.* 135 (1994). Duquesne Law School also has initiated projects to rebuild communities. Letter from Kenneth Gormley, Professor of Law, Duquesne University to Randy Lee (Sept. 9, 1995) (on file with the author).

have valuable frameworks to offer Eastern European nations.<sup>109</sup>

### 3. Serving the Poor

Typical of the calling of the Church,<sup>110</sup> the Franciscans have always accepted a special obligation to, and a special intimacy with the poor.<sup>111</sup> From the moment Saint Francis donned the "single gray tunic of coarse woolen cloth" and began to beg for alms,<sup>112</sup> the order embraced this mission. Ministry to the poor, however, is not limited to the financially poor, but also includes the poor in spirit.<sup>113</sup> As such, this ministry necessarily includes an element of evangelization.

Given the Christian calling to serve the poor, a Catholic law school must embrace a goal of increasing legal services available to the poor.<sup>114</sup> It must do this in two distinct ways. It must first instill in its students a desire to provide legal services to poor people.<sup>115</sup> Second, it must seek to prevent its students from falling prey not only to greed, but also to the fear that lures students into the materialism that can block service to others.<sup>116</sup> Just as Catholic universities aggressively commit themselves to making their

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109. *Visit*, *supra* note 39, at 4-5 (indicating the Pope's support of Western universities sharing their ideas and resources with Eastern Europe); *see also* TALBOT, *supra* note 5, at 100-01.

110. This calling is captured clearly in Matthew's Gospel:

Then the King will say to those on his right, "Come, you who are blessed by my Father. Inherit the Kingdom prepared for you from the foundation of the world. For I was hungry and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me, naked and you clothed me, ill and you cared for me, in prison and you visited me."

*Matthew* 25:34-36; *see also* *Matthew* 14:16; *Luke* 18:22; *Acts* 6:1-3.

111. TALBOT, *supra* note 5, at 6-7; CATALOG, *supra* note 40, at 14.

112. CATALOG, *supra* note 40, at 14; *see also* DEPAOLA, *supra* note 74, at 8-9; HOMAN, *supra* note 74, at 121-23.

113. MOTHER TERESA, *supra* note 69, at 60-61.

114. *See generally* TASK FORCE ON LAW SCHOOL AND THE PROFESSION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT - AN EDUCATIONAL CONTINUUM 54 (1992) (discussing the importance of clinical programs in providing legal services to the poor). The Bar itself has also indicated a commitment to getting lawyers to embrace this goal. "A lawyer should aspire to render at least 50 hours pro bono public legal services per year." MODEL RULES OF PROFESSIONAL CONDUCT Rule 6.1 (1993).

115. *See, e.g.*, DIARY, *supra* note 107, at 156-59 (stating, "Look, the rewards are great. All the time there is the satisfaction of doing something half worthwhile - and being helped to feel better about yourself by the appreciative affection of those you've treated. *They treat you!*").

116. Steven T. Taylor, *How Much Money Do You Need?* NAT'L JURIST, April/May 1995, at 20.

resources available for financial aid to students,<sup>117</sup> a Catholic law school must do likewise if its students are to avoid at least some of the debt that can dominate their planning upon graduation.<sup>118</sup>

In addition to legal services, a Catholic law school community as a whole must be willing to serve the poor with the full range of its talents.<sup>119</sup> We must encourage our students and ourselves to remember all our diverse abilities and to keep all of those abilities accessible to others.<sup>120</sup> We must be careful to see a legal education as enhancing rather than limiting what we have to offer others.

In directing this service, a Catholic law school must always remember that the time to serve is now,<sup>121</sup> and the people to serve are those closest to

117. See, e.g., CATALOG, *supra* note 40, at 35 (stating that the "University is committed to tithe 10% of its income to provide financial assistance to deserving students").

118. Even adjusted for inflation, over the last ten years, law school tuition has risen rapidly. For example, average annual private law school tuition during this time has increased from just under \$8,000 to just under \$16,000; public law schools have shown similar increases. *Average Tuition at ABA Approved Law Schools*, CONSULTANT'S DIG., May 1995, at 3. As tuitions have risen, so has student debt, which now exceeds 1.1 billion dollars at ABA approved private law schools, up from approximately 300 million dollars in 1988. *Student Loans at ABA Approved Law Schools*, CONSULTANT'S DIG., May 1995, at 3. The size of individual student loans clearly affects the priorities and career choices of graduating law students. Taylor, *supra* note 116, at 20.

119. For example, although a secular law school, Widener-Harrisburg has an incredibly active Saint Thomas More Society that serves the poor in many non-legal ways. Students have been tutors for a local mission GED program, kitchen help in soup kitchens, and staff for Project Mercy, the local Catholic furniture bank. In addition, three years ago, runners in the group joined forces with the Jewish Law Students Association to organize an annual road race for Project Mercy. Over the last three years the race has raised thousands of dollars for Project Mercy.

One may question whether such effort may be sustained. "It is not possible to organize large, permanent groups of middle class people around issues that primarily affect the working or lower middle class, or the underclass." DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* 102 (1983). Yet, Catholics such as Dorothy Day have been more than willing to try to prove they can be. See generally ROBERT COLES, *DOROTHY DAY: A RADICAL DEVOTION* (1987).

120. See, e.g., Monica Bay, *Life, Law, and the Pursuit of Balance*, BARRISTER, Winter 1994, at 4-5; Adrienne Drell, *Chilling Out*, A.B.A. J., October 1994, at 70.

121. Mother Teresa provides a particularly striking illustration of this:

I had the most extraordinary experience once in Bombay. There was a big conference about hunger. I was supposed to go to that meeting and I lost my way. . . . Suddenly I came to that place, and right in front of the door to where hundreds of people were talking about food and hunger, I found a dying man.

I took him out and I took him home.

He died there.

He died of hunger.

And the people inside were talking about how in 15 years we will have so much food, so much this, so much that, and the man died.

us.<sup>122</sup> It must also remember always to exercise good stewardship in securing and caring for all its resources so that the law school will not waste, but will always have resources to share.<sup>123</sup> This is particularly true in respecting our human resources, for if our people are strong in mind, heart, and spirit, that strength alone will constitute abundant wealth for the school community.<sup>124</sup> We must consider among these human resources not only our workers, but their families as well.<sup>125</sup> We must appreciate both the contributions these family members make directly to the school and also those they make indirectly by supporting our employees.

Jesus recognized that it is often easier to meet the needs of the flesh than those of the spirit.<sup>126</sup> Therefore, a Catholic law school must be particularly vigorous in attending to the poor in spirit. These people take many forms, but we must be especially prepared to recognize them in the people who have been wounded while approaching the legal system for help,<sup>127</sup> and in the lawyers who feel wounded by working in the system.<sup>128</sup>

See the difference?

MOTHER TERESA, *supra* note 69, at 25.

122. *See supra* note 108.

123. *See Luke* 15:11-19 (telling the parable of the prodigal son); *I Timothy* 6:17-20.

124. "We have to take good care of ourselves physically as well as emotionally." Bay, *supra* note 120, at 4.

125. St. Thomas More considered family a vital part of his existence. *See Erasmus, supra* note 17, at 74. This is evidenced by his restriction on the Utopians to work only six hours a day. THOMAS MORE, *UTOPIA* (1516), *reprinted in* MORE'S *UTOPIA AND ITS CRITICS* (Ligeia Gallagher ed., 1964). The words of civil rights activist James Farmer paint a poignant picture of the havoc that the excessive demands of even a good cause may play in a life:

As [my wife] lay dying in 1976, all that this remarkable woman had meant in my life dominated my thinking. I devoutly wished that I had been a better husband and father. Wholly preoccupied with people in general, I had forgotten how to relate to individuals in particular. The [civil rights] movement was a mistress who had robbed me of the capacity to show Lula the attention and affection she deserved. I think Lula understood this, and since she, too, loved the movement, her own suffering in this regard was not an unbearable tragedy in her life.

Less bearable to her, though, was my neglect of our daughters. So intensely absorbed with the plight of children of the nation being maimed by hatred was I that my own children saw little of me, and I scarcely knew them.

JAMES FARMER, *LAY BARE THE HEART* 349 (1985).

126. *Matthew* 9:1-8.

127. *See, e.g.*, NANCY MICHELS, *HELPING WOMEN RECOVER FROM ABORTION* 29-44 (1988) (discussing that, although abortion is legal, women often struggle with post-abortion depression); *see also Luke* 15:20-24 (focusing on the redemptive and healing power of the Father).

128. *See, e.g.*, MARY ANN GLENDON, *A NATION UNDER LAWYERS* 13 (1994); Daniel J. Morrissey, *The Catholic Moment in Legal Education*, 78 *MARQ. L. REV.* 413, 415-20 (1995) (indicating the need to rediscover Catholic values to combat this despair); Bay, *supra*

Thomas L. Shaffer, quoting John Howard Yoder, indicates that in response to those who are poor in spirit, the faith community should feel challenged "to purify, and clarify, and exemplify [the message that Jesus Christ is Lord] so that the world can perceive it to be good news without having to learn a foreign language."<sup>129</sup> This challenge to show Christ as good news is particularly great now because so many are frightened by anything "Christian."<sup>130</sup> Yet, both Saint Francis<sup>131</sup> and Mother Teresa<sup>132</sup> have taught that we can still evangelize effectively even without using words, threatening or otherwise, so long as we can show acts of love and peace. Therefore, we must always remember that the best mechanisms we have for evangelization are the kindness we introduce into the lives of others and the peace we reflect in our own lives.

Finally, as a function of this mission, a Catholic law school must foster relationships between students and alumni. The excited and enthused law student brings to the alumnus an innocence<sup>133</sup> and an invitation to youthful ideals.<sup>134</sup> The alumnus brings to the law student perspective, stability and wisdom.<sup>135</sup> The hope of the legal system rests in the integration of the two.

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note 120, at 4 (stating that "the dangers of [burn-out, disenfranchised families, and health problems] are so real that the California bar now requires lawyers, as part of mandatory continuing legal education, to take at least one course every three years on stress and substance abuse"); Debra Cassens Moss, *Lawyer Personality*, A.B.A. J., Feb. 1991, at 34 (stating that "41 percent of female attorneys are unhappy with their jobs"); Stephanie Benson Goldberg, *One in Five Lawyers Dissatisfied*, A.B.A. J., Oct. 1990, at 36.

129. *Erastian and Sectarian Arguments*, *supra* note 1, at 1870. See also *Acts 2:7-12* (acknowledging how at Pentecost, the Word of God was spoken to each in his own language).

130. "The existence of paranoid, violent thinking within our borders" has been associated with "well-known elements of far-right thought, . . . [including] Christian home-schoolers." Philip Weiss, *Outcasts Digging In for The Apocalypse*, TIME, May 1, 1995, at 48.

131. From a Franciscan perspective, John Michael Talbot describes the most important expression of evangelization as "simply the Christian life itself." TALBOT, *supra* note 5, at 152. In explaining this he says, "We go out only to love and care for the people we meet with the love Jesus Christ has given us." TALBOT, *supra* note 5, at 154.

132. "We are supposed to preach without preaching not by words, but by our example, by our actions. All works of love are works of peace." MOTHER TERESA, *supra* note 69, at 72.

133. Such innocence, or possibly naivety, can guard a "nagging sense of futility" that can cause one to forget "that in the face of known evil, only the first 'unmixed' response is correct." RICHARD H. WEISBERG, *THE FAILURE OF THE WORD* 8 (1984).

134. Both St. Francis and St. Clare were young people whose perspectives were not limited by experience, a situation that required a lot of getting used to for their parents. DEPAOLA, *supra* note 74, at 8-9, 18-19.

135. It would be naive to think that law school, without the help of the practicing bar, can complete the education of lawyers. Everyone needs a mentor, and it is particularly important that lawyers of strong faith prepare others to follow in their footsteps. Steven

## III. AN ISSUE OF SPIRIT AS MUCH AS METHOD

In the thirteenth century, Saint Francis of Assisi came to know, love, and serve the Lord. In response to this, he was called to many diverse tasks. Francis became a builder, a healer, a repairman, a peacemaker, a victim, and an advocate.<sup>136</sup> Francis excelled in each task because he embraced prayer and the power of the Holy Spirit.<sup>137</sup>

Today, 700 years later, the Lord seeks to call other people who have come to know, love, and serve Him. They are called from our Catholic law schools at a time when the legal system is faced with unprecedented levels of criticism.<sup>138</sup> The Lord calls His servants to many different functions and bestows upon them many different gifts.<sup>139</sup> Thus, He can be expected to treat our students accordingly. Some he may call to be warriors like David;<sup>140</sup> some builders like Solomon;<sup>141</sup> others dreamers like John.<sup>142</sup> But all must be prepared to be rocks, like Peter, upon whom the Lord can build.<sup>143</sup>

The challenge for our students is great, and therefore, they, like Francis, must embrace the tools of prayer and Spirit that served Saint Francis so well. This is so because prayer is "the most powerful tool we Christians have."<sup>144</sup> Simply enough, "[t]he branches without the Vine will die,"<sup>145</sup> and there are just some problems in the world that "can only come out through prayer."<sup>146</sup>

What does it mean for a Catholic law school to embrace prayer and Spirit? Professor Shaffer remembers a Notre Dame Law School where mass and religious retreats for its students were part of the school's programs, and

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Keeva, *Good Act to Follow*, A.B.A. J., Mar. 1995, at 74-75; see also Joryn Jenkins, *Everybody Needs a Mentor*, BARRISTER, Spring 1991, at 26.

136. See *supra* note 87.

137. See TALBOT, *supra* note 5, at 147.

138. A 1993 poll done for the ABA found lawyers receiving a favorable rating from only 40% of those surveyed, placing them above "only stockbrokers and politicians among the nine professions identified in the survey." James Podgers, *Image Problem*, A.B.A. J., Feb. 1994, at 66, 67. Most expect things to get even worse, particularly in light of the O.J. Simpson trial. Steven Keeva, *Storm Warnings*, A.B.A. J., June 1995, at 77, 78. For a discussion of the effect this is having on society as a whole, see MARY ANN GLENDON, *HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* (1994).

139. I *Corinthians* 12:4-31.

140. I *Samuel* 18:1-7.

141. I *Kings* 5-6.

142. *Revelations* 1:1-2.

143. *Matthew* 16:18.

144. TALBOT, *supra* note 5, at 102.

145. TALBOT, *supra* note 5, at 102. Talbot goes on to say, "Our involvement in the affairs of nations will come to nothing if it does not begin and end in the spiritual reality of the Kingdom of Heaven." TALBOT, *supra* note 5, at 102.

146. *Mark* 9:29.



where classes began with prayers and priests circulated to offer advice.<sup>147</sup> Yet, Professor Shaffer would also point out that a presence of Spirit in a Catholic law school “is more than a matter of having mass in the law building.”<sup>148</sup> What truly matters in embracing the Spirit is not so much how much prayer goes on in the building but how much prayer goes on in the hearts of the people who reside in the building.<sup>149</sup>

A call to prayer should not be threatening to a Catholic law school. Prayer need not be formal, wordy, institutional, or public, and in fact, Christ discouraged such prayer.<sup>150</sup> Rather, prayer “is a surge of the heart; it is a simple look turned toward heaven, it is a cry of recognition and of love, embracing both trial and joy.”<sup>151</sup> We must ask ourselves whether, after three years in a Catholic law school, an individual would be more likely to experience such surges of the heart and to embrace with love both trial and joy. One seldom hears that question asked. In fact, given the extensive concern about the need for prayer in public schools<sup>152</sup> and the apparent lack of concern about the need for it in Catholic law schools, one has reason to wonder whether the Christian world is more concerned that public schools are prayerful places than that Catholic law schools are prayerful.

Ultimately and inescapably, a Catholic law school must be Catholic. This does not require that it be isolated or exclusionary; in fact the opposite is more likely the case.<sup>153</sup> But it does require that we preserve an environment in which those seeking God will be embraced and not rebuked,<sup>154</sup> an environment that will not cause any of those who believe to sin.<sup>155</sup> The preservation of such an environment is a mission not to be taken lightly. As Pope John Paul II has said, “The mission that the Church, with great hope, entrusts to Catholic universities holds a cultural and religious meaning of vital

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147. Shaffer & Rodes, *supra* note 26, at 13. Professor Nelson would add that Notre Dame also once required the reading of important Catholic books and that other Catholic law schools had similar mass and retreat requirements. Nelson, *supra* note 3, at 133, 136-38.

148. Shaffer & Rodes, *supra* note 26, at 11.

149. For a discussion of differing views on encouraging a more spiritual environment in a Catholic law school, see Nelson, *supra* note 3, at 145; Barkan, *supra* note 3, at 109. For the argument that it is easier to be a prayerful place if a place provides a place to pray, see Gregory, *supra* note 88.

150. *Matthew* 6:5-8.

151. VATICANA, *supra* note 46, at 601.

152. Pamela Coyle, *The Prayer Pendulum*, A.B.A. J., Jan. 1995, at 63.

153. FIRE FALL, *supra* note 31 at 176-77; TALBOT, *supra* note 5, at 149 (stating that “[t]o be uncompromisingly Catholic is to assure respect and liberty for every other religion of the world”). See also Michael J. Perry, *The Idea of a Catholic University*, 78 MARQ. L. REV. 325, 343 (1995).

154. *Mark* 10:13-16.

155. *Matthew* 18:6.

importance because it concerns the very future of humanity.”<sup>156</sup> In fact, an even greater authority than the Pope has said that for one who disregards this mission, “it would be better for him to have a great millstone hung around his neck and to be drowned in the depths of the sea.”<sup>157</sup>

It would be fair at this point for us to feel ill-used. Are such dire consequences to be associated with such an impossible mission? We are called to create an environment of prayer and Spirit to prepare lawyers to see law as a ministry “which communicates the love of God to a human person,”<sup>158</sup> and then send those lawyers out to practice in a world of “unjust opponents practicing without personal ethics.”<sup>159</sup> As Patricia Rizzo asks, “is this situation hopeless?”<sup>160</sup> One might well maintain that such an environment cannot be sustained, and that such lawyers cannot succeed. Yet, Ms. Rizzo ultimately finds hope in the situation,<sup>161</sup> and so can we.

Lawyers in the image of Saint Thomas More can practice law successfully today just as More himself did in his time. Our times are not so different. And we can, if we so choose, create law schools with an environment to nurture lawyers in More’s image. Are such environments sustainable? Does it matter whether they are? Even if the efforts on any given campus do not continue forever, that does not mean the efforts have not contributed to the mission. Professors Shaffer and Rodes remind us that “the definitive reality is being built on what is transitory.”<sup>162</sup> We must therefore have faith that “the brotherhood which is sought through the abolition of the exploitation of man by man is something possible, that efforts

156. John Paul II, *Ex Corde Ecclesiae*, Conclusion (1990).

157. *Matthew* 18:6.

158. Fred M. Enman, S.J., *Law as Ministry: A Perspective from the Judaeo-Christian Tradition*, 35 *CATH. LAW.* 97, 97 (1991). Professors Shaffer and Rodes call it “a service in powerlessness, a service of sacrifice and of reconciliation. It is immediate, local, personal, and pastoral.” Shaffer & Rodes, *supra* note 26, at 8.

159. Rizzo, *supra* note 77, at 95.

160. Rizzo, *supra* note 77, at 95.

161. Patricia Rizzo offers a remedy:

A personal sense of morality must be developed and used by each lawyer, and only this will put the adversary system on the right track. Personal morals cannot be commanded or reduced to a list. They lie within each person, and each person, even the lawyer, will be held accountable for their stewardship.

Rizzo, *supra* note 77, at 95.

162. Shaffer & Rodes, *supra* note 26, at 18 (quoting Gustavo Gutierrez). See also Letter from H. Jefferson Powell, Professor of Law & Divinity, Duke University, to Professor Randy Lee 1 (Aug. 23, 1995) (on file with the author) [hereinafter Letter from Powell]:

God clearly often calls human beings to build structures and institutions in His service even though after a generation or two (or perhaps far less time — witness the Confessing Church in Germany) those structures and institutions are going to ossify, and even if they don’t disappear or entirely lose their way, they will eventually fall short of their original energy and dynamism.

to bring it about are not in vain, that God calls us to it and assures us of its complete fulfillment."<sup>163</sup>

It is, I think, like coming upon a great mountain and gazing at its splendor. We would not refuse to appreciate the majesty of such a mountain because we know in time the forces of nature will wear it down. Similarly, we must not refuse to appreciate the value of a dynamic Catholic law school today because we believe in time human forces will wear it down.<sup>164</sup> As Christ instructed, "Let the day's own troubles be enough for the day."<sup>165</sup>

As we set out to educate the Catholic lawyers for the next millennium, we must certainly be aware of the challenges associated with any law school, and we must acknowledge the importance of advancing lawyers of excellence toward membership in the bar. Beyond that, however, we must remember the vital importance of our particularly Catholic mission and the level of accountability that comes with it. We must accept the challenge of preparing people to defend, heal, build, and spread justice. And yet, even as important as all those goals are we must foremost embrace the spirit needed to foster a new generation of saints.<sup>166</sup>

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163. Shaffer & Rodes, *supra* note 26, at 18 (quoting Gustavo Gutierrez).

164. We must also remember that while human institutions give in to human forces, we are here, after all, "reckoning with the Spirit, who can and will make His own choices about how to move people," and that may make all the difference in the world. Letter from Powell, *supra* note 162, at 1-2.

165. *Matthew* 6:34.

166. Saint Thomas More acknowledged that even "very learned and very holy" people err. John J. Noonan, Jr., *A Catholic Law School*, 67 NOTRE DAME L. REV. 1037, 1038 (1992). There is, therefore, a particularly grave need to suspect the possibility of error in one, like myself, who is in no danger of inclusion in that category. For that reason, this should not be the end of the discussion but simply one more beginning with corrections and more concrete visions to come from the many out there who work each day to send forth saints. See, e.g., *Symposium on Religiously Affiliated Law Schools*, 78 MARQ. L. REV. 247 (1995).