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THE CATHOLIC LAW SCHOOL AFTER VATICAN II — BOOK REVIEW: LEGAL EDUCATION AND RELIGIOUS PERSPECTIVE,

BY REVEREND RAYMOND C. O'BRIEN†

*Anthony J. Scanlon**

As a result of Vatican II every Catholic institution has had to re-define itself. Catholic hospitals, schools, youth organizations, religious communities and universities have all undergone a process of reexamination that has resulted in new understanding of their respective roles in the mission of the Church. *Legal Education and Religious Perspective* is a monograph which attempts to answer the question: "What is a Catholic law school?" More specifically, Father O'Brien, a law professor and former admissions dean, describes the Catholic Service Clinic which provides legal advice to indigent clients by student volunteers from Catholic University, Columbus School of Law. The Catholic Service Clinic, founded in 1978, is a community-based outreach program which, although similar to educational programs at other law schools has, at Catholic University's Law School, the distinctly pastoral purpose of establishing for students the connection between personal faith and professional commitment. Rather than simply evaluating his own law school's Catholic Service Clinic, however, Father O'Brien hopes to assist other legal educators in developing the lay apostolate's "radical utilization" of their talents and commitment to the Church's mission of service to the community.

†Cambridge, Bethesda, Maryland, 1985.

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Moreover, Father O'Brien seeks to provide a framework for distinguishing Catholic and religiously affiliated law schools from secular institutions. Finally, *Legal Education and Religious Perspective* is an important attempt to answer Dean Lawless' question about Post-Vatican II Catholic law schools: "Why a 'Catholic' Law School?"¹

Catholic colleges and universities in America were founded by the Bishops and religious communities which assumed direct responsibility for both the governance and instructional program.² In almost every facet of university life there was a Catholic aspect and identity. When these universities initiated law schools, however, the religious communities had neither the expertise nor a sufficient number of qualified personnel to staff the law schools as they had in their liberal arts divisions. The historian Edward J. Powers explains:

The success of Catholic colleges of law depended on their ability to achieve status, for the reputation of a young lawyer's Alma Mater was often more important to his advancement to positions of influence both inside and outside the profession than his personal reputation or competence. In few other professions were connections so carefully preserved, once made, or so vigorously sought after.

In order to achieve status, Catholic law schools tried to attract teachers who had some reputation in the law. In some cases this meant appointing non-Catholics to the law faculty and the consequent anomaly which resulted from such a practice: the school was committed to purveying a Catholic philosophy of law, but its wisest and most prominent teachers were neither intellectually nor emotionally equipped for this task. Because the heritage of Catholic schools of law was so meager and so brief, legal scholars and teachers who were Catholics were not easy to find.³

Another important reason for the apparently non-Catholic quality of the first Catholic law schools is that, certainly in the early part of this century, there was probably not a peculiarly Catholic point of view on

¹ Lawless, *Why a "Catholic" Law School*, 5 U.S.F. L. REV. 185 (1970).

² The secular nature of Catholic law schools is not without precedent in Catholic higher education. Indeed, John Carroll, the United States' first bishop, did not even envision a Catholic University "System" but rather a Roman Catholic chaplaincy program at secular colleges and universities. The arrival of various immigrant groups and numerous religious congregations, however, led to the establishment of Catholic colleges, which were indeed Catholic. But even among these plainly Catholic colleges there was a consistent realization that a Catholic University's graduates would have to exist in a pluralistic, largely non-Catholic and frequently anti-Catholic society composed of individuals of various faiths or of no religious persuasion. After all, Catholic colleges and universities were not founded to train members of the clergy. Unlike their Protestant counterparts, American Catholic institutions of higher education were founded specifically to educate the lay Catholic for life in the secular world; the education of priests was accomplished mostly in the post-Trentine Seminary System quite apart from the laity. See J. HENNESSEY, S.J., *AMERICAN CATHOLICS* 249 (1981).

³ E. POWER, *A HISTORY OF CATHOLIC HIGHER EDUCATION IN THE UNITED STATES* 249 (1958).

most subjects included in the law school curriculum. The study of natural law, for example, continued throughout higher education, at least in the philosophy departments of every respectable college or university. Nor did the law school have to confront issues which today dominate the political agenda of many jurisdictions, like abortion or capital punishment. The common law tradition remained quite compatible with general Catholic beliefs, and there was no uniquely Catholic perspective on subjects like the law of Contracts, Torts or Equity.⁴

A survey conducted in 1938 of the members of the American Philosophical Association sought responses to questions on the jurisprudential concerns of religious law schools.⁵ Even at that early date there were those who felt that a religious atmosphere, even if vaguely defined, was enough to justify a continuing ecclesiastical affiliation.⁶ The sense that a denominational institution could provide a general religious 'atmosphere,' as opposed to a particular religious instructional program, was a view that had been espoused in the nineteenth century by other religious groups involved in higher education.⁷

Despite Catholic legal education's secular and practical origins and the non-sectarian reality of much of the Catholic law school curriculum, deans of Catholic law schools certainly described themselves as "Catholic." *The Catholic Lawyer*, on the eve of Vatican II in the late fifties and early sixties, published a series of articles on Catholic law schools. The series, read twenty years after Vatican II, highlights the non-religious origins of several of the law schools.⁸ So similar in course content and other ways to secular schools, the authors of the *Catholic Lawyer* series on Catholic law schools strove to make a case for their own schools' particular Catholic religious perspective. Many of the descriptions elevate the role of the study of natural law to a very visible place in their understanding of a Catholic law school's distinctiveness. Encouraging students to study the relationship between natural law and other jurisprudential philosophies was not then, or is it now, a phenomenon unique to Catholic law schools, however.⁹ In several of the schools described in the *Catholic*

⁴ See generally Dunsford, *St. Louis — Pioneer Catholic Law School*, 3 CATH. LAW. 237 (1957).

⁵ Brown, *Jurisprudential Aims of Church Law Schools in the United States, A Survey*, 13 NOTRE DAME LAW. 170 (1938).

⁶ Nelson, *God and Man in the Catholic Law School*, 26 CATH. LAW. 127, 140 (1981). Professor Nelson provides a very valuable description of the shift of several Catholic Law Schools away from their specific religious identity and provides an excellent general review of the history of Catholic Law Schools.

⁷ S. DUVAL, *THE METHODIST EPISCOPAL CHURCH AND EDUCATION UP TO 1869 79-83* (1928).

⁸ See, e.g., Kelly, *De Paul University College of Law*, 6 CATH. LAW. 287 (1960).

⁹ Pape, *The Law School of Loyola University, New Orleans*, 5 CATH. LAW. 218 (1959); Seitz, *Marquette Law School — Fifty Years of Service in the Middle West*, 3 CATH. LAW.

Lawyer series, the spiritual connection, aside from the Catholic identity of the university, was provided by events like the Student Bar Association sponsored communion breakfasts or Sacred Heart League meetings.¹⁰

The Catholic Lawyer series, of course, contains several concrete descriptions of programs or institutes which might make a Catholic law school distinctive, including, for example, the establishment of *The Catholic Lawyer* itself in 1955 to provide a forum for scholarship on legal issues which legitimately required a particular Catholic perspective.¹¹ Also interesting was Dean Vernon X. Miller's description of Catholic University's understanding of his own law school's special Catholic mission, i.e., the motivation of students to apply Catholic principles to social questions. This is all the more interesting because the theme of the program, which Father O'Brien describes in *Legal Education and Religious Perspective*, seems to resemble his own school's early identification of the important role of Catholic philosophy in solving "social questions."¹² Indeed, the laity, motivated by their religious belief to serve the community, both historically and as described by Father O'Brien, may be the quality which gives vitality to a Catholic law school's special apostolate. Describing the laity's role, long before Vatican II, Yves Congar, wrote:

Since the Church's apostolic mission carries with it, beyond its purely spiritual duties, influence upon temporal civilisation, it follows that this mission is fully exercised only through the lay people doing their own proper part in it: they are irreplaceably the Church for a whole order of ecclesial activities. It may be said, with Jacques Maritain and the Abbé Journet, that the clergy have specially to show forth the exalting influence of grace and the spiritual transcendence of Christianity, while the laity show forth its healing and salutary influence on civilisation, the fineness and nobility of a Christian temporality. The clergy's part and the laity's part are integrated in the Church's total mission, without detriment to what is common to both; the laity's mission complements that of the priesthood, which would not be fully effective without it. Once more, the laity form 'the priestly *pleroma* of the bishop.'¹³

331, 332 (1957). At Loyola the natural law was used to explain the connection between the civil code and the common law. *See id.* at 221.

¹⁰ Lucey, S.J., *The Story of Georgetown Law School*, 3 CATH. LAW. 130, 135 (1957); *see* McKenney, *Santa Clara University College of Law*, 5 CATH. LAW. 61, 62 (1959).

¹¹ "The *Catholic Lawyer* proposes to serve as a forum in which lawyers may join with canon lawyers, theologians, moralists, historians, physicians, psychiatrists and other experts in matters of interest to Catholics or to the Catholic Church where the solution to a legal problem depends on specialized knowledge in other fields." Tinnelly, C.M., *The Catholic Lawyer, An Idea and a Program*, 1 CATH. LAW. 3, 4 (1955).

¹² Miller, *The Law School of the Catholic University of America*, 4 CATH. LAW. 333, 336-37 (1958).

¹³ Y. CONGAR, O.P., *LAY PEOPLE IN THE CHURCH* 375 (1957).

Thus, the "errors" of the reformation which may have promoted some resistance to an activist laity, had been overcome long before the advent of Vatican II.¹⁴ What is needed now, however, is what Father O'Brien proposes, suitable models for encouraging Catholic lay persons, particularly those who are lawyers, to use their talents without becoming absorbed by pecuniary pursuits.

Vatican II is frequently cited as a source of division and confusion among Catholics.¹⁵ Father O'Brien, however, uses the Council documents as an indispensable source for help in defining the important role that Catholic law schools have in developing Catholic action and the lay commitment to the mission of the Church. The Council fathers clearly mandated an agenda for the education of the laity that included the educator's moral responsibility to prepare lay persons adequately for public leadership. Furthermore, Catholic education, the Council advised, must encourage a "Catholic sense and Apostolic activity in young people."¹⁶ Thus, as Catholic law schools attempt to redefine themselves in this post-Vatican II era, simple juridical definitions may not only be impossible for some Catholic schools, they may be unnecessary.¹⁷ Even for law schools which are part of universities that have been able to retain their Catholic identity, it is clear that Catholic schools could and ought to define themselves much more in terms of how well Catholic schools prepare their graduates "to shoulder society's heavier burdens and to witness the faith to the world."¹⁸ Thus, there is a developing understanding that Catholic higher education must provide a quality education and true competence among graduates of Catholic colleges, always mindful however that it is the manner in which the graduates of Catholic institutions use the educational opportunities they have been given that make the university's law school distinctive or even Catholic.

Many leaders in Catholic higher education have come to define their

¹⁴ J. NEWMAN, *WHAT IS CATHOLIC ACTION* 34, 35 (1957).

¹⁵ The post-Vatican II confusion is perhaps best described by a liturgical "event," a children's confirmational mass, observed by Patrick Mornham while visiting Lourdes:

The presiding priest said that for a confirmation one needed a bishop but unfortunately there was no bishop present. However, if all the children clapped loud enough a bishop might appear. Thus the bishop, who had been waiting in the sacristy, duly did. Balloons and paper streamers were then thrown around and the concelebrating priests joined hands and skipped up the side aisles singing "Lord of the Dance."

P. MARNHAM, *LOURDES: A MODERN PILGRIMAGE* 135 (1981). Of course the atmosphere of change brought about by the modern life and the uncertainty which has accompanied it antedates the Council. Pius XII, for example, is reported to have explained, "Après moi, le déluge." F. MURPHY, *C. SS. R., THE PAPACY TODAY* 13 (1981).

¹⁶ *THE DOCUMENTS OF VATICAN II* 518 (Walter M. Abbott., S.J. ed. (1966)).

¹⁷ C. FORD & E. ROY JR., *THE RENEWAL OF CATHOLIC HIGHER EDUCATION* 21, 22 (1968).

¹⁸ See *supra* note 16, at 684.

Catholic mission much more in terms of the progressive activism of the graduates of their institutions rather than a particular Catholic perspective in the classroom. Father Hesburgh, in considering a Catholic college's essential mission, comments: "We must also now endow students not only with competence but also with the compassion and commitment to use their competence in the interest of the less fortunate."¹⁹ Speaking specifically about graduates of a Catholic law school, Dean Lawless of Notre Dame asserted, "[t]here cannot be a true Christian who will accept poverty for others. There cannot be a true Christian who will close his eyes to minority groups, consumer exploitation, overcharges, usurious interest rates and the cruel exploitation of the ignorant in our society."²⁰

The general consensus that Catholic education must somehow assist the lay Catholic fulfill his or her special mission to the world does not, however, in itself provide a framework or model for accomplishing this aim. Indeed, a monolithic Catholic approach to legal education would certainly be undesirable even if it was attainable. Some Catholic educators, in the years immediately after Vatican II, saw a need to radically alter the legal structure of Catholic education, along the lines of Jacqueline Grennan's reform of Webster College in St. Louis.²¹ Others wanted to remain Catholic in the juridical sense, but with much less introspective apologetics and far more involvement in the secular community.²² The laity's vocation of service is, however, apparent. Father Greeley observed:

Given the ferment in the Church, the volunteer movements among students, the complexities of the modern world, and the supernational organization of the Roman Church, it ought to be possible to turn a Catholic college or university campus into a dynamic, challenging, socioreligious milieu, in which young people would see a connection between their beliefs and the problems of the contemporary world.²³

Recognizing that the magisterium of the Church has already defined the importance of the "centrality of service" as the vocation of lay persons in the Church,²⁴ Father O'Brien espouses a clinical program based on a Catholic sense of service. Briefly, the Catholic Service Clinic is a outplacement clinical opportunity where students join with social service

¹⁹ T. HESBURGH, C.S.C., *THE HESBURGH PAPERS — HIGHER VALUES IN HIGHER EDUCATION* 83, 84 (1979).

²⁰ Lawless, *supra* note 1, at 190.

²¹ J. GRENNAN, *WHERE I AM GOING* 35 (1948). After leaving the convent and Webster College, as Ms. Jacqueline Wexler, she became president of Hunter College, a position once held by another outstanding Catholic layperson, George N. Shuster.

²² P. REINERT, S.J., *THE URBAN CATHOLIC UNIVERSITY* 111-12 (1970).

²³ REV. A. GREELEY, *THE CHANGING CATHOLIC COLLEGE* 197 (1967).

²⁴ McCluskey, S.J., *Catholic Schools After Vatican II*, in *TRENDS AND ISSUES IN CATHOLIC EDUCATION* 349 (1969) (an explanation of Paul VI's viewpoint).

agencies, usually under Church sponsorship, to provide legal advice where this may dovetail with the students' course work. In a rather unstructured, though certainly positive way, the students bring this practical experience back to their regular class work. The interesting and perhaps most radical element of this Catholic model of a service clinic is that it is designed to be at most, co-curricular. The clinic is part of the elective program at Catholic University, only to the extent that it may be used for legal internship credit, a small part of a student's total credit requirement; the students receive no financial reward for this service to the community.

Of course, this sort of volunteer program is not unique, nor does Father O'Brien describe a program which is exclusively composed of Catholic participants. But he does set this outplacement clinic within an evangelical perspective. Thus in terms of liturgical celebrations, religious motivation and theological basis, the program he has conducted and which he proposes as a model provides "the potential for dynamism of social service, the radical utilization of gifts, [and] the eschatological significance of virtue." Father O'Brien reinterprets, in modern language, the eternal value and truth of the offering of good works. Ultimately, Father O'Brien provides us with a thoughtful essay on how legal education at Catholic law schools can make an effective connection between personal religious beliefs and professional training in the law.

As a model for the non-Catholic or secular law school, the notion of encouraging students to have client contact experience is also not new.²⁵ An outplacement clinical model, as described by Father O'Brien, is but one of several clinical models existing or historically available to the law school wishing to provide students with varying degrees of hands-on experience.²⁶ And, while the inclusion of a detailed description and evaluation of the Catholic Service Clinic is certainly helpful, it is not this book's main contribution for Catholic legal educators or Catholic law students. Far more importantly, Father O'Brien has described a possible model for inculcating in the neophyte attorney the Catholic value of service to others. Searching for ways to lessen any profession's preoccupation with

²⁵ Early in the history of modern legal education in the United States, there was a concern that law schools were not devoting enough attention to practical training. See generally A. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 281 (1921) (historical perspective).

Clinical training was also seen as vital for those students contemplating practice in small or single member firms. Professor Bradway of Duke observed: "The lawyer who, because he does not know how to deal with people, fails to attract or to hold any clients is, indeed, a very lonely person" in Bradway, *The Role of the Duke Legal Aid Clinic*, 9 J. LEGAL EDUC. 104, 105 (1956).

²⁶ For a description of several models see: AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL EDUCATION, CLINICAL LEGAL EDUCATION REPORT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS 9-11 (A.B.A. 1980).

the mundane is a valuable contribution, but it is a particularly valuable lesson for legal educators. Schools with a specific religious tradition may have an advantage in transmitting the value of service to the poor and the community, but all law schools have an obligation to reexamine the values they claim to further and to evaluate how effectively these values are preserved and transmitted to new generations of students. As Chief Justice Earl Warren observed:

If every law school in America would select a good cause—any good cause—and pursue it diligently our profession would be greatly enriched; opportunities for a better life would be available to all of us; our cities would be more livable; and the majesty of the law would be enhanced.²⁷

It is this underlying value of service to others which breathes greater meaning into any clinical educational experience at any law school. William Pincus, the godfather of modern clinical legal education, explains:

When I arrived at the Ford Foundation to work in its Public Affairs program, one of the assignments I received was to work on what was rather vaguely defined as 'law.' As a practical matter, the assignment entailed a review of pending applications for funds, mainly for general support of law schools and their faculties and for research projects to be undertaken by individuals. There was little doubt that the funds requested would have supported the projects or schools involved. Yet as I read and pondered, I began to harbor a feeling that something was missing. What was missing from the applications was any tangible evidence of awareness of service—of the obligation to convey a professional service, based on many years of learning, to all segments of the American public, including those who might not be able to afford the ordinary price of legal services.²⁸

Nor can this issue of "service" be seen mainly as the call for law schools to directly serve the unserved through clinical offices serving a specific community. This obligation belongs to those with the resources and authority to provide services to the poor. Because law schools are the single training ground for new lawyers, however, the concept of "service" must be imparted here. Earl Johnson commented that "it is difficult for the law school to inculcate an attitude of professional responsibility in its students if it abstains from dirtying its own hands with actual pro bono cases."²⁹

Throughout the book, Father O'Brien, himself a former admissions dean, speaks of the important role that a school's values have in the ad-

²⁷ Warren, *Dedication of the Spessard E. Holland Law Center*, 21 U. FLA. L. REV. 285, 289 (1969).

²⁸ Pincus, *Program To Supplement Law Offices For The Poor*, 41 NOTRE DAME LAW. 887, 887 (1966).

²⁹ Johnson, *Education Versus Service: Three Variations on the Theme*, in CLINICAL EDUCATION FOR THE LAW STUDENT 414, 416-17 (1973).

missions process. Indeed, even more than the contribution Father O'Brien's book makes towards the already rich literature of clinical legal education³⁰ is his most significant and original discussion about marketing in higher education.

Putting aside the flim-flam, plastic approach of sales, Father O'Brien speaks of how the substance of a school and not its projected image "sells" a given institution. In discussing the tenets of a particular perspective one cannot help but observe that perspective implies distinctive points of view. *Legal Education and Religious Perspective* appropriately recognizes the vital importance of "uniqueness" in terms of the marketing of a particular law school. The author gives specific examples of how a school can avoid trying to be all things to all people by recruiting specific kinds of students for particular programs. In the context of the Catholic Service Clinic, for example, Father O'Brien describes a "Dear Former Activists" recruiting letter that may be a model for direct student mailings. More important than being—or saying—it was a Catholic law school, Father O'Brien found that the substance of this program, a Catholic Service Clinic in Washington, D.C., was the deciding factor for students electing to enroll at Catholic University's law school.

The optimistic and enthusiastic manner in which Father O'Brien discusses the Catholic Service Clinic highlights the major contribution of the remaining Catholic law schools. As Father Ratterman suggests: "When all is said and done, perhaps the greatest service the Catholic University can provide academe is to communicate to the larger academic society its spirit of hope, its spirit of realistic optimism that is so important to Catholic spirituality."³¹

The ability, freedom, and commitment to define legal service to the community in the religious terms of personal faith can be a distinctive characteristic of the modern Catholic law school. At least, at a Catholic law school, the law teacher can define the contribution he or she wants to make to society in terms of a personal faith and can support students with the same goals.³²

Father O'Brien has written a work in *Legal Education and Religious Perspective* which celebrates the freedom to pursue the training of lawyers committed to serving the community through an intelligent understanding of their religious commitment.

³⁰ See D. DJONOVICH, *LEGAL EDUCATION: A SELECTIVE BIBLIOGRAPHY* 70-83 (1970).

³¹ P. RATTERMAN, S.J., *THE EMERGING CATHOLIC UNIVERSITY* 117 (1968).

³² For an anecdotal expression of this problem see: Reisman, *Academic Collegueship and Teaching*, *THE ANTIOCH REVIEW* 420-21 (1985).

