
THE LECTURER

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ST. IVES LECTURE

INTRODUCTION

Charles Reid, Director
Center for Law & Religious
Traditions

ADDRESS

Steven P. Frankino

"The Nature of a Catholic Law
School—Personal Reflections"

RECEPTION IMMEDIATELY FOLLOWING THE LECTURE

Boy's Town Center

THE THIRD ANNUAL ST. IVES LECTURE
Sponsored by
THE CENTER FOR LAW AND RELIGIOUS TRADITIONS
THURSDAY, April 9, 1981

"The Nature of a Catholic Law School -- Personal Reflections" *

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In the past century the history of legal education under the auspices of the Roman Catholic Church has been a study in uncertainty, false starts, isolation and finally secularization. The study of law and its application to the human condition had been central to the teaching mission of the Church. The law faculty stood with the doctors of theology and philosophy at the core of the Christian university. When the Schoolmen divided law into eternal, divine, natural and human the study of jurisprudence became the collaborative effort of theologians, philosophers, and Canon and civil lawyers. The tradition of the Catholic university was to regard the study of law as a part of the essence of both the religious and secular curricula.

The translation of the Catholic university to the United States did not carry with it the marriage of disciplines which had characterized European institutions. To a marked degree theology and canon law, (and to some degree philosophy) were concentrated in institutions whose primary mission were clerical formation. Institutions of higher education for the laity emphasized religion, arts, letters, philosophy and science. Civil law was almost lost to the American Catholic educational tradition by this bifurcation. Indeed the Anglo American common law tradition which the immigrant Church found rooted in the new land trained lawyers in apprenticeships rather than educate them in universities. In addition, the Civil Code traditions of Continental Europe were rooted in Roman and Canon Law and were capable of comfortable intellectual comparison with the jurisprudence of Catholic universities. That Code tradition was left behind and in its place the Immigrant Church found the confusing Statutes and Cases of the Common Law. The study of law suffered from this trans-cultural translation.

There was no tradition of legal education in American colleges and universities in the eighteenth and nineteenth centuries and the emerging Catholic universities felt no need to retain the study of law at the core of their curricula. Another factor in this historic evolution was the fact that American Catholic higher education depended to a marked extent on the Society of Jesus for their foundation and sustenance. In the Constitution

* Footnotes omitted.

of the Jesuits, St. Ignatius indicated that the study of law was "remote from our Institute" and therefore "will not be taught in the Universities of the Society, or at least the Society will not undertake this activity through its own members." This attitude would later have a significant impact on the development of Catholic law schools.

When the first lectures in law at an American Catholic university begun at the Jesuit St. Louis University in 1843, it was by lay and not clerical lecturers. This attitude that legal education should be primarily the concern of lay professors was carried forward in the foundation of the first Catholic Law Schools at Notre Dame in 1869, Georgetown in 1870 and Catholic University in 1898. Of the twenty-three law schools associated with American Catholic Universities, thirteen are at Jesuit institutions. We will return to the implications of the Jesuit attitude toward legal education in a moment.

As Catholic universities matured in the late nineteenth and early twentieth centuries law schools were added not as essential elements but because of the conditions of American society. The rise of anti-Catholic Nativism as Catholic immigrants threatened white Anglo-Saxon Protestant dominance resulted in the exclusion of Catholics from the law schools emerging at private and state universities. In the urban centers of industrial America Catholics were ranked as second-class and suspect citizens whose final loyalty was to a foreign sovereign in Rome and, therefore, they could not be trusted with any degree of power or influence -- and in Anglo-America law was the lever of power and influence. Exclusion and the role of the legal profession in the governance of society led to the appendage of law schools to Catholic universities. (By way of foot note it should be added that clerical administrators were not unmindful of the fact that legal education was relatively inexpensive.)

The centrality of law to the philosophical and ethical heritage of Catholic higher education was not the primary force which inspired the establishment of Catholic law schools. In fact, only one was founded primarily if not exclusively for that purpose and that was Catholic University Law School which became the fourth unit of this University in 1898.

Returning to the implications of St. Ignatius' institutes on American Catholic legal education it should be noted that the establishment of lay dominated law schools created a degree of autonomy within clerically run institutions which carries over to this day. The clerical administrators did not have the degree of control over lay men in the law schools which they had over other units of their universities and this led to a sense of alienation and separateness -- often physical separation -- which was later to contribute to the secularization of Catholic legal education. The focus of the law schools was to educate and train Catholic laity, to achieve social mobility and access to the levers of power. In accomplishing this mission Catholic legal education

was spectacularly successful. While graduates were not welcomed to the law firms and board rooms which manipulated property and power on behalf of liberal capitalists they did use their legal skills to enter politics and government and to influence and to a marked degree to lead the great social movements of the late nineteenth and twentieth centuries. These lawyers have served the Church and the Catholic peoples of this nation in an extraordinary way -- a legacy in which the American Catholic legal educator can take great pride. In addition, these schools opened their doors to other non-Catholic immigrant groups who were excluded from establishment institutions by quota systems. It is not accidental that Eastern and Southern European immigrant lawyers and their children earned law degrees at Catholic law schools.

Parallel to these practical social purposes was the rekindling of the Catholic jurisprudential spirit. Distinctively Judeo-Christian approaches to law were a part of the Catholic law school through the middle of this century. Neo-scholastic scholarship thrived and the exploration of the natural law was an integral part of the curriculum. Dean Brendan Brown of this law school was a leader in this movement. Coincidentally, the humanistic natural law of Justice Story, Thomas Jefferson and Chief Justice Marshall which dominated American legal thought was under attack at those institutions which had brought it to full flower -- Harvard, Yale and Columbia. Dean Christopher Columbus Langdell developed the case method which was intended to destroy principles of law and substitute therefore the rule of the case. Legal principles laid out in lectures and forming a basis of moral and ethical analysis of the legal system became the "brooding omnipresence" struck down by the U. S. Supreme Court in Erie v. Tompkins as a result of Mr. Justice Holmes skepticism, Dean Roscoe Pound's social engineering and Mr. Justice Brandeis' notion of evolutionary process. Langdell was triumphing by limiting students horizons through the case method and American legal thought turned to pragmatism and realism in the writings of William O. Douglas, Thurman Arnold, Leon Green, Karl Llewellyn and Jerome Frank. At a time when American Catholic legal scholars were making their first impressions in expounding the transcendental aspects of law, positivists took over the mainstream of legal education and legal thought. The legal scholars in Catholic institutions found themselves in a back water, ghettoized by being Catholic, defensive because they were swimming against the intellectual tide, and unaccepted in the intellectual circles which dominated their profession.

By the 1960s Catholic law schools had fulfilled their mission to educate and train generations of new immigrants. Catholic America had moved toward the mainstream of social, cultural and economic acceptance. State and private institutions welcomed

graduates of parochial schools. Accrediting agencies began a steady process of secularizing legal education even to the point of threatening the distinctive religious heritage of Church related law schools. At the same time jurisprudence was reeling from the excesses of Fascist, Nazi and Communist realism and was reconstructing a higher law theory based on secular humanism which began to dominate the United States Supreme Court. At a time when Judeo-Christian humanism had the ability to reverse the tide of positivism Catholic legal education and scholarship was itself in the process of secularizing. The central question was no longer "what is the nature and distinctive characteristics of a Catholic law school" but "is there such a thing as a Catholic law school." By the mid 1970s the twenty-three law schools associated with Catholic institutions had secularized to the point that being characterized as Catholic caused embarrassment and uneasiness.

A perusal of law school catalogues from 1950 to 1980 illustrates this trend. In 1949 a typical catalogue would proclaim the law school "proudly boasts that by its very nature as a Catholic institution it has always taught and always will teach the principles on which rests all law, order and right government . . . It believes, briefly, in the teachings of Christ, who taught that morality must regulate the personal, family, economic, political and international life of men if civilization is to endure."

By 1980 this ringing acclamation typically has been sanitized to something like this:

[This university] "has followed the honored pattern of other American universities by growing into an eclectic institution of higher education. Its academic community is open to men and women of all backgrounds, its scholarly pursuits range the entire spectrum of contemporary thought and interest."

This statement of purpose, noble in itself, does not, distinguish the church-related law school from state sponsored law schools. This trend has led one commentator to write: Catholic law school curricula rarely contain any distinctively Catholic course offerings and the institutions do not give any evidence of fostering an active Catholic spiritual life. There are a few exceptions to this characterization . . . but on the whole, Catholic law schools have become progressively more secular and now offer nothing distinctively Catholic."

The essence of my theme this evening is that such a characterization is tragic and unnecessary. That which is distinctively Catholic can and will make an essential contribution to American and world legal thought and scholarship.

The title I have chosen for this lecture assumes that there is such an entity as a Catholic Law School distinct from other legal educational institutions. Twenty-five years ago that assumption would have been made without significant doubt or significant question. From the beginnings of the great universities of the middle ages through the early 1960s one thousand years of Catholic legal education had survived as a distinct contribution to intellectual life. Catholic legal educators viewed themselves as natural successors to the traditions of Exodus, Leviticus and Deuteronomy; Solon, Plato, and Aristotle; Cicero and Seneca; Akiba, Maimonides, and the scholars of the Torah; Justinian and the Glossators; Ambrose, Augustine and Ockham; Thomas and the Schoolmen; Erasmus, Moore and the Jesuits of Trent, through to Gilson and Maritan.

What then is a Catholic Law School? First it is a community. A community based on the central message of Christ that we come together to love and serve one another. A community focused on the dignity and value of the individual person. Our mutual enterprise is to develop the whole person in an atmosphere of mutual respect. Respect for our different roles -- as staff, administrator, teacher and student. Unless we strive to perfect this sense of community -- supportive, reinforcing, tolerant -- we will have missed the essence of Catholic education. Christian humanism is not an abstraction, it is a principle by which we organize our lives. If we fail to care for one another, to minister to each others needs, then we are learning, teaching, administering, but we are not living in a community. What distinguishes our tradition is that we are a living community.

From this flows the way in which we should organize ourselves. As we each develop our individual potential we must also respect the right of our fellows to realize theirs. No one of us is perfect in knowledge or virtue so we must act together to work toward these values. This should translate itself into the classrooms and into the governance of the law school. There is no room for the psychological brutalization which characterized the Langdellian modification of the Socratic method. The classroom is not a place to focus on the superiority of the teacher but rather it must focus on the learning of the student. Our pedagogy should be concerned with the transmission, understanding and improvement of our discipline. We must compete with ourselves to become better -- not with each other to become superior.

In terms of governance this idea of a living community should seek to mirror the Church. Collegial governance allows those who share responsibility to exercise it for the greater good of all. This responsibility places in the faculty the pri-

mary role, not because they are better, but because our purpose is education and training. The faculty have been chosen for and function in the role of educators because their experience, professionalism and expertise have qualified them. They cannot delegate their responsibility to give direction and governance to a learning community -- either to administrators or to students.

As the law school is a community devoted to the development of each individual so also is the university a community. It is essential to the nature of a Catholic law school that it participate in and contributed to the goals and mission of the university. If our discipline and knowledge are central to the core of Christian humanism then our participation in the larger university must in turn be at its core.

It is of the nature of a Catholic law school that it participate in the essential integration of knowledge which characterizes a truly Catholic university. Insofar as autonomy is necessary to the development of a professional school there is a concomitant obligation of a professional school to integrate its functions into the life of the university community.

Since law is normative it informs and regulates all human activities. Every body of knowledge and all human behavior is a subject of law in the practical order. While all disciplines recognize the legal dimension of their activity, the law school must appreciate its role. Interdisciplinary studies are part of legal education. In a Catholic law school interdisciplinary study is essential. Theology enlightens our understanding of law, philosophy reveals its essence, the social sciences enrich its perspectives, and the professions contour its application.

If the law school and the university are communities so also is the Church. The Catholic law school and the university are a part of the life of faith of the Church. Both in a special way participate in the Church's mission to serve and to teach.

I'm sure it has not been lost on you that I have yet to talk about law -- that is, the substantive areas of law. I hope you have perceived the reason. That which should truly distinguish a Catholic law school is first that it is as a vital living community of scholars and students. Teaching, scholarship and the content of law are not the primary things that distinguish a truly Catholic law school. That which distinguishes is its living witness to the message of Christ. It is not what we do, == it is how we live. Once our dedication to the value of human individuality and the dignity of the person is translated into a living law school then we can speak of our unique contributions to a body of knowledge or to the practice of a profession.

Lest I disappoint or be thought insensitive to the content of law let me turn for a few minutes to the substance of the Catholic legal tradition and its vital relevancy to the present life of our planet.

We must start with the essential -- the person. The human person preceded the state, society and the law. The human person was created in the Image of his creator and derives dignity and worth from that participation in the life of the Author of Life. The focus then of law must be on the human person not on the state, but on the person the state serves, not on society as an abstraction but on society as the total of its human subjects. Christ as the Lawgiver has an immediate application to an understanding of law and its legitimate function. Insofar as law is consistent with and cognizant of the essential human nature of the person then law serves the goals of peace and the end of love. Behavior and society must be regulated only to the extent that it allows the human person to fulfill his rendezvous with his Creator and allows his fellows to fulfill their destiny as well. To subject the human person to the state, to the current majority, to constantly changing secular mores, to the immediate, the passing, is to derogate from the essential conservative function of law -- that is to conserve, protect, encourage and enoble the human person in dignity and good. The only constants against which we work in establishing those normative values we call law are the love of God and the humanity of men. When viewed from this perspective we can not only understand the purpose of law but the joy of our own human existence.

With these intuitions as guidelines we can approach human society within a framework of law. Property is not a thing to be exclusively used on behalf of the possessor. Property becomes a measure of the needs of a human to fulfill existence. The ownership of property can not be in derogation of the needs of others but must be subject to the common needs of all. Economic enterprise ceases to be the measure of men's activities but rather the shared responsibility of productive persons to sustain the quality of human existence. The poor are not incidental to social progress but the subjects of social justice. Crime is an affront to the security of human persons and not an act against the state. The criminal is the subject of justice so that retribution is not a value but rehabilitation is grounded in the essential ability of man to perfect himself. Life is sacred because it is the vital force of human beings and must be respected and protected not only from conception but until death. The same principal that prohibits any act which will cut off life at its beginning applies with equal if not greater vigor to cutting off life in its early maturity through war or through capital punishment.

The dignity of labor and the right to the fruits of their work is essential as we seek the greatest good of all men. The support of the aged with both human warmth and financial security is inherent in their dignity as human persons. Social welfare

is not largess; racial, religious, ethnic and cultural equality are not social values alone but a recognition of individual worth and the inherent dignity and equality of the human person. Protection of the environment and responsible distribution of the resources of the world are not special interests but an expression of distributive justice. International cooperation and world peace are not the secular end of nation states but a human imperative.

This litany of values is not derived from current social thought. It emerges from the rich heritage of our Judeo-Christian traditions.

Let me become even more concrete. Adding a few starred courses to a law school curriculum with titles such as "Jurisprudence", "Church and State", "Catholic Social Teachings" do not make a Catholic law school although they should be part of its curriculum and concerns. If the substantive curriculum only mirrors contemporary legal experience and learning then these accoutrements become window dressing. The law of torts is sterile if it addresses causation, economic risk spreading, fault and neglects the impact of injury on the whole person and the principles of justice which seeks to make a person whole and productive again. Contracts is an interpersonal undertaking which is subject to breach with only economic consequences unless we address the moral aspects of superior parties, coercion, the sanctity of obligations.

Balancing the rights of the victim while protecting the rights of those who commit crime and at the same time securing the tranquility of the human community are values which must be grounded on justice in the law of crimes. Fair and equitable taxation is a part of the obligation to secure social justice. I am certain you can see the relevance of the principles of justice embodied in our religious and philosophic traditions to every area of law. My fundamental point is that our Judeo-Christian heritage adds a valuable perspective to how we learn, understand, appreciate and practice law.

If anyone doubts the intrinsic value of this perspective in the practical world those doubts can be allayed by reading the great encyclicals of our modern Popes. Pope Leo XIII articulated the rights of labor in Rerum Novarum which was reinforced and extended to modern social legislation in Pius XI's Quadragesimo Anno." This encyclical also illuminated such areas as corporate enterprise, accumulation of economic power, and applied the imperative of social justice to property and all economic activities. Pius XII addressed the use of material goods for the sustenance of the individual and related that concept to the rights of private ownership. John XXIII in his major encyclical on social justice, Mater et Magistra, applied the principle of justice to all of the social activities of men. Again in Pacem in Terris Pope John

enlightened international relations, the rights and duties of citizens, the interdependence of nations and the nature of the modern state. Pope Paul VI in Popolorum Progressio addressed the development of human persons in the context of all mankind. He taught that the doctrines of social justice and social, technological and economic progress must be ordered so that all persons will have the ability to grow and to perfect themselves. The declarations of the Second Vatican Council cover almost all aspects of the modern law school curriculum. Of particular importance in this context is the Declaration on Religious Freedom and the Constitution on the Church in the Modern World. The point I am making is that Catholic learning and teaching has immediate relevance to the law in all its aspects and that relevance is a proper and essential aspect of the modern Catholic law school. Translating this learning, teaching, and values to our society is a part of the mission of Catholic legal education.

There is one final aspect of my reflections which I would like to share. John Paul II declared in Brazil that the Church must serve the cause of justice by using its voice "to summon consciences, guard people and their liberty and demand the necessary remedies". Accordingly, he declared, it is the Church's right and duty to promote social justice and to speak on behalf of the poor and the oppressed. As a part of the Church the Catholic law school must participate in this life of service. Our proper mission is to serve human needs in the social, political and economic orders. This duty of service is spelled out in Gaudium et Spes. The Catholic law school has, therefore, an active dimension. An involvement in law reform and social movements. Our education and training are properly directed to legal services for the poor, and direct contributions to social justice. This law school has understood and implemented this obligation through the Catholic University Legal Services programs and the Centers for National Policy Review and Law and Religious Traditions. This marriage of scholarship, education training and service flows from the mission of a Catholic law school and is an essential dimension of our community. The Judeo-Christian tradition is more relevant to man's needs and the law's life today than it has every been. The teachings of the Roman Catholic Church on law and justice are immediately applicable to the conditions of our society and world. Today it should be the special glory and ennobling purpose of a Catholic law school to proclaim the good news of Jesus Christ and make the principles, intuitions and application of Christian humanism the viable core of legal education. Catholic teachings on social justice can be and should be the active ingredient in the responsible and productive practice of the legal profession.

I would like to lay to rest a cultural, social and psychological inhibition which has affected myself and many others in the

present generation of legal scholars. A lawyer scholar can talk about Jesus Christ without embarrassment. Being a Catholic, a Christian a Jew, or a Moslem, need not be separated from being a lawyer. Religious values have relevance in the practice of law and in the development of legal institutions. Theology and philosophy are at the center of jurisprudence. Moral conduct based on religious principles is essential to the legislator, the judge, the practitioner, the scholar and the law student. The Judeo-Christian concept of justice is the highest end of law and in their lives of service lawyers should be ministers of justice. Training a moral professional lawyer is of equal value with teaching, understanding and speculating on the nature and science of law. A Roman Catholic law school can translate this tradition into the central corridors of our legal institutions and this will serve at the same time the goals of our religious community as well as the goals of our society as a whole. In short, I believe that a lawyer need not be a closet religionist; that a law school can be a first class American legal education institution and at the same time a truly Catholic Law School.

Saying these things I do not wish to be misunderstood. A Catholic law school must not be parochial, it must be pluralistic. Its mission is to discover, impart and apply truth and values from all perspectives. My emphasis here is on the one perspective which has been missing -- the Judeo-Christian perspective which should be the unique contribution to the understanding and practice of law of a Catholic law school. In fact to be parochial would be counter to the principles enunciated in the Second Vatican Council's Decree on Ecumenism and in the Dogmatic Constitution on the Church. A Catholic law school cannot be ecumenical in any sense if it excludes qualified persons who are not Catholic from its faculty, staff and student body or if it addresses the content of law without meaningful reference to and reflection of the contributions and perspectives of other traditions.

I have attempted to summarize here my personal reflections on the nature of a Catholic law school. I have done so not to define what any particular law school ought to be for that is a collegial decision. What I have attempted is to articulate my own personal beliefs in the viability and relevance of Catholic legal education. I hope I have initiated a dialog which will help us all to continue to explore the nature of a Catholic Law School.

We are all involved in service to justice. I hope we can strive for a community, for mutual sustenance in the enterprise of legal education. For me those hopes are grounded in hopes of the Church in the social and political order. As we live out a life of justice we must keep in mind that whatever the Church hopes for is rooted in God's promise that at history's end we shall be given "a Kingdom of truth and life, of holiness and grace, of justice, love and peace".