Teaching Justice to Law Students: The Legacy of Ignatian Education and Commitment to Justice and Justice Learning in 21st Century Clinical Education*

C. Michael Bryce**

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* I would like to thank Professor David Gregory of St. John's University School of Law for his review and comments on drafts of this response. I also want to recognize the life and spirit of Father Solanus Casey for being instructive in what justice in Catholic social teaching really is. Father Solanus was never regarded as a Catholic intellectual but rather as a simplex priest. Yet, his commitment to justice and fulfillment of Catholic social teaching was unparalleled. I also want to thank Professor Frank Grad of Columbia University School of Law for his mentoring and inspiration. He exemplifies pursuit of the common good and scholarly achievement better than any law professor I know.

** Some of the dichotomy between my views and those of Professor Breen's may be reflected in our educational and legal backgrounds. I attended Fordham University and later law school at the University of Detroit Mercy, which are both Jesuit institutions. After law school, I worked for Legal Services in New Jersey on numerous cases for poor clients. Subsequently, I worked on Mt. Laurel-related litigation in New Jersey for the Public Advocate and later the Love Canal Litigation in New York for the State Attorney General's office. As a legal educator, I became the Director of Clinical Education for University of Detroit Mercy School of Law after starting the first clinical program at St. Johns University School of Law. I have supervised the creation of a Mobile Law Office ("MLO") "RV" at University of Detroit Mercy that goes out into the community to reach clients who otherwise receive no legal contact. Most recently this MLO has begun both a state and national tour addressing Veterans Federal Disability issues. I have written and presented on ADR and Jesuit Education at Queen Mary's College in London and made presentations to the Irish Law Teacher Association on American Clinical Legal Education and Jesuit Education.

Professor Breen is a graduate of Notre Dame University where he studied the Great Books and then attended Harvard Law School. He clerked for Judge Boyce F. Martin Jr. of the Sixth Circuit before working for Sidley & Austin doing commercial litigation. He then went into law teaching and is now at Loyola School of Law, where he is teaching Contracts, Jurisprudence, and UCC courses. He has written on the UCC as well as Catholic social thought prior to writing and presenting on Justice in Jesuit Legal Education. See Loyola University Chicago School of Law Faculty, John M. Breen, http://www.luc.edu/law/faculty/breen.html (last visited Mar. 1, 2008).
Professor Thomas Shaffer, in discussing clinical law programs at Notre Dame School of Law, observes that: "[his] student-lawyers don't talk much about Catholic [s]ocial [t]eaching, but they act as if they know about it. The practice is ahead of the theory—not always a bad thing in a university, and a good reason for having clinics."

I. INTRODUCTION

Professor John Breen has written two companion articles identifying the need for more focused concentration on the promotion of justice in legal education by Jesuit and Catholic law schools. I write this article in response to both articles, as the second article builds upon the first.

Professor Breen believes that law students and lawyers are suffering from loss and malaise because they have not learned adequately about justice in law school.


Professor Breen's articles may have found some genesis in at least three other articles, including: John J. Fitzgerald, Today's Catholic Law Schools in Theory and Practice: Are We Preserving Our Identity?, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 245 (2001); Martin R. Tripole, S.J., Justice and Jesuit Higher Education: Another Perspective, CONVERSATIONS ON JESUIT HIGHER EDUC., Spring 2003, at 46; Michael Novak, Defining Social Justice, FIRST THINGS, Dec. 2000, available at http://www.firstthings.com/article.php3?id_article=2702. It is not clear whether Professor Breen's articles may also be related to articles written by one of Professor Breen's Loyola colleagues, Henry Rose. See Henry Rose, Law Schools Should be About Justice Too, 40 CLEV. ST. L. REV. 443 (1992); Henry Rose, A Law School Faculty Member's Perspective on Justice, CONVERSATIONS ON JESUIT HIGHER EDUC., Spring 2001, at 51. Professor Breen's articles may also be considered in part responsive to William Quigley, Seven Principles for Catholic Law Schools Serious About a Preferential Option for the Poor, 1 U. ST. THOMAS L.J. 128 (2003); Daniel J. Morrissey, Bringing the Messiah through Law: Legal Education at the Jesuit Schools, 48 ST. LOUIS U. L.J. 549 (2004); or Jeffrey S. Brand, Legal Education, Democratization, and Economic Development: New Perspectives for the 21st Century, CONVERSATION ON JESUIT HIGHER EDUC., Spring 2003, at 32.

3. It is not fully evident what the definition of justice or the promotion of justice is for Professor Breen. He indicates there are numerous definitions for justice, but in neither article does he fully clarify what he means by justice, unless he is saying it is Catholic social teaching. The term "social justice" is rarely seen in either of his articles. Is this due to a belief that there is a dichotomy between social "teaching" and social "justice"? Is this dichotomy regarded as being similar to one between the terms: "considering" justice and actually "promoting" justice? Professor Breen suggests that justice is "something that one thinks and reasons and argues about," Breen 1, supra note 2, at 398, but he seems to minimize the reality that justice is something one does. For a discussion on meanings of justice see NATIONAL CONFERENCE OF CATHOLIC BISHOPS, ECONOMIC JUSTICE FOR ALL: PASTORAL LETTER ON CATHOLIC SOCIAL TEACHING AND THE U.S. ECONOMY 34-40 (1986); WORLD SYNOD OF CATHOLIC BISHOPS, JUSTICE IN THE WORLD 13-15 (1971); Paula Lustbader, Walk the Talk: Creating Learning Communities to Promote a Pedagogy of Justice, 4 SEATTLE J. SOC. JUST. 613,
He goes on to identify problems that law students and lawyers are encountering in life today and a malaise and sense of loss they are experiencing. To resolve these significant problems, he offers an antidote—the creation of at least two mandatory classroom courses to transmit ideas of justice and Catholic theology in one class and Catholic social teaching and Catholic intellectual tradition in another. Both classes would be required of all law students attending a Jesuit or Catholic law school. It is Professor Breen's premise that law students are experiencing a sense of loss because they are "divorced from the fundamental beliefs about justice that inspired many of them to pursue a career in law in the first place."
Professor Breen initially states that students' own beliefs in justice are what lead many of them to go to law school. I do agree that it is a very good idea for law students to take a jurisprudence class, as I did myself at a Jesuit law school. But, I also recognize that taking a jurisprudence class in law school is not the sole prerequisite for knowing what "concepts" of justice are. Thomas More, John Adams, Mohatma Ghandi, Michael Collins, and Martin Luther King, Jr., along with an incredible host of others, have grasped the concepts of justice without taking such a course. They did so in the face of injustice. Ghandi did so through experiential learning. When he was an attorney, he was turned away from entering a church in South Africa as a person of color.

An independent issue also arises about the role of students in these justice proposals. Professor Breen mentions talking with just one student after a panel presentation. Although students are not the arbiters of the law curriculum, nor specifically the identity of the law school, still shouldn't their interest and desire to participate in these justice proposals be identified, promoted, and elaborated in a more concrete way? It seems the law students are being seen as \textit{tabla rasa} for purposes of the two mandatory classroom proposals. Also, students are said to be unaware of how much these courses will benefit them, so the courses need to be mandated to ensure student participation.

Professor Breen's two articles, therefore, address the role of two stakeholders: a) the Jesuit institutions themselves and b) the law faculties. He leaves out one important constituency, the students. He fails to consider the makeup and number of Catholic students at Catholic law schools in 2008. He appears to be working from a 1950's formula, when the student populations at many Catholic law schools were predominantly Catholic and predominantly male. Without factoring in the beliefs and preferences of the students who actually attend Jesuit or Catholic law schools today, his proposals remain incomplete.

It might, however, be interesting to propose not only hiring faculty to mission at Catholic law schools, but also accepting students for Catholic mission at Catholic law schools. This would mean that the students would also have to understand and be committed to Catholic religious teachings in order to be admitted (thereby limiting many of the admittances to only Catholic students). I doubt, however, that many Catholic law schools will consider accepting law students to Catholic mission, instead of academic merit, even if they could.

Although Professor Breen offers extensive discussion about hiring of faculty to mission for Catholic law schools, the discussion seems incomplete. He concedes that one cannot limit the hiring of faculty to Catholics alone but also advocates that whoever is hired must have a sufficient understanding and commitment to Catholic religious teachings. It would seem, in many cases, this would be accomplished by hiring someone who is Catholic. There may, however, be competitive consequences for limiting the faculty or students to being solely Catholic. Faculty members of all stripes and deans of various law schools are still highly cognizant of and enamored with the prestige that is conferred by U.S. News and World Report rankings. Limiting choices in faculty or students could affect these rankings.

Neither of Professor Breen's two articles discuss the historical choices made by Catholic undergraduate students to go to public or secular law schools, instead of attending Catholic law schools. This is important, especially in light of the Harvard/Boston College (Jesuit) dispute that existed in the last century, along with the choices students are making today. What are the integral reasons many Catholic students choose to go to an Ivy League law school, like Harvard, or another secular law school instead of going to a Catholic law school? It cannot simply be a perception that Catholic law schools are not Catholic enough. Ivy League law schools are certainly not Catholic enough. Rather, it may be that these students are simply pursuing what they believe to be the greatest merit, prestige, and hope for success. Compare Kenneth L. Woodward, \textit{God and Man at Notre Dame}, N.Y. TIMES, Apr. 16, 2008, at A25, where Mr. Woodward points out that: "there are more Catholic students at many of the big public universities in the Midwest than at any Catholic college."
The new "justice/theology" offerings Professor Breen proposes are ones he believes necessary for the resolution of the "loss" within the profession and also for establishing a Jesuit or Catholic identity at Jesuit law schools. Professor Breen criticizes Jesuit law schools for not fulfilling their stated commitment to promote justice and apparently for not having an authentic Catholic identity.

Professor Breen's overall premise is interesting and his analysis reflects very copious research in a number of areas. He also identifies some of the problems facing law students, lawyers, and the profession today but fails to identify fully and adequately the causes of these problems. The suggested antidote of mandatory justice and theology learning in the law school classroom is wide of the mark for resolving the malaise and loss now endemic in law schools and the legal profession.

They are there by choice . . . .

8. Id. at 417-18.
9. Id. Professor Breen makes much of non-Catholic law schools having clinical programs and says this prevents Jesuit law schools from claiming any distinctive role in their commitment to justice through the service work of their clinics. See id. at 395. No evidence is provided that shows a significant number of other law schools regard service as central to their mission. It is, therefore, distinctive for Jesuit law schools to pursue service as fulfillment of their mission. A secular law school may see clinics as simply enhancing its educational cache or just ensuring students get some practical experience. Even assuming that a few other law schools do see service as central to their mission, that does not make the Jesuit commitment to service any less efficacious or any less a part of its mission, or its commitment to the Gospels. If non-Catholics are also aware of the importance of pursuing justice and doing it, does that prevent a Jesuit law school from having a Catholic identity grounded in the Catholic conception of human dignity? Cf. Mark 9:38-41.

Dean Mark Sargent of Villanova put it rather pointedly:

The fact that non-Catholic law schools attempt to teach similar lessons and that Catholic law schools are not uniquely distinctive because of their commitment to such service establishes nothing of any great importance. What is important is why Catholic schools choose to follow the path of service. Clinical and pro bono programs are tangible expressions of the quest for human solidarity and the hunger and thirst for justice grounded in the Catholic conception of human dignity.


St. Thomas Law School provides a possible example for other Catholic law schools to consider, in distinguishing themselves further in promoting justice. Catholic law schools could all commit economically to encourage their students to pursue careers in public interest, rather than generally following the more lucrative paths in the profession. Most students obviously will not do this, but it would show a strong and distinctive commitment to justice, by both the law schools and the students who do commit.

10. Breen 1, supra note 2, at 384-85.
11. I join Professor Breen in recognizing that students entering higher education today may have less basic knowledge about their religion and spirituality than in the distant past. This appears to
Nevertheless, learning about justice is a very important pursuit for any law school, including Jesuit law schools. Students need to be exposed to injustice and reflect on its causes and meaning for their lives. Methods for accomplishing this learning about the promotion of justice, both in concepts and contacts, can best be found in the Jesuit educational tradition and more recently in clinical legal education.

My response will, therefore, focus primarily on the following:

In Part II, I discuss the loss of meaning in law school and the legal profession as referenced by Professor Breen. The cause for this loss is viewed by him as a failure to undertake jurisprudential education of law students during law school. Conversely, I view the causes of this loss as much broader; with the present-day methods of legal education being a major contributing factor.

Part III includes a review of the Jesuit tradition of education and the corollary commitment by Jesuits to justice within their tradition. The success of Jesuit education for centuries can be found in their concern for the individual student (cura personalis) and for persons in the world. The Jesuits have also been successful in providing both cognitive and affective learning to students, while at the same time identifying the necessity of students to assist others. In doing so, Jesuit education continues to follow the solid roots of its Ignatian tradition.

Part IV elaborates why clinical legal education is the best conduit in legal education for promoting justice. Jesuit law schools wisely recognize the importance of clinical education and the University of Detroit Mercy has made clinical education mandatory for every student. The deficits of Langdellian legal education regarding justice and moral learning are enumerated throughout the essay and the benefits of student learning justice concepts in context are highlighted.

Part V identifies proposals to effectuate justice learning in law school. In addition to requiring each student to take a clinic, the proposals would include optional courses in jurisprudence and Catholic social teaching. In addition, a major revamp of the third-year curriculum would be undertaken. Still, another important

be true for students who are both Catholic and non-Catholic. The secularization of society and the laxity in promoting this learning earlier in life are definite factors. For Catholics, the closing of Catholic grammar and high schools throughout the United States is a significant factor and exhibits a lack of Catholic commitment to the concept of Catholic identity.

Notwithstanding Professor Breen's protestations otherwise, I believe that his mandatory course proposals are much more religious in nature than jurisprudential. This inculcation of religious concepts, however, cannot be accomplished in two courses over two semesters in law school. For Catholics it should have occurred much earlier, with Catholic colleges eventually addressing a number of these issues during the core curriculum of philosophy and theology studies as capstones. I agree that students, both Catholic and non-Catholic should be encouraged to take jurisprudential courses. However, mandating the courses will be the kiss-of-death for engaging students in what will be offered. Unlike contracts or torts, the post-modern law student may feel as though he or she is being proselytized by these specific mandatory courses. The students may either react negatively against them or simply turn off. The institutional purpose should instead be to reach the students with these important concepts contextually through clinics and mentoring. See Kirsten Edwards, Found! The Lost Lawyer, 70 FORDHAM L. REV. 37, 59-61 (2001).
reform would be for faculty members to have more personal and individual contact with students. Such mentoring would significantly alter the lingering malaise that students and lawyers experience in the law.

In Part VI the essay concludes by recognizing the dialogue Professor Breen has introduced as a welcome initiative. Nevertheless, his analysis misses the mark in terms of why students and lawyers are feeling an inherent loss and his proposals to ameliorate this loss are also wide of the mark. They fail to ensure an amelioration of the lingering malaise and will not fully promote justice.

II. THE LOSS OF MEANING IN THE LEGAL PROFESSION

It is clear that an intense dissatisfaction is present in the legal profession. It is observed that lawyers have a loss of meaning or purpose in their lives. Moreover, "[a]n estimated one-third of American attorneys suffer from depression or from alcohol or drug addiction, a rate that is two to three times higher than in the public generally," Law students also suffer from significant depression and ill health, and they seem to lose the sense of purpose they had when entering law school. A pervasive negativity is permeating the profession, whether in law school or in practice.

One could attribute some of this malaise and negativity to the nature of legal work and law school education. After all, if one is in an adversarial or competitive stance for many hours of every day, it will take its toll. The fight or flight mechanism will repeatedly be called into action. Eating and sleeping may occur on the run. Relaxation may come by turning to

14. Sullivan et al., supra note 13, at 137.
16. Daisy Hurst Floyd, Reclaiming purpose-our students 'and our own, The Law Teacher, Spring 2003, at 1, 1. Professor Floyd also posits that the law school emphasis on analytical reasoning devalues self-awareness and prevents reflection by law students. She believes both self-awareness and reflection are essential for finding meaning and purpose in law practice and in sustaining relationships, an important part of law practice. Id. at 2; see also William P. Quigley, Letter to a Law Student Interested in Social Justice, 1 DePaul J. Soc. Just. 7, 9-11 (2007) (reasoning that money rather than justice is the essence of the legal profession).
17. See supra notes 12-16 and accompanying text.
outside means, including an abusive consumption of alcohol or drugs. Relationships will be neglected to foster the "jealous mistress of the law."

Law students also discover that the law does not necessarily comport with the reasons they went to law school. Many attorneys are discovering they are not doing the kind of work that they had envisaged as their life's work. Lacking a connection to the profession in either preparing to practice, or during practice, can contribute to a feeling of loss.

Students also find themselves cutoff from their feelings and values while attending law school. The desire of students to involve their personal values and feelings into the study of law may be viewed by legal educators and law schools as emotivism—something that these educators believe should be avoided when involved in precise analytical learning. This "positivist" learning attitude and method may be a major contributor to the alienation found among law students. It is an attitude that emanates from the scholastic law school method that cuts students off from their values, feelings, and selves.

It does not appear that many empirical studies have been done on the pedagogical or andragogical benefits and detriments of the Langdellian model of legal education. The same Langdellian educational model has been utilized at


In fact, many law students come to law school desiring to help those who are less fortunate. This desire to do real service and to learn by doing can be accomplished through clinical education. In assisting others, it is amazing to see how the feelings of loss and discontent lift from many students.


21. It should be noted that Dean Stanley Fish of the University of Illinois, at Chicago, has written in favor of keeping values out of the curriculum of schools of higher education. Peter Steinfels, The University’s Role in Instilling a Moral Code Among Students? None Whatever, Some Argue, N.Y TIMES, June 19, 2004, at A13. Professor Fish argues that moral and civic education in colleges and universities is not only a "bad idea," but also an unworkable one. He believes you "can’t make [students] good people, . . . and you shouldn’t try." Id. In addition, Professor John J. Mearsheimer of the University of Chicago also advocated that the actual purpose of a university is "teaching students to think critically, broadening their intellectual horizons and promoting their self-awareness." Id. This does not include aspects of moral learning. Both Dean Fish and Professor Mearsheimer reflect the narrowness of the normal scholastic and academic tradition on values in the curriculum. Cf. Stanley Fish, Op-Ed., Why We Built the Ivory Tower, N.Y TIMES, May 21, 2004, at A23.

22. Deborah Maranville, Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences, 7 CLINICAL L. REV. 123, 130 (2000). See generally Mitu Gulati et al., The Happy Charade: An Empirical Examination of the Third Year of Law School, 51 J. LEGAL EDUC. 235 (2001). However, some studies have been done of law students and many
American law schools for over 138 years, with almost no update and little improvement in its methods.23

Empirical studies have been completed on how the present-day Langdellian method of teaching is affecting law students.24 A study at the University of Arizona in the 1980s found that 20-40% of the law students suffered from elevated symptoms empirical studies done of attorneys. For one bibliography of empirical studies, see Susan Daicoff, Empirical Studies on Lawyers, http://www.fcs.l.edu/faculty/daicoff/masterbiemp.htm (last visited Mar. 1, 2008).


A key to altering the outdated Langdellian methods is to realize that law schools do not have to be intimidating places for teaching students even when teaching legal analysis. See Lustbader, supra note 3, at 623-24. The Socratic method does not have to be used or misused in a way that strikes fear in students. Many students become disengaged from learning in the class in the face of an adversarial situation and disrespect. See Gerald F. Hess, Listening to Our Students: Obstructing and Enhancing Learning in Law School, 31 U.S.F. L. REV. 941, 947 (1997). Neither adult law students nor other persons learn well in an environment of intimidation or embarrassment. In law school, there is no need for professors to play hide the ball with substantive legal concepts and no reason for professors (especially those teaching first-year students) to be required to teach classes of 60-120 students. Scheduling only one exam at the end of the semester without any other feedback also detracts heavily from law student learning, even though it provides law professors additional time for other activities. Tools such as Twen, Blackboard, and PowerPoint are now available to use to illustrate, communicate, and provide feedback to students throughout the semester. For a complete description of many excellent teaching techniques and methods for legal education, see generally ROY STUCKEY, BEST PRACTICES FOR LEGAL EDUCATION (2007). Tutors and mentors can also be utilized in law schools, in much the same way they are utilized in all other graduate programs. It is after all the twenty-first century.

of "anxiety, hostility, phobic anxiety, paranoid ideation, and psychoticism (social anxiety and isolation)."\textsuperscript{25} Even though only 3–9\% of the general public suffer from depression, "17–40\% of law students and [law] alumni in [the] study suffered from depression."\textsuperscript{26}

A more recent empirical study focused first on general legal scholarship identifying certain concepts of legal education that are negatively affecting law students.\textsuperscript{27} These concepts include: "overvaluing theoretical scholarship and undervaluing the teaching function . . . , employing generally unsound teaching and testing methods . . . , and emphasizing abstract theory rather than providing practical training."\textsuperscript{28} It is suggested that these "priorities and processes train students to ignore their own values and moral sense."\textsuperscript{29}

The Sheldon & Krieger 2007 study then concludes after empirical evaluation that "to maximize the learning and emotional adjustment of its graduates, law schools need to focus on enhancing their student's feelings of autonomy."\textsuperscript{30} The study also concludes that schools need to consider students' priorities and provide choices consistent with those priorities.\textsuperscript{31} These findings highlight motivation-dampening effects now occurring in law schools, ones that are affecting lawyers later in practice.\textsuperscript{32}

One commentator has suggested, however, that the "lost lawyer" that Professor Breen references, has been found.\textsuperscript{33} Professor Kristen Edwards, while at Yale Law School, discussed critiques of Dean Kronman's book on the lost lawyer.\textsuperscript{34} She claims

\begin{itemize}
  \item 25. Benjamin 1, supra note 24, at 246.
  \item 26. Id. at 247.
  \item 28. Id.
  \item 29. Id.
  \item 30. Id. at 894.
  \item 31. See id.
  \item 32. Id.
  \item 33. Edwards, supra note 11, at 37.
  \item 34. See generally KRONMAN, supra note 12. Professor Edwards stated: [C]linics seemed to be the only part of the law school turning out the kind of lawyer that everybody not only wished for, but appeared to think was lost long ago. Yet, despite these efforts, the contribution of clinical education seemed to be ignored . . . Not that anyone was critical of clinical education, far from it; but given the shining light of clinics in what appeared to be an otherwise bleak picture painted of the American legal profession and
\end{itemize}
the lost lawyer has been here all the time in the form of law school clinicians, who are "doing incredible things towards educating and inspiring students to be ethical, practically wise and caring professionals." She sees the clinical experience as especially helpful in teaching law students ethics and professional responsibility. She also references Dean Patrick Schiltz by stating that ethics cannot be taught precisely in the classroom. Rather, "[l]awyers develop an understanding of the ethical norms of the profession through exposure to them in practice and by maintaining and fostering connections with lawyers throughout the legal community." Both Edwards and Schiltz seem to recognize the importance of "contacts" when it comes to understanding and recognizing ethical and moral concepts. Professor Edwards also sees empathy and collaboration as important skills that are being promoted in clinical education. She believes these skills ameliorate some of the competitive and destructive behaviors regularly ascribed to law school participation. It is evident that such skills are also important for the future of law practice as demonstrated by alternative dispute resolution. In addition, clinics provide a way to counter some of the causes of loss and the malaise now affecting law students.

Professor Edwards identifies a beneficial solution for the lost law student, as well as the lost lawyer phenomenon that Professor Breen identifies. The solution is "clinical legal education." Law student learning occurring in clinical education is active, engaging, and inherently involves the application of theory and doctrine into practice that will allow for the development of the whole law student.
III. THE APPLICABILITY OF THE JESUIT EDUCATIONAL TRADITION IN EDUCATING FOR JUSTICE

Professor Breen indicates that he does not have a background of knowledge regarding the Jesuit tradition. Yet, his two articles reference and comment on the Jesuit tradition repeatedly, including a reference to Jesuit roots. He criticizes the Jesuits at Loyola of Chicago for not reaching out to him as a faculty member and educating him on the Jesuit tradition.

The Jesuit tradition of education is very expansive and can only be briefly addressed here. The Society of Jesus had its beginnings in the travails and learning of St. Ignatius of Loyola. From his experience and prayers, St. Ignatius recognized that he would not be able to accomplish his work in a monastery, but rather in assisting souls in the world. He recognized the need for the members of the society to assist their neighbors. This was to be accomplished through "action in the

43. Breen 2, supra note 2, at 45 n.15.
44. As a professor at a Jesuit school, Professor Breen could have requested to go to the Collegium program at Holy Cross. The Collegium program occurs during one week each year in June. It includes scholars of Jesuit universities from around the country who spend the week together in scholastic reading, presentations, discourse, reflection and interaction. Catholic social teaching is a central topic of the Collegium. Professor Breen could also have attempted to participate in a "Year of Prayer" through his university’s Jesuit province. The program is designed to have Jesuit priests, including professors, share the charism with lay persons through meditations on the Spiritual Exercises and a discussion of other readings. He could also have attended the Commitment to Justice Conferences at University of Detroit Mercy in 1999, Santa Clara University in 2000, or John Carroll University in 2005, not to mention the Heartland conferences he briefly refers to. By doing so, he could have had a wonderful introduction to and interaction with the Jesuit tradition that he intends to comment on. In accord with his specific concern, I can say from research and my own experience, that Professor Breen would have encountered numerous discussions and references to Jesus at these conclaves. He may have also encountered Jesuits who were not so much audacious as they were committed to justice with their overall lives, as well as their pen.
45. SAINT IGNATIUS OF LOYOLA, PERSONAL WRITINGS 1 (Joseph A. Munitiz & Philip Endean trans., 1996). St. Ignatius received firsthand lessons on justice and injustice. He was investigated by the Inquisition in Alcala, Spain three times (including how he was dressed) and was imprisoned once. Id. at 41-44. He was later arrested and imprisoned by the Inquisition based on a complaint by the Dominicans in Salamanca, Spain. Id. at 44-47. Subsequently, he was also investigated by the Inquisition in Venice, id. at 59, and Rome, id. at 61. In each case, St. Ignatius prevailed and was cleared even though he always declined to have a lawyer. Each time he won the respect of the judges and in Rome, the respect of the Pope. The fear of something new in the form of the Spiritual Exercises caused the Inquisitors to act irrationally, assuming they could have done otherwise.
Ignatius believed that "love ought to show itself more in deeds than in words."  

To fulfill its mission, the Society members began working as educators. Through Ignatius' Spiritual Exercises, Article IV of his Constitutions, and the Ratio Studiorium of 1599, the Jesuits began forming their innovative concepts for education. The methods created were not uniquely Catholic. Many of the methods were borrowed from ones previously developed by an outstanding Roman educator, Quintilian. Even where Jesuit education developed its own unique synthesis for the day, it essentially shared educational concepts with other educational traditions. From the 1500s through today, Jesuit educational methods and schools have been lauded by even their most ardent critics. Part of the reason for the great success of Jesuit education has been its ability to adapt to the times in which its students are learning.

Some of the greatest critics of the Jesuits have been malefactors within the Church itself. The Jansenists, who believed in salvation through faith alone, and were an austere version of the Augustinians, attacked the Jesuits for having an optimistic approach to salvation and for their active role in the world. Later attacks on Jesuits by Jansenist sympathizers in France were a contributing factor to closing hundreds of Jesuit schools in the late 1700s during the suppression. Although the Jansenist movement had been declared a heresy, former members still had the ability to attack the Jesuits.

49. LACROIX, supra note 46, at 13. This is similar to St. Thomas Aquinas' observation that one is closer to God in charity than in knowledge. See DONOHUE, supra note 48, at 27 ("[W]e can love God directly while we cannot yet 'see' him directly.").
50. SAINT IGNATIUS OF LOYOLA, supra note 45, at 283.
53. FARRELL & FITZSIMONS, supra note 47, at 122.
55. DONOHUE, supra note 48, at 64; LACROIX, supra note 46, at 1.
To adequately understand the Jesuit tradition of education, it must be recognized that the primary goal of Jesuit education is not the acquisition of knowledge for its own sake.\(^5\) The Jesuit method has involved active learning,\(^6\) with students learning through various methods, including academic challenges called disputations.\(^6\) In philosophy courses students were asked to debate one another on a constant and animated basis.\(^6\) This allowed for student interaction to accomplish learning. Other competitions involved individual students or teams of ten students competing on various subjects.\(^6\) These competitions resulted in hard-earned awards, called emulations.\(^6\) Learning also took place through drama and the arts. One of the goals of Jesuit education was to cultivate all aspects of learning including: the "cognitive, reflective, and affective."\(^6\) "[T]he human intellect needs the cooperation of the senses in order to carry out on its work as intellect. This is true even when man understands immaterial reality, such as justice."\(^6\)

The Ratio Studiorum of 1599 intimated that the educational purpose of the Jesuits was in part aiding one's neighbor.\(^6\) Although Professor Breen suggests that the Jesuits commitment to justice and to neighbor began with the 1973 address of Father Arrupe,\(^6\) this is inaccurate.\(^6\) It actually is part of the Jesuit tradition, dating back to Ignatius.\(^6\) After all, the name given to the group by Ignatius was the Society of Jesus. Was not Jesus active in the world, even interacting with members of the lowest echelons of society? Was not every part of Christ's spiritual work active and involved? Does Jesus not call upon us to take up the cross and follow him?\(^7\)

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59. LACROIX, supra note 46, at 60, 68. St. Ignatius believed that intellectual education alone was inadequate. FARRELL & FITZSIMONS, supra note 47, at 104.

60. DONOHUE, supra note 48, at 67.

61. FARRELL & FITZSIMONS, supra note 47, at 128-29.

62. Id. at 129.

63. Id. at 131.

64. See id. The competitions appear to have been similar to a College Bowl.

65. Id. at 122.

66. Id. at 181 (quoting Fr. Francis C. Wade, S.J.).

67. John W. O'Malley, S.J., The Jesuit Educational Enterprise in Historical Perspective, in JESUIT HIGHER EDUCATION: ESSAYS ON AN AMERICAN TRADITION OF EXCELLENCE 10, 21 (Rolando E. Bonachea ed., 1989) (adding that the Jesuits even criticized the professors at the University of Paris for always staying in their offices and not going into the streets to help persons in need, as the Jesuits did).

68. Breen 1, supra note 2, at 387.

69. See DONOHUE, supra note 48, at 138 (discussing the significant commitment to neighbor that was to be part of all Jesuit education).

70. Id. Service issues were even extended into the science and theology courses. St. Aloysius Gonzaga died from the plague because he worked with poorer students outside of the ivory tower.

71. Matthew 17:24-27.
In 1893, Father General Luis Martin, S.J. addressed the legacy of the Ratio Studiorum by identifying two distinctive earmarks of Jesuit education. That “activity be demanded of the students” and “mere acquisition of knowledge is not enough.” In addition, he noted the “object of study lies in the cultivation of all the faculties, which will then be fitted for every phase of life and activity.”

Father John Baptist Janssens, the Father General of the Jesuits in 1949, stated during the 27th General Assembly of Jesuits:

It is our aim above all in educating the young men we have accepted in the name of the Church, to instill in their hearts the charity of Christ . . . Let them learn to hunger and thirst after justice, the justice which sees to it that all men receive the due reward of their labors, and that there be a more . . . universal sharing of spiritual goods.

More recently, Father General Peter Hans Kolvenbach has stated:

[T]he Ignatian worldview is world-affirming, comprehensive, places emphasis on freedom, faces up to sin, personal and social, but points to God’s love as more powerful than human weakness and evil, is altruistic, stressed the essential need for discernment, and gives ample scope to intellect and affectivity in forming leaders.

To amplify and highlight understandings of Jesuit education, the Jesuits, in 1986, issued a document known as “The Characteristics of Jesuit Education.” An international group of Jesuit scholars, the International Commission on the Apostolate of Jesuit Education (“ICAJE”) worked on drafting this document, reaffirming the tradition of Jesuit Education. The group published the Characteristics, consisting of 198 points, as a specific reflection on the vision of Ignatius. The Characteristics express a commitment to sound intellectual formation so one can reason “reflectively, logically and critically.” The Characteristics identify a commitment to humanistic studies and state emphatically that: “In Jesuit education, particular care is given to

72. Farrell, supra note 54, at 402.
73. Id.
74. Donohue, supra note 48, at 208-09.
77. Id. ¶¶ 1, 5-6.
78. Id. ¶ 4.
79. Id. ¶ 26.
80. Id. ¶¶ 26-28.
the development of the imaginative, the affective, and the creative dimensions of each student in all courses of study. These dimensions enrich learning and prevent it from being merely intellectual.\textsuperscript{81}

This vision is in part what has made Jesuit education distinctive and successful. Educating the whole student occurs in the Jesuit method by actually engaging him or her completely. This is accomplished through \textit{cura personalis} (care for the individual student) and innovative techniques to keep the students awake and engaged.\textsuperscript{82} Jesuit educators recognize wisely that the greatest enemy of learning is boredom.\textsuperscript{83}

The Characteristics also include a section discussing faith doing justice,\textsuperscript{84} with a number of points addressing education for justice in a Jesuit school (high school through higher learning).\textsuperscript{85} The Jesuits see a basic formation in the students for rigorous and critical thinking. The curriculum should have a "critical analysis of society" that depending upon the students' age level, may look to the Bible, church teachings and human science for analysis.\textsuperscript{86} However,

\begin{quote}
"[t]here is no genuine conversion to justice unless there are works of justice. . . . In preparation for life commitment, there are opportunities in Jesuit education for actual contact with the world of injustice. [An] analysis of society within the curriculum thus becomes reflection based on actual contact with the structural dimensions of injustice."
\end{quote}

The Characteristics go on to elaborate about educating students for service to others and having a preferential concern for the poor.\textsuperscript{87}

Strong interest grew in the 1990s to implement the Characteristics into contemporary teaching.\textsuperscript{88} The ICAJE worked for another three years and developed a practical pedagogical method to implement substantive aspects of the Characteristics.\textsuperscript{89} This document is known as “Ignatian Pedagogy: A Practical

\begin{thebibliography}{99}
\bibitem{81} \textit{Id.} \S\ 28.
\bibitem{82} \textit{Id.} \S\ 28-29.
\bibitem{83} See \textsc{Francis P. Donnelly}, S.J., \textit{Principles of Jesuit Education in Practice} 36 (1934).
\bibitem{84} \textsc{Characteristics, supra} note 76, \S\ 74-81.
\bibitem{85} \textit{Id.} \S\ 77-81.
\bibitem{86} \textit{Id.} \S\ 78.
\bibitem{87} \textit{Id.} \S\ 80.
\bibitem{88} \textit{Id.} \S\ 82-90. Professor Quigley suggests that law schools generally have a preferential option for the rich. Quigley, \textit{supra} note 2, at 129. Professor Quigley is well-known for the work he did in New Orleans during the aftermath of the Katrina disaster. In the foregoing article he states: "A preferential option for the poor should be a foundation of any . . . institution that calls itself Catholic, but especially Catholic law schools." \textit{Id.} at 134-35.
\bibitem{90} \textit{Id.} at 234-35.
\end{thebibliography}
Approach. It highlights the distinction between Jesuit education and singular scholastic education.

Ignatian pedagogy recognizes that much of traditional education is conducted in the classroom, with the professor or teacher transmitting knowledge to the students through lecture and memorization. Ignatian pedagogy views this model of education as deficient. It is only a two-way process from teacher to student, with the teacher being the active participant.

The Ignatian paradigm instead sees the student and teacher having greater interaction, with the student becoming more active and involved in his/her own learning as time goes on. Two examples of this from the past may be seen in “discipleship and apprenticeship.”

The five steps that make up the Ignatian pedagogical paradigm include: context, experience, reflection, action, and evaluation. These steps fulfill the integration of the intellect and the senses in allowing for a more comprehensive and effective learning experience.


IGNATIAN PEDAGOGY, supra note 89, at 250-51.

Id. at 251. It is instructive to compare these five Jesuit building blocks of learning with David A. Kolb’s learning theory of a four-part “cycle through which the learner passes numerous times while progressing from novice to expert.” Kristin B. Gerdy, Teacher, Coach, Cheerleader, and Judge: Promoting Learning through Learner-Centered Assessment, 94 LAW LIBR. J. 59, 62 (2002). The Kolb cycle “moves from concrete experience through reflective observation to abstract conceptualization ending in active experimentation . . . Underpinning this model is the view that complete learning requires integrating both the concrete and the abstract, as well as action and reflection.” Deborah Maranville, Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning, 51 J. LEGAL EDUC. 51, 59 (2001). Similarly, other theories reflect methods that encompass a combination of cognitive and affective aspects as integral keys to learning. See JEROME BRUNER, THE CULTURE OF EDUCATION 119-120 (1996); Learning Domains or Bloom’s Taxonomy, http://www.nwlink.com/~donclark/hrd/bloom.html (last visited Jan. 19, 2008). Unfortunately, law professors are generally not very rigorous about reading educational learning theory. That is why up until now they have utilized 1870 educational learning theory to teach. Cf. RAYMOND J. WLODKOWSKI, ENHANCING ADULT MOTIVATION TO LEARN: A COMPREHENSIVE GUIDE FOR TEACHING ALL ADULTS 7-20, 136-50 (2d ed. 1999) (discussing the importance of intrinsic motivation in adult learners and steps to help adults build a positive attitude toward a new learning endeavor); Alberto Rosa & Ignacio Montero, The historical context of Vygotsky’s work: A sociohistorical approach, in VYGOTSKY AND EDUCATION: INSTRUCTIONAL IMPLICATIONS AND
Although Professor Breen criticizes clinical education for being affective in nature, it is evident that affective learning has been an integral part of Jesuit education for hundreds of years. So, when Professor Breen asks whether the Jesuits will recover their roots regarding their educational mission, it is clear they never lost them. In viewing clinical education as a pedagogical method for the promotion of justice, Jesuit law schools are in fact following their own Jesuit tradition of education. The Jesuits' success throughout so many years exemplifies the effectiveness of their pedagogy and andragogy.

IV. WHY CLINICAL EDUCATION PRESENTS AN EXCELLENT METHOD FOR LEARNING JUSTICE

Professor Breen criticizes Jesuit law schools for referencing clinical law programs as embodying their commitment to promote justice. He identifies the fact that only about one-third of the students in law schools participate in clinics. As such, he sees this as an insufficient number to suggest clinics adequately promote justice in law schools. However, if Jesuit law schools instead require every student to participate in a clinic, that would fully address Professor Breen's objection to the "marginality" of clinical education. Yet, instead of actually proposing mandatory clinics for every student in Jesuit law schools, Professor Breen suggests that every law student be required to take at least two classroom courses. The rationale given for this curriculum alteration is that

APPLICATIONS OF SOCIOHISTORICAL PSYCHOLOGY 59, 78-84 (Luis C. Moll ed., 1990) (discussing the increasing reliance on twentieth century psychologist Vygotsky's educational theory); HOWARD GARDNER, MULTIPLE INTELLIGENCES: THE THEORY IN PRACTICE 75-77, 190-97 (1993) (describing the ideal school where students are actively learning and methods to gear education toward a child's needs at different times in life); DANIEL GOLEMAN, EMOTIONAL INTELLIGENCE 93-95 (1995) (discussing new learning theories put into practice by schools).

96. Breen 1, supra note 2, at 397.
97. Breen 2, supra note 2, at 75.
98. Any argument that the Jesuit's 400 year-old attention to the affective aspects of education is anti-intellectual will only fall on deaf ears. The intellectual rigor of Jesuit education during the past 400 years has been unrivaled in Catholic learning.
99. Breen 1, supra note 2, at 395.
100. Id. at 396 n.67.
101. If every Jesuit law school required every student to participate in a clinic, the mandatory participation would itself signal the distinctive type of Catholic identity Professor Breen sees as important. Only a handful of schools around the country now require every law graduate to participate in clinical education. The University of Detroit Mercy School of Law is one of the few schools. Although ensuring that every student does a clinic may be more expensive than simply having one professor lecture to 100 students, Professor Breen suggests there is still a powerful case for requiring clinical education. That powerful case is why the University of Detroit Mercy is requiring clinical education. Why then is Professor Breen not advocating a “powerful case” in both articles to have other Jesuit or Catholic law schools pursue mandatory clinical education?
clinics cannot teach students about the complex moral problems they will encounter in practice.102

This is a bit ironic, since many of the students are doing in the clinics exactly what they will be doing in practice. In fact, law students in the clinic are encountering many of the same ethical, jurisprudential, and moral questions that may come up later in practice. As identified by Professor Shafer and quoted by Professor Breen, moral discussions take place in every law office103 and it is no different in clinical law offices. The discussions and decisionmaking in clinics take place not only among the students, but also with faculty members who have had extensive experience in dealing with ethical and moral issues in practice.104

Still, Professor Breen may respond that the law students themselves have no grounding in what justice is and they cannot promote justice other than in individual cases.105 But, isn’t doing justice in small cases part of what we are called to do as individuals by Catholic social teaching,106 and isn’t it how attorneys may best promote justice in their later practice? Moreover, Professor Breen recognizes in the first instance that students enter law school already with their own beliefs about justice.107 To now suggest that they are entirely _tabla rasa_ for understanding what justice is, seems juxtaposed to the initial reasoning for making the proposals.

At times it appears Professor Breen may be somewhat supportive of the concept of clinical education in his articles,108 but at other times he is quite negative about clinics.109 He observes that clinics are good for Jesuit identity, but he will not accede that clinics are sufficiently promoting justice and justice learning in law schools.

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102. Breen 1, supra note 2, at 397.
103. _Id._ at 385 n.8 (quoting THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY 1 (1994)).
104. “The experiential nature of the clinical course brings abstract notions of justice to life and inspires classroom or informal teacher-student or student-student dialogue on the relationship of the legal practice to the lives of clients and to society as a whole.” Quigley, _supra_ note 23, at 44.
105. It appears Professor Breen is making the assumption that all clinical faculty members teaching at Jesuit law schools do not have a background in either jurisprudence or Catholic social teaching. This is certainly not true of Professor Shafer.
106. I presume Professor Breen may have already weighed in on the concept of subsidiarity within Catholic social teaching and found it a preferable approach in addressing justice issues, like the issues discussed herein. _See_ Lucia A. Silecchia, _Reflections on the Future of Social Justice_, 23 SEATTLE U. L. REV. 1121, 1149-1150 (2000) (explaining the subsidiary doctrine as requiring issues of social justice to be handled on the local level before attacking them on a larger level).
107. _See_ Breen 1, _supra_ note 2, at 386.
108. _See id._ at 398; Breen 2, _supra_ note 2, at 45-46.
109. Breen 1, _supra_ note 2, at 395 & n.62, 396, 398 nn.73-75, 415; Breen 2, _supra_ note 2, at 43, 56. “[M]ere presence of . . . clinics” and “cherry on top of a sundae,” are references to clinical education by Professor Breen that are simply wrong or without basis. _Id._ at 56. His opinion that students do not give careful thought in the clinic and that clinical education is almost entirely affective or that it is not rigorous, is formed without any documentation or support. The Carnegie Report, discussed above in Part II, states:
It may, therefore, be useful to engage in a dialogue with Professor Breen on what clinics do, what the literature on clinical education says, and how clinics promote the learning of justice. Investigating what clinical students may be doing, what they are learning, and what they are accomplishing may help to understand just how well clinical education promotes justice and justice learning. It may also help to understand just how rigorous clinical education is.

The premise that justice can be learned well only in the normal scholastic educational method is adverse to Jesuit tradition.

It is true that Thorstein Veblen believed that law schools and other professional schools had no more business being

... [In clinics,] the student comes to understand that the cognitive and the practical are two complimentary dimensions of meaningful professional activity that gets its point and intensity from its moral meaning. ... Clinics can be a key setting for integrating all the elements of legal education, as students draw on and develop their doctrinal reasoning, lawyering skills, and ethical engagement, extending to contextual issues such as the policy environment. ... If one were to search for a single term to describe the ability they hone best, it is probably legal judgment.

SULLIVAN ET AL., supra note 13, at 121-22. Legal judgment is the skill most needed to be a professional, ethical, and moral attorney.

In Breen 2, supra note 2, at 52 n.34, Professor Breen suggests that in giving direct service to clients in clinics, rigorous thought does not occur. This is again based not on any "concepts" of knowledge about clinical education, but apparently on some distant assumption, preconception, or bias about what clinical education is.


111. See Quigley, supra note 23, at 44-46; see also Gerald F. Uelmen, Letter From the Institute Director, EXPLORE, Fall 1999, at 1 (outlining the justice themes and Biblical connections to Santa Clara’s law school clinics).

112. It is true that in Breen 1, supra note 2, at 411 n.119, Professor Breen attempts to back away from saying that justice can only be learned in a the scholastic classroom context. Nevertheless, his arguments throughout appear to be otherwise. See id. at 401; Breen 2, supra note 2, at 52 n.34 (referring to Father Greg Kalscheur’s analysis of Breen’s position).
in an academic university than a fencing or dancing school. Yet, in his misguided elitism, Veblen did make an important observation about the law and its study. Law is not a pure science that can be learned only in a purely cognitive way, even though that has been the incorrect positivist ethos of legal education since 1870.

Unfortunately, Christopher Columbus Langdell and the nineteenth century German scientific tradition had everyone believing that the law was a "science." By the 1920s, it was argued by the Realists that Langdell had been wrong about the law being a science. Nevertheless, change in legal education has been incredibly slow in coming. For the past 80 years numerous outside blue ribbon studies have continued to report and recommend that legal education improve its methods of teaching in numerous ways. The most recent of these studies being the Carnegie Report on Legal Education, which found that:

Developments in philosophy and in the learning sciences have made increasingly clear the reciprocal interpenetration of cognitive development and social interaction. . . . In contrast to the distanced stance of positivist theories of knowledge, the practical disciplines embody forms of knowing that blur distinctions among cognition, action, and intention.

It would seem that now, in the year 2008, legal education may finally be understanding what the Jesuits have known for centuries and educational psychologists for decades. Real learning is not solely intellectual. Cognitive education by itself cannot fully develop the type of judgment and understanding that is required in the law or in promoting justice. Learning in the classroom may be a good way to abstract formal knowledge about justice or values. However, reintegrating that knowledge into a practical context of indeterminate situations, or even understanding how it might be integrated, requires the development of judgment. This type of judgment is developed through both a cognitive and affective understanding, and can be learned best in the type of study, reflection, and experiential learning that occurs in clinical education.

113. Cooper, supra note 42, at 51.
114. SULLIVAN ET AL., supra note 13, at 5.
118. SULLIVAN ET AL., supra note 13, at 18.
119. Id. at 8.
120. See supra note 95.
121. See SULLIVAN ET AL., supra note 13, at 79.
A few years ago, Professor Byron Cooper made a significant observation about the legal continuum of theory and doctrine into practice. He referred to Professor Karl Llewellyn being perplexed about students in his upper classes not remembering concepts he had taught them in their first-year classroom. Yet, most students remembered the facts and substantive law from their moot court participation quite well. The key was the students learned the legal concepts during moot court in context and engagement, rather than in an appellate vacuum. They could see the context and how the law and facts interacted. The result was a powerful experience that ensured it would be memorable for them. The students were engaged and today they can be found being even more engaged in clinics.

There is little debate that clinical education programs provide legal skills, access to the legal system, and practice orientation. The access to the legal system is in fact access to justice for many indigent clients. Still, Professor Breen downplays access to justice in terms of actually promoting justice. He suggests that clinical education is simply empathetically affective, suffers from emotivism, and that students only see justice on immediate contact. He apparently concludes that clinical education is not rigorous.

The fact is that students definitely learn about justice by seeing injustice. It is not necessarily an empathetic or affective sympathy reaction that the students have but rather a strong equitable reaction to a perceived wrong that is frequently based in the law. After recognizing the inequities, students do not have an immediate reaction. They must engage in careful and thoughtful investigation and analysis to determine what the issues are and consider how and if to address them. Through reflection with faculty members the students determine what justice or ethical issues exist. They then see what action should be taken next to resolve the inequities. Issues concerning the relationships of the parties and other non-legal problems facing the client enter into the mix for any negotiations. The students must be thorough and rigorous in their thinking, analyzing, interviewing, drafting, evaluating, writing, understanding,
and negotiating in the pursuit of any type of litigation to ensure a just result. This must be done in the manner of a competent and professional attorney who recognizes ethical and moral issues. In a number of ways, the faculty also provide modeling for the students in their participation in the clinic.

As for mandating the teaching Catholic moral theory in law school, one has to remember that theology is based on factors such as faith and love. Certainly love is an affective concept and is learned in an affective way. Such a concept, however, may be viewed by some scholastic legal educators as emotivism. Many scholars may feel uncomfortable in talking about love as a necessary component in promoting justice or in understanding Catholic social teaching or theology. Still, the heart of Catholic social teaching and theology is love.130

If we are going to somehow teach these concepts in law school, we cannot skirt the fact that it will require an affective understanding and affective learning. Concepts like love, faith, fairness, hope, inspiration, caring, compassion, understanding, sacrifice, commitment, responsibility and yes, even empathy, are all affective concepts that legal scholastic education has considered fuzzy. Nevertheless, learning or understanding these concepts cannot be reduced to some linear analysis, marginalized by negative characterizations or simply ignored by “emotive-adverse” and “value-free” scholarly intellectual inquiry.

We also cannot ignore that people have different views on moral values. We cannot simply say that we will endeavor to discuss everyone’s views in class. Many people believe their moral views to be private and not subject to introspection by others, especially fifty to eighty others. The concept of subjecting these students to our own specific moral views may be something they do not wish to do in a law school classroom, and they should not be mandated to do so. Instead, they should be encouraged to do so.131 This can best be accomplished through their participation in clinical education.

To achieve the goals Professor Breen has set forth, it would be preferable to adopt a more expansive approach such as the interaction, discussion, and learning that occurs in clinics. This is a milieu where these justice and moral discussions occur spontaneously simply because the students feel comfortable to open up to each other and to their clinical faculty about them.

Clinical legal education is not just a “go out and do some skills” approach to legal learning, as Professor Breen’s articles might seem to suggest.132 Most clinical

131. Quigley, *supra* note 23, at 42 n.17 (“T]he concept of an ‘invitation’ to increase awareness about the relationship between social justice and the practice of law is borrowed from the Socratic concept that persuasion is more of an invitation than a command.” (citing Barbara Bezdek, *Reconstructing a Pedagogy of Responsibility*, 43 HASTINGS L.J. 1159, 1173 (1992); who references Howard Lesnick, *The Integration of Responsibility and Values: Legal Education in an Alternative Consciousness of Lawying and Law*, 10 NOVA L.J. 633, 642 (1986))). It would appear that Professor Breen’s proposals may be more of a demand than an invitation.
132. See *supra* notes 125-128 and accompanying text.
programs have a classroom component that requires students to learn not only skills, but applicable substantive law, ethics, and in the case of University of Detroit Mercy, moral issues. In addition, clinical courses include “rounds” or classes where the faculty and students review and reflect together on the progress and import of the cases. Weekly meetings take place with each student individually. These meetings provide a time for reflection on the legal work of the clinic and on other issues as well. Students research and discuss ethical issues that may arise and actions that need to be taken to avoid ethical concerns.

Professional responsibility is also examined in the Urban law clinic at the University of Detroit Mercy through an exercise borrowed from Cardozo Law School. The exercise originated with Cardozo’s elder law clinic and its facts are about two daughters attempting to get their father’s money. In a thirty minute role play, over 60% of the Model Rules are covered. The law students act out the role play and then participate in a focused discussion on the ethical problems that arise. The discussion extends beyond the ethical questions facing the attorney, to the moral choices made by the family. This is an integrative simulation that adds to the student’s ethical and moral understanding of elder law and justice issues. Other simulations and discussions are conducted with students individually throughout the semester to highlight other professional responsibility and moral issues that may arise in the clinic’s cases.

Justice issues are recognized by clinical students through the spotlight of direct service. The contact that students have with clients and their cases has significant impact. Many law students have not had close contact with someone of a lower economic status. It is an incredibly eye opening experience for the students to see that people are faced with such daunting legal and social problems. Working on the clinic cases transforms the students. They are empowered by helping the clients and find a new maturity and compassion as a result of their work. As Professor Shafer observed, practice can actually precede theory.

In the Urban Law Clinic at University of Detroit Mercy students discuss non-legal assistance that clients may need and the circumstances surrounding the living situations their clients may endure. Students consider changes that might be made legislatively or judicially to avoid some of the inequities clients may be encountering. Students also discuss fairness issues and the legal rights of the client.

One of the most interesting discussions that occurs is about client status and image. Clients are frequently viewed and treated by others in society differently, usually very badly. This is because of their age, economic status, race, or disabilities. The clinic students learn about the dignity of each individual and the respect that each individual deserves. Issues of distributive justice are also considered and vigorously debated in many clinical discussions.

134. Shaffer, supra note 1, at 310.
A final class in the Urban Law Clinic addresses the issue of spirituality in the life of lawyers and judges. Prominent lawyers and judges join the class as a panel in advising students on what they need to know about in their first year in law practice. The discussion includes problems that affect the profession and the role spirituality plays in the life of each lawyer and judge. The students question the panel on their views on spirituality and a number of students interject their own views. The result is a terrific interaction as the students receive insights about how members of the profession deal with difficult issues in their own lives.

The Urban Law Clinic has also looked at issues related to more theoretical perspectives of justice. Two JD/LLB students who were in the Urban Law clinic in 2006, Brennan and Ryan Mitchell, reviewed Professor Breen’s initial article. They each drafted their own analysis and response from a philosophical perspective. Both students identified what they viewed as an inherent contradiction in Professor Breen’s positions. Brennan initially determined that Professor Breen had a Positivist approach to legal education, but at the same time was attempting to inculcate personal metaphysical values into the value-free positivist model. Brennan’s analysis was very copious, including a historical evaluation of Positivism. Ryan Mitchell independently made a presentation to the weekly clinical class on Natural Law and Positivism and the class discussed their own views and the basis for them.

V. SPECIFIC PROPOSALS FOR EFFECTUATING JUSTICE LEARNING IN LAW SCHOOL

Clinical education is a significant key to learning the promotion of justice. It engages students like no other aspect of legal education. It promotes students in doing social justice work. It encourages teamwork among the students and it develops problem-solving, a key to their future career. Clinical education resolves cases favorably for the indigent; it ensures access to justice for many; gives students a greater understanding of the inequities in society, highlights and addresses ethical and moral issues in practice, and forces students to think through difficult legal issues rigorously to understand what promotion of justice means in the real world. Clinical education also illuminates the need to do pro bono work after graduation and imbues the students with the importance and dignity of being compassionate and human. It also sharpens students’ intellectual approach through enthusiasm, motivation, and attentiveness and allows the student to do a self-reflection. Each of these related “affective” concepts being essential for real learning to occur.

135. Brennan, Ryan, and I discussed Professor Breen’s first article a number of times, in and out of the clinic itself. I enjoyed our discourse, their philosophical acumen, and their independent thoughts on responding to Professor Breen. Brennan and Ryan also initiated other discussions in the clinical class on religious and philosophical issues.
136. See Quigley, supra note 23, at 44-45.
Therefore, the first step in effectuating the promotion of justice is to have a
clinical course as a requirement for each student enrolled in the clinic.\textsuperscript{137} Specific
classes in the clinic can be structured to not only address substantive law and ethics,
but also to look at justice in a coordinated way. An independent course on
jurisprudence, not unlike the one Professor Breen suggests, can be recommended to
each student enrolled in a clinic.\textsuperscript{138} Depending upon the support given by the faculty,
this may result in a significantly large class, or classes. An upper level course
addressing "Catholic social teaching and Catholic social justice" can also be offered,
as opposed to mandated.

Disputations on issues of justice can also be conducted between students in the
clinic and possibly with other members of the law school community. The school
might also create a scholarship award for the best academic writing produced on a
specific justice issue. Judges and lawyers can be invited to discuss the promotion of
justice on a broad range of issues with the students.

These curricular and extra-curricular changes may be helpful in a number of
ways. They will allow for a cross-pollination of ideas and a greater involvement with
justice issues. They will engage students and bring status to the subject itself for law
students. These changes will also broaden student thinking and will challenge
students through invitation and persuasion rather than mandate.

Nevertheless, the most important curricular change for learning about justice will
not necessarily be a course innovation, be it clinical or classroom. It will instead be
increased faculty involvement and contact with the students. The 2006 Law School
Survey of Student Engagement ("LSSSE") found that law students believe faculty
contact is the most important factor in learning professional ethical
issues.\textsuperscript{139} Faculty
members are role models for the students, are looked up to, and play an important
part in student thinking. Faculty members, therefore, need to take the time to speak to
and engage smaller groups of students or individual students outside of the classroom
and office hours. During this time they can also address justice and moral issues.
Through this mentoring and expanded contact and concepts learning, these values
can be further considered and transmitted to students.

Mentoring students is absolutely integral at other graduate programs in the
United States, including medical programs.\textsuperscript{140} Mentoring can be given by faculty
members, advanced students, and more recently in a cyber capacity. Mentoring in its

\begin{footnotes}
\footnotetext[137]{See discussion supra notes 34, 101.}
\footnotetext[138]{This is an initiative the Curriculum Committee at the University of Detroit Mercy will
advance to be effectuated next year.}
\footnotetext[139]{Law School Survey of Student Engagement, Engaging Legal Education:
Moving Beyond the Status Quo—2006 Annual Survey Results 11 (2007). It is fair to say that
students would also find direct faculty involvement important for learning justice and moral issues.}
\footnotetext[140]{See Jennifer Leadley, Ass'n of American Med. Colls., Medical School Based
Mentoring Programs 1-9 (2006), available at
http://www.aamc.org/members/facultydev/mentoringprograms.pdf.}
\end{footnotes}
elemental form is a relationship between an expert (faculty member) and a novice (graduate/law student). The expert meets with and provides guidance to the novice as he/she goes through the academic program. Elements of a mentoring role by faculty in law school may include:

1. Providing a positive role model;
2. Being available to speak with a student on a regular basis;
3. Evaluating and giving feedback on a student’s progress and performance;
4. Helping a student learn how to develop integral expertise in both substantive knowledge and communication skills;
5. Creating and fostering a spirit of collegiality and professionalism;
6. Valuing diversity;
7. Providing ethical guidance; and
8. Assisting with career advice

The fifty page Mentoring Manual by the Rackham School of Graduate Studies at the University of Michigan also suggests that a mentor should demystify the graduate school for the student, treat students with respect, and provide individual encouragement and support. It is certainly questionable how often all of these three elements are undertaken by faculty in law schools, yet the Rackham manual observes that: “Research shows that students who have mentoring relationships have higher productivity levels, a higher level of involvement with their departments, and greater satisfaction with their programs.”

In a copious commentary, Professor Robert Schuwerk of Houston Law School identifies the lack of mentoring occurring in law schools for students. He proposes that as faculty:

We could take an interest in them as nascent lawyers, who need to be taught not just “the law” and not just “legal skills,” but also legal values, legal traditions and legal culture. . . .

. . . We could take an interest in them as persons. . . . We could acknowledge as part of our education mission acquainting our students with the stresses of the

143. Id. at 6.
practice of law and devising strategies with them for coping with those inevitable difficulties.  

This all requires a significant commitment of time on the part of a faculty member. It may mean less time with one's own writing agenda and more time interacting with law students.

An extensive mentoring program developed by the faculties at Jesuit law schools would definitely be distinctive in terms of Jesuit and Catholic identity. It would reconfirm the 400 year-old Jesuit concept of cura personalis, or the commitment to the individual student. St. Thomas Law School in Minnesota is already initiating such a mentoring program.

How can such significant change be accomplished in our law schools? The answer can be found in the third year of law school. The 2005 LSSSE survey of students discovered many students tend not to participate or study for their classroom courses in the third year. They are not learning the subject matter well because they are simply not there, figuratively and many times literally. They seem to be very disinterested not only in the Langdellian method of teaching, but also in the doctrinal subject matter as well. They fail to see a connection between the classes they are taking and what they will be doing in the next year. They are not engaged! As such, they will not learn.

The third year of law school offers a singular opportunity for innovative curricular initiatives to reengage law students. This can be done by ensuring all students participate in a clinical program during their third year. It can also be done by creating innovative and unique simulations that address the type of legal practice students may encounter when they graduate. Jurisprudential and moral theory courses, like those discussed in this dialogue, may be introduced and should be strongly encouraged. The jurisprudence course may be combined with other third-

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145. Id. at 759-61. Professor Schuwerk’s proposal is an excellent way for faculty members to deal with the malaise and loss that law students and lawyers face. It is evident how much of an impact faculty members can have by mentoring law students. Cf. Allegretti, supra note 13, at 880-82 (comparing the hell in Dante’s Inferno to the experience of practicing law); Schiltz, supra note 38, at 720-24, 740-42, 771-77 (describing reasons for the decline of mentoring in law practice and presenting an argument for mentoring in law school).


147. See Gulati et al., supra note 22, at 244-47; Justin Pope, Is third year of law school just one big party?, AZCENTRAL.COM, Aug. 9, 2005, available at http://www.azcentral.com/families/education/articles/0809lawschool-ON.html; see also SULLIVAN ET AL., supra note 13, at 77.

148. The University of Detroit Mercy is initiating a law firm program that will simulate law firm practice. With faculty and members of Detroit law firms, the students will work on complex corporate and other business problems. Different modules (environmental, real estate, securities etc.) will be offered to the students.
year courses in a manner proposed by Professor Andrew Moore.\textsuperscript{149} Independent pro-bono activities can also be initiated or expanded upon. Pilot classes in legal human interrelationships can be explored. Interdisciplinary courses can be implemented with other departments of the university, including the Philosophy and Theology departments.

To effectuate this potential for the third year of law school, faculty members might be given one regular advanced course to teach, along with a seminar or class specifically geared to the new innovative third-year curriculum. Faculty and third-year students could work together on scholarship, policy issues, pro bono legal service projects for the community, and the mentoring of first-year students. Team teaching, utilizing lawyers working with the faculty, or simply faculty members working together\textsuperscript{150} can be initiated to address the third-year workload and to provide a diversity of legal thought throughout. This team teaching can also provide the time needed for mentoring and for scholarship.

Of course, the objections will be legion to any such innovations in the third-year curriculum. The innovations will be seen as impinging on the scholarly work of professors and will not be regarded as rigorous legal education. Yet, the alleged "rigorous" legal education from 1870 is fast becoming "rigor mortis" education for law students in their third year. The key is working with twenty-four to twenty-eight year old adults to help them learn not only the formal aspects of law, but also the affective aspects of law and life, so they can become practitioners with judgment and sound values to promote justice.

The third-year initiative is an exciting possibility for law schools and law faculty to make a significant difference in the future lives of our law students. Mentoring them into the future on law, justice, life, and salvation\textsuperscript{151} is the real transmission of knowledge that Professor Breen seems to yearn for in his articles. Why not accomplish it so that students will listen and be engaged and actually begin to pursue their own lifelong learning, instead of having them study only for the next exam in their classroom, in a malaise-plagued pursuit of the golden treadmill.

VI. CONCLUSION

Professor Breen's dialogue, addressing the need to increase student exposure to the promotion of justice is a welcome initiative. Our differences center on how law students should participate in the promotion of justice and how it can be best portrayed to students. It is evident that the most effective way to transmit the values

\textsuperscript{149} Moore, supra note 133, at 470.

\textsuperscript{150} Five Professors at UDM taught a seminar on Religion in the Law last year (Professors Robert Brown, Andrew Moore, Pamela Wilkins, Leon Lysaght, and Michael Bryce). The religious diversity among the professors included two Catholics, two Episcopalians and one Eastern Orthodox professor.

\textsuperscript{151} See Matthew 25:36-40.
and metaphysical knowledge that Professor Breen really wishes to transmit is through clinical education and mentoring. If we are going to make the commitment to ensure students are exposed to these important concepts, we need to make a commitment to the students as well. Simply telling them that it is good to learn these concepts, and then not modeling what we are saying, will have little effect. The old saying that actions speak louder than words makes this very clear.

My purpose in responding to Professor Breen has been to discuss the causes of “loss” law students are feeling in law school and identify the role legal education itself plays in that sense of loss. The elements of Jesuit education, over the past 400 years, are also important to reflect upon because they have been far ahead of their time and have resulted in terrific educational results. Today, clinical education utilizes a number of similar methods.

My critique is not intended to suggest that students don’t need to develop intellectually and morally to learn necessary information, knowledge, and understanding. What I am advocating is that simply learning concepts in a mandatory classroom course is not the adequate process. These concepts can best be learned with contextual learning. It is important that what is taught is caught. After all, we are not doing this for ourselves alone, but for the greater glory of God. It is in the doing that we as a faculty show by example just how important this really is.

And as Father Solanus Casey would say in closing: *Deo Gratias.*

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