

# Contact and Concepts: Educating Students at Jesuit Law Schools

Andrew F. Moore\*

## TABLE OF CONTENTS

I. INTRODUCTION.....	459
II. THE IDENTITY, HISTORY, AND MISSION OF JESUIT EDUCATION.....	460
A. <i>Catholic Identity</i> .....	460
B. <i>Jesuit History and Mission</i> .....	461
C. <i>Jesuit Legal Education</i> .....	464
III. PROFESSOR BREEN’S CRITIQUE AND PROPOSAL.....	465
A. <i>Moving Justice to the Center</i> .....	465
B. <i>A Critique of Breen’s Proposal</i> .....	467
IV. A COUNTER PROPOSAL.....	470
A. <i>Weaving Justice Issues into the Curriculum</i> .....	470
B. <i>Direct Service</i> .....	473
V. CHALLENGES AND CRITICISMS.....	478
VI. CONCLUSION.....	480

## I. INTRODUCTION

Are Jesuit law schools distinct from other law schools? Professor John Breen, in a recent critique of Jesuit legal education, concluded they are not.<sup>1</sup> He contends they lack distinctive qualities that should be present given the history of the Society of Jesus (the Jesuits) and the Catholic intellectual tradition.<sup>2</sup> Professor Breen concludes that Jesuit identity, while mentioned in the webpages of the fourteen Jesuit law schools,<sup>3</sup> is marginalized and basically expressed through the operation of clinics

---

\*. Assistant Professor of Law, University of Detroit Mercy School of Law. Gratitude to Professors John Breen, Michael Bryce, Joseph Daoust, S.J., David Gregory, Amy Uelmen and Ronald Volkmer who read and commented on earlier drafts of this work. All errors are mine.

1. John M. Breen, *Justice and Jesuit Higher Education: A Critique*, 36 LOY. U. CHI. L.J. 383, 416 (2005).

2. *Id.* at 415-16.

3. *Id.* at 419. Boston College Law School, Creighton University School of Law, University of Detroit Mercy School of Law, Fordham University School of Law, Georgetown University Law Center, Gonzaga University School of Law, Loyola University, Chicago, School of Law, Loyola Law School (part of Loyola Marymount University in Los Angeles), Loyola University, New Orleans, School of Law, Marquette University Law School, University of San Francisco School of Law, Santa Clara University School of Law, Seattle University School of Law, and St. Louis University School of Law are the fourteen Jesuit law schools. *See id.* at 418-31.

which serve underrepresented populations.<sup>4</sup> Since most law schools, both public and private, have such clinics,<sup>5</sup> these Jesuit law schools cannot base their Jesuit identity in such a feature. What is missing, he asserts, is a commitment to teaching about justice throughout the curriculum.<sup>6</sup> He proposes a model for bringing the study of justice into the heart of Jesuit legal education, with mandatory jurisprudence classes that emphasize the Roman Catholic intellectual tradition as an essential element.<sup>7</sup>

This paper offers a response to Professor Breen, agreeing with his concerns but disagreeing with his proposed solution. This response is based upon my experiences as a former member of the Society of Jesus as well as my experiences teaching at a Jesuit law school and founding an immigration law clinic. Part II of this article will describe the identity, history, and mission of the Society of Jesus and Jesuit legal education. In Part III, I consider Professor Breen's critique, which has strong merits, and his proposal. He raises a concern that should be addressed at Jesuit law schools: how is the Jesuit mission fulfilled through these schools? While Breen provocatively raises the issue, I conclude that his proposed solution to address the issue will be ineffective. Instead, in Part IV, I propose a model, the key features of which include the following: weaving justice issues into the existing curriculum; providing direct service to the underserved; and conducting a seminar that would give a structured opportunity to engage in social analysis and integrate religious, spiritual and vocational reflection. Last, the article will address and respond to the challenges in implementing this vision.

## II. THE IDENTITY, HISTORY, AND MISSION OF JESUIT EDUCATION

### A. Catholic Identity

Those who have written on the Jesuit mission of higher education start with the recognition that the root of the Jesuit university is found in the Catholic tradition that gives the university its reason for operating: searching for the truth in light of the Judeo-Christian faith.<sup>8</sup> Legal education in this search for truth therefore goes beyond the ordinary law school objective of developing competent and ethical practitioners. A law school in this tradition studies the laws and regulations, but also the deeper values of the society that become reflected in the particular laws at a particular time. Fr. Joseph Daoust, S.J., a Jesuit priest and professor, in an article on Catholic legal

---

4. *Id.* at 391-98.

5. Breen, *supra* note 1, at 395.

6. *Id.* at 403-12.

7. *Id.* at 410-11.

8. Joseph P. Daoust, S.J., *Legal Education in a Catholic University-Mission and Possibilities*, 78 U. DETROIT MERCY L. REV. 27, 30-32 (2000) (citing Part I Identity and Mission, *The Identity of a Catholic University*, in APOSTLE CONSTITUTION OF THE SUPREME PONTIFF JOHN PAUL II ON CATHOLIC UNIVERSITIES, (August 15, 1990) (referred to as *Ex Corde Ecclesiae*)).

education, summarized this search as the examination of laws and regulations by a community with a shared sense of tradition and spirituality; a search that also welcomes other faith traditions and perspectives.<sup>9</sup>

The Judeo-Christian faith tradition embraces a covenant between the Creator and the human community, and this covenant contains two commandments: love God with all your heart, and love your neighbor as you love yourself.<sup>10</sup> These commandments obligate the community to protect the marginalized and defenseless, welcome the alienated, and allow all to participate in the development of the human community.<sup>11</sup> Both the Old and New Testament, as well as the Catholic Church's teachings, describe this as the covenant.<sup>12</sup> It is by fulfilling the covenant that humanity demonstrates its love and praise for its Creator.<sup>13</sup> The Catholic university explores this truth through dialogue with those who are Christian and those who are from other faiths or backgrounds.<sup>14</sup>

### B. Jesuit History and Mission

This rich faith is filtered through and reflected in the particular charism (the spirituality, culture and traditions) of the Society of Jesus. The Jesuits were founded in 1540 by Ignatius of Loyola, a soldier and Basque member of the royal court.<sup>15</sup> Ignatius had a profound conversion experience after being wounded in battle.<sup>16</sup> His conversion and pilgrimage lead him to the University of Paris, where he attracted several well-educated men to share in his vision for a life of service to God.<sup>17</sup> Their founding inspiration was to follow Christ as laborers in this world, helping souls.<sup>18</sup> They put themselves at the service of the Church, with a particular focus on missionary work.<sup>19</sup> This founding inspiration and the character of the first Jesuits lead to a charism that engaged the world in its multiplicity of cultures and religions.

---

9. *Id.* at 29-31.

10. *Mark* 12:28-31. See also Robert J. Araujo, S.J., *Legal Education and Jesuit Universities: Mission and Ministry of the Society of Jesus?*, 37 *LOY. L. REV.* 245, 257 (1991) (identifying the two commandments as the basic premise for a Jesuit legal education).

11. See Araujo, *supra* note 10, at 257-60.

12. Daoust, *supra* note 8, at 31-32. Daoust relies upon passages from the prophet Micah and Jesus' response to the Pharisees (*Matthew* 22:34-40, *Mark* 12:28-34, *Luke* 10:25-28) when they try to entangle him in questions about Jewish law. *Id.*

13. *Id.* at 33.

14. *Id.* at 29-30.

15. See Daniel Morrissey, *Bringing the Messiah Through Law: Legal Education at the Jesuit Schools*, 48 *ST. LOUIS U. L.J.* 549, 552-65 (2004) (reviewing the development of the Society and its educational work).

16. *Id.* at 552.

17. *Id.* at 553.

18. *Id.* at 555.

19. *Id.* at 554.

It also led to an emphasis on educational ministry early in the history of the Society of Jesus.<sup>20</sup>

In modern times, the mission of the Jesuits and their institutions has become articulated as the “service of faith and the promotion of justice.”<sup>21</sup> This modern description emerged in the 1970s in response to the changes taking place in the Roman Catholic Church and the world in general.<sup>22</sup> The Church, starting in the 1960s, began to discuss its relationship to a larger, multicultural world with a sense of belonging to that world, rather than being removed from it.<sup>23</sup> It was a world with many problems generated by governments, economic systems, and ethnical and cultural divisions.<sup>24</sup> The injustices in economic, social, and cultural systems challenged the Jesuits to clearly declare the standard by which their ministries were measured.<sup>25</sup> The Jesuits did so by deciding that the service of faith and promotion of justice would be integral to all ministries.<sup>26</sup> Thus, today, all Jesuit educational institutions should in some way reflect this mission. In school, students should be immersed in this mission as they grow and learn in the hallways, classrooms, and playing fields.

Closely connecting faith with the promotion of justice leads Jesuit institutions to desire a particular outcome for their graduates. “Men and women for others” is the term that also emerged in the 1970s to capture the aspiration for the educational

20. Morrissey, *supra* note 15, at 555.

21. Peter Hans Kolvenbach, S.J., Superior Gen. of the Soc’y of Jesus, Address at Santa Clara University: The Service of Faith and the Promotion of Justice in Jesuit Higher Education, (Oct. 6, 2000), [http://www.sjweb.info/documents/doc\\_show.cfm?PubTextId=2014](http://www.sjweb.info/documents/doc_show.cfm?PubTextId=2014) (last visited Apr. 1, 2006).

22. Seamus Murphy, S.J., *The Many Ways to Justice*, STUD. IN THE SPIRITUALITY OF JESUITS, March 1994, at 3-5.

23. *Id.* at 3.

24. Many documents emerging from the Catholic Church reflected this new understanding. See, e.g., Apostolic Letter from Pope Paul VI to Cardinal Maurice Roy, President of the Council of the Laity and of the Pontifical Comm’n Justice and Peace (May 14, 1971), <http://www.papalencyclicals.net/Paul06/p6oct.htm> (last visited Apr. 1, 2006) (referred to as *Octogesima Adveniens, A Call to Action*); Encyclical Letter from Pope Paul VI to the Bishops, Priests, Religions, the Faithful and to All Men of Good Will (Mar. 26, 1967), <http://www.papalencyclicals.net/Paul06.p6derelo.htm> (last visited Apr. 1, 2006) (referred to as *Populorum Progressio, The Development of Peoples* (1967)); SYNOD OF THE BISHOPS, JUSTICE IN THE WORLD, SYNOD OF THE BISHOPS (Vatican: Pontifical Comm’n Justice and Peace 1971).

25. The Jesuits articulated the service of faith and the promotion of justice as their mission during an international meeting of Jesuits, which occurs periodically to address major issues such as electing a new leader, the Superior General, for the order or addressing major issues. Kolvenbach, *supra* note 21. The meeting is referred to as a General Congregation. *Id.* It was at the 32nd General Congregation that the Jesuits announced their mission as the service of faith and promotion of justice. *Id.* For a discussion of the development of this understanding of the Jesuit mission, see *id.* See also Araujo, *supra* note 10, at 263-64.

26. See Kolvenbach, *supra* note 21.

apostolate.<sup>27</sup> The Superior General of the Society of Jesus, Fr. Peter Hans Kolvenbach, S.J., in an address at a national meeting on Justice in Jesuit Higher Education in 2000, stated that “[t]he real measure of Jesuit universities lies in who our students become.”<sup>28</sup> Jesuit education should produce graduates who, having been exposed to the world with its suffering and injustices, have a “well-educated” solidarity as adults and make life choices according to this solidarity.<sup>29</sup>

At the 2000 conference, Fr. Kolvenbach also articulated the methodology for approaching issues of justice in Jesuit higher education.<sup>30</sup> “Solidarity is learned through contact rather than through concepts”<sup>31</sup> was the phrase Fr. Kolvenbach used. It is essential for students to have direct experience with injustice that impoverishes and marginalizes. The methodology of Jesuit higher education necessarily requires the ability to engage in some level of social analysis.<sup>32</sup> Social analysis means that students are equipped to look at the variety of structures that result in injustice and work to alter or eliminate those structures.<sup>33</sup> This requires an understanding of the legal, economic, religious, and cultural forces that form the context resulting in impoverishment and marginalization.<sup>34</sup>

However, this methodology is not simply a formation oriented toward training social activists. Instead, as Fr. Kolvenbach emphasizes, it is also a pedagogical method for the formation of students.<sup>35</sup> Young people educated at Jesuit universities should not only engage in direct service experiences and study subjects to acquire knowledge, but they must also uncover the meaning of their learning experience.<sup>36</sup> Students must integrate their experiences with what they have learned and with their own values and beliefs.<sup>37</sup> This leads toward the goal of Jesuit higher education: educating the whole person toward a well-formed and well-informed solidarity.<sup>38</sup> With this sense of solidarity, students from Jesuit schools can work for a just society and a just world.

---

27. *See id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. Kolvenbach, *supra* note 21.

32. *See* JOE HOLLAND & PETER HENRIOT, S.J., *SOCIAL ANALYSIS, LINKING FAITH AND JUSTICE*, 14-30 (rev. & enlarged ed. 1983) (discussing social analysis through a faith perspective).

33. *Id.* at 24-26.

34. *See id.* at 24.

35. Kolvenbach, *supra* note 21.

36. *Id.*

37. *Id.*

38. *Id.*

*C. Jesuit Legal Education*

This history and mission should be found in some way in Jesuit legal education in the United States. Previous scholarship has tried to articulate how legal education at Jesuit universities should capture this history and mission.<sup>39</sup> Professor Steve Barkan and Fr. Robert Araujo, S.J. have each identified general characteristics that should be found at Jesuit law schools.<sup>40</sup> Barkan identified theological characteristics, such as recognition that humans are created and thus have inherent value and dignity, more general value-oriented characteristics, such as inculcating a commitment to justice, and pedagogical characteristics, such as promoting inter-disciplinary study and striving for excellence.<sup>41</sup> Fr. Araujo, on the other hand, focuses more on the need to inculcate a particular appreciation for how the practice of law affects others.<sup>42</sup> This appreciation includes an understanding of how a lawyer's work affects those beyond an immediate transaction or case and how lawyers should be men and women for others rather than simply serving one client's interests.<sup>43</sup> It is only in this way that a lawyer's work can promote justice for all and serve as a source of reconciliation rather than conflict.<sup>44</sup>

Whether Jesuit law schools are capturing this history and mission is a different story. Previous surveys of Jesuit law schools demonstrate a range of affinity with their Jesuit identity.<sup>45</sup> Professor Breen, after reviewing Jesuit law school websites, concludes that Jesuit identity has been embraced on a rhetorical level.<sup>46</sup> But beyond this rhetoric, Breen sees an absence of honest engagement that not only leaves Jesuit law schools non-distinctive, but also contributes to the poor environment of legal education and the legal profession.<sup>47</sup> Further, the attributes that have been ascribed to Jesuit legal education do not, in Breen's estimation, give any significant meaning to the term "Jesuit."<sup>48</sup> Breen contends that these attributes are marginal at best to the enterprise of educating students in the law.<sup>49</sup>

39. See, e.g., Steven M. Barkan, *Jesuit Legal Education: Focusing the Vision*, 74 MARQ. L. REV. 99, 101-07 (1990) (finding Jesuit law schools place "little emphasis on their religious traditions").

40. Araujo, *supra* note 10, at 266-67, 274-76; Barkan, *supra* note 39, at 108.

41. Barkan, *supra* note 39, at 108-16.

42. Araujo, *supra* note 10, at 275-76.

43. *Id.* at 275.

44. See *id.* at 276. Other scholars have also attempted to articulate the way Jesuit identity is fulfilled in Jesuit law schools. See, e.g., Alfred C. Kammer, S.J., *Why Should a Jesuit University Have a Law School*, 10 ST. LOUIS U. PUB. L. REV. 565, 584-90 (1991).

45. See, e.g., Araujo, *supra* note 10, at 248-56.

46. Breen, *supra* note 1, at 391, app. at 419-31.

47. *Id.* at 395-98.

48. *Id.* at 395, 403-04.

49. *Id.* at 410-11. Breen cited Professor Steven Barkan's piece as an example. *Id.* at 411 n.120.

## III. PROFESSOR BREEN'S CRITIQUE AND PROPOSAL

A. *Moving Justice to the Center*

Professor Breen's criticism is that leaving fulfillment of the Jesuit mission to clinical programs is insufficient for the mission of Jesuit law schools.<sup>50</sup> In fact, it can be positively harmful because it generates a belief that Jesuit identity is fulfilled solely through such clinics that really only educate a relatively small percentage of students.<sup>51</sup> While some students in Jesuit law schools are exposed to an experience of serving the marginalized and poor in clinical programs, they are not given any substantive concepts of justice upon which to reflect.<sup>52</sup> Therefore, they lack the ability "to think through, in a rigorous fashion, the complex kinds of moral questions they will encounter later in practice."<sup>53</sup> There is no discussion of the nature of the human being, or the common good.<sup>54</sup> As a consequence, reflection is not informed by conceptions allowing for full examination.<sup>55</sup> Thus, according to Breen, the service of faith and promotion of justice are not fulfilled.<sup>56</sup> Graduates will lack the ability to really think about what injustice is and how it manifests itself in our society.<sup>57</sup> Although it is not explicitly stated, one could infer from Breen's critique that Jesuit law schools will likely produce uninformed men and women for others who will be misguided in their service.<sup>58</sup>

Professor Breen asserts that the study of justice must be placed at the center of the curriculum of the Jesuit law school.<sup>59</sup> This means there should be a mandatory first year jurisprudence and moral theory course that introduces students to the Catholic magisterium and Catholic philosophical and social thinkers.<sup>60</sup> Breen cites Fr. John Courtney Murray S.J., Mary Ann Glendon and John Finnis as examples of contemporary thinkers in his call for such a course.<sup>61</sup> He states that the Catholic intellectual tradition should not be offered as final and authoritative, but rather as part of a larger dialogue.<sup>62</sup> In addition, Breen contends that Jesuit law schools should

---

50. *Id.* at 397.

51. Breen, *supra* note 1, at 396.

52. *See id.* at 397-98.

53. *Id.* at 397.

54. *See id.* at 397.

55. *See id.* at 397-98.

56. Breen, *supra* note 1, at 401.

57. *Id.* at 397-98.

58. *See id.* at 398.

59. *Id.* at 400-01.

60. *Id.* at 401, 405-07.

61. Breen, *supra* note 1, at 406-07.

62. Breen, *supra* note 1, at 407. Another Jesuit scholar calling for such a dialogue is Fr. Greg Kalscheur, S.J. See Gregory A. Kalscheur, S.J., *Law School as a Culture of Conversation: Re-imagining Legal Education as a Process of Conversation to the Demands of Authentic Conversion*, 28

offer upper division jurisprudence classes that explore different views, such as critical legal studies, feminist theory, and law and economics.<sup>63</sup> The ultimate objective is to challenge students with ideas about the common good, rights and duties, and the proper exercise of freedom.<sup>64</sup> Absent a mandatory curricular study of concepts of justice relying on the Catholic intellectual tradition, Breen characterizes Jesuit law schools as doing little other than providing the same education as other non-Jesuit law schools, which focuses excessively on autonomy and is devoid of any thought about what constitutes the common good for human beings.<sup>65</sup>

This leads to the larger context and concern for Professor Breen's critique: not only are law schools at Jesuit universities lacking a distinctive identity, but they are also losing their tradition and heritage, *i.e.*, their *raison d'être*, as Catholic higher educational institutions.<sup>66</sup> Fr. Araujo described this concern in environmental terms as "erosion forces which threaten the [religiously affiliated university's] ecology."<sup>67</sup> Without recognition that an institution is devoted to the search for the truth in light of the Christian message, it becomes like any secular institution. Those familiar with Christian scripture may recall the admonition from Matthew's Gospel: "But what if salt goes flat? How can you restore its flavor? Then it is good for nothing but to be thrown out and trampled underfoot."<sup>68</sup> This concern is not limited to Catholic universities, but is shared by other religiously affiliated institutions.<sup>69</sup>

The loss of the motivating force behind Jesuit legal education renders Jesuit law schools unable to address another larger context for Breen's critique: the current state of legal education in the United States. In the past thirty years, the state of American legal education has come under considerable criticism.<sup>70</sup> Professor Roger Cramton, in a well-known essay he authored more than twenty-five years ago, referred to U.S. law schools as instilling an "ordinary religion."<sup>71</sup> This ordinary religion has three

LOY. U. CHI. L.J. 333, 334-36 (1996).

63. Breen, *supra* note 1, at 401.

64. *Id.* at 407-10.

65. *Id.*

66. *Id.* at 410-12.

67. Robert John Araujo, S.J., "The Harvest is Plentiful, But the Laborers Few": Hiring Practices and Religiously Affiliated Universities, 30 U. RICH. L. REV. 713, 722 (1996).

68. *Matthew* 5:13.

69. See generally Lynn Buzzard, *Religiously Affiliated Law Schools: Macro-Dynamics in Contemporary Culture*, 78 MARQ. L. REV. 283, 283 (1994) (finding a "growing loss of confidence in the authority of religious or Christian proclamation [religiously affiliated schools] have to make."). Some scholars are of the view that almost all religiously affiliated schools are in fact secular. Thomas L. Schaffer, *Erastian and Sectarian Arguments in Religiously Affiliated American Law Schools*, 45 STAN. L. REV. 1859, 1864 (1993).

70. See generally Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247, 247 (1978) ("A clear understanding of the value system that permeates the educational enterprise is a prerequisite to its change and improvement.")

71. *Id.* at 248.



important effects: it conveys skepticism toward principles, moral relativism and value nihilism; it encourages students to view all human interaction as purely instrumental exchanges for personal benefit; and it promotes the view of lawyers as social engineers or hired guns whose objective is fulfillment of the client's goals.<sup>72</sup> Coupled with this view are studies which demonstrate that this ordinary religion and other environmental factors damage a law student's desire to pursue public interest careers.<sup>73</sup> The picture of U.S. legal education that this paints is a system which reinforces a cynical, selfish, and materialistic set of values and never directly asks questions about values or justice. According to Breen, it is this system to which Jesuit legal education must respond by introducing Roman Catholic moral and social teaching.<sup>74</sup>

### B. A Critique of Breen's Proposal

It is important to note, before delving into a critique of Professor Breen's proposal, that prior historical study of Catholic legal education does not reveal a recent departure by Jesuit or Catholic law schools from a previous central role of promoting Catholic jurisprudential thought.<sup>75</sup> In fact, Catholic law schools, many of which began nearly a century ago,<sup>76</sup> reflect and are a product of the developments in legal education at that time; namely a desire on the part of local bar associations to

---

72. *Id.* at 253-60.

73. ROBERT V. STOVER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL 114-15 (Howard S. Erlanger ed., 1989); Howard S. Erlanger, Jr., *Law Student Idealism and Job Choice: Some New Data on an Old Question*, 30 L. & SOC'Y REV. 851, 851 (1996).

74. Breen, *supra* note 1, at 387.

75. Brendan Brown, *The Place of the Catholic Law School in American Education*, 5 U. DET. L.J. 1, 2-3 (1941). Professor Brown reported the results of a survey of American Catholic law school deans on a variety of topics including teaching methodology, the place of ethics, security of faculty in their jobs, resources to host extracurricular activities, etc. *Id.* at 1.

76. I am aware of twenty-six law schools affiliated with Catholic institutions: Ave Marie School of Law (2000), Boston College Law School (1929), Catholic University of America, Columbus School of Law (1897), Catholic University of Puerto Rico School of Law (1961), Creighton University School of Law (1904), DePaul University College of Law (1912), University of Detroit Mercy School of Law (1912), Duquesne University School of Law (1911), Fordham University School of Law (1905), Georgetown University Law Center (1870), Gonzaga University School of Law (1912), Loyola University Chicago School of Law (1908), Loyola University New Orleans School of Law (1914), Loyola Law School, Loyola Marymount University (1920), Marquette University School of Law (1908), Notre Dame Law School (1869), St. John's University School of Law (1925), St. Louis University School of Law (1908), St. Mary's University School of Law (1927), St. Thomas University School of Law (1984), University of San Diego School of Law (1954), University of San Francisco School of Law (1912), Santa Clara University School of Law (1911), Seattle University School of Law (1994), Seton Hall University School of Law (1951), and Villanova University School of Law (1953).

move legal education from apprenticeship and for-profit schools to the university and a desire on the part of institutions to start law departments that would gain the prestige of being a university.<sup>77</sup> Through the early years of their existence, Catholic law schools worked on developing programs that met accreditation requirements and garnered respect in mainstream legal education.<sup>78</sup> There is some history indicating that Jesuits taught jurisprudence at law school and produced scholarship which injected Catholic social thought into important policy and philosophical debate.<sup>79</sup> However, Jesuit and Catholic law schools were largely responding to the pragmatic needs of their students who were largely from immigrant communities and faced exclusion from mainstream institutions.<sup>80</sup> The diversity of the student body was one noticeable feature of the early Catholic law schools.<sup>81</sup>

In addition to Professor Breen, other scholars have asserted that Jesuit law schools must, as part of Catholic educational institutions, exhibit a unique identity or cease to identify itself as Catholic or Jesuit.<sup>82</sup> It is insufficient for institutions to rely upon clinical offerings or slogans, signs, crucifixes, statues, special liturgies such as Red Mass, or organizations such as the St. Thomas More Society in order to fulfill the mission of the Jesuit institution.<sup>83</sup> Breen is also not alone in calling for the curriculum of Jesuit institutions to reflect at their core a commitment to justice in the classroom as well as other fora.<sup>84</sup> Justice must be centrally located in the curriculum and with an understanding that it is part of an institutional dialogue. However, Professor Breen and most commentators do not endorse proselytizing by using the professor's podium as a pulpit for religious indoctrination.<sup>85</sup> It is generally acknowledged as ineffective and inappropriate,<sup>86</sup> as well as contrary to the Catholic commitment to a search for truth. Instead, the Jesuit and Catholic identity, in the form of the Catholic intellectual tradition, must be found in the classroom and in what is taught.

---

77. See Barkan, *supra* note 39, 103-05.

78. *Id.* at 105.

79. See Morrissey, *supra*, note 15, at 566-70.

80. *Id.* at 567-570; see also ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, 100-02 (1983).

81. *Id.* at 567.

82. See, e.g., Daoust, *supra* note 8, at 30; Thomas Schaffer, *Why does the Church Have Law Schools*, 78 MARQ. L. REV. 401, 410-11 (1995); Barkan, *supra* note 39, at 108.

83. Breen, *supra* note 1, at 401 (citing Daoust, *supra* note 8, at 30).

84. See *id.*; Morrissey, *supra* note 15, at 584; Amelia J. Uelmen, *An Explicit Connection Between Faith and Justice in Catholic Legal Education: Why Rock the Boat?* 81 U. DET. MERCY L. REV. 921, 923 (2004); Henry Rose, *Law Schools Should Be About Justice Too*, 40 CLEV. ST. L. REV. 443, 446 (1992).

85. Breen, *supra* note 1, at 416.

86. For a critic of engaging in any sort of explicit value oriented or religious faith dialogue, see Lee Modjeska, *On Teaching Morality to Law Students*, 41 J. LEGAL EDUC. 71 (1991).

Professor Breen raises concerns about Jesuit legal education very effectively and makes a definite proposal for addressing them. However, in my judgment, a mandatory, first year course aimed at large social, philosophical and moral issues is likely to be ineffective at forming men and women for others for three reasons. First, the influence of the law school “ordinary religion” is implicit, through a student assuming a role identity as a lawyer. A jurisprudence course that explicitly tries to shape the students’ social view or conceptions of the common good can be easily disregarded as peripheral to the training that they are receiving. There is some history in American legal education of the use of mandatory courses designed to shape students’ larger worldviews and the eventual removal of such courses from the curriculum as extraneous.<sup>87</sup>

Second, there is the danger that the course, in spite of intentions to the contrary, will become akin to proselytizing. Professor Breen’s concern is that students lack the ability to think about justice and have misshapen understandings from mainstream American culture.<sup>88</sup> Therefore, students must be given material and concepts, particularly from the Catholic tradition.<sup>89</sup> While Breen asserts the course will be a course of dialogue on ideas open to all views,<sup>90</sup> the underlying motive of the course is to instruct and challenge, rather than a back-and-forth exchange of ideas. With the professor leading such a course, it will not be a dialogue on equal footing with the students. While such a course may appeal to some students for ideological reasons, it could be considered by some as an overt attempt at converting the students’ moral and religious beliefs or values that lie behind the ideas. At least some, and perhaps many, students would not simply disregard such a course, but might also find it offensive.<sup>91</sup>

---

87. The best example of this may be the plethora of courses entitled “Legal Process” or “Legal Methods” that inhabited many law school curricula. These courses were named after a famous textbook developed by law professors Henry Hart and Albert Sacks. See HENRY HART & ALBERT SACKS, *LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW* (William N. Eskridge & Philip P. Frickey eds., The Foundation Press 1994) (1958). However, the content of such courses varied over time. In the mid 1980s a decline in its presence was noted. See Clark Byse, *Fifty Years of Education*, 71 IOWA L. REV. 1063, 1076-7 (1986). In more recent years such courses have all but disappeared from the curricula of law schools. See Richard B. Cappalli, *The Disappearance of Legal Method*, 70 TEMP. L. REV. 393, 393-94 (1997). Scholars have noted that, in part, law students found courses in Legal Process or Legal Methods to be unconnected to their course work. See Philip C. Kissam, *The Decline in Law School Professionalism*, 134 U. PA. L. REV. 251, 296 (1986). The authors cited above consider this to be a negative phenomenon. Nonetheless, a majority of law school faculties have concluded that such a course does not provide a sufficient benefit to the education of law students.

88. Breen, *supra* note 1, at 386.

89. *Id.* at 401.

90. *Id.* at 404-05.

91. This response to Professor Breen should not be taken as an assertion that jurisprudence or Catholic moral and social teaching has no place in Jesuit legal education. I share Professor Breen’s view that Catholic tradition has much to offer in helping students grow into their new

Third, and perhaps most importantly, Professor Breen's proposal neglects to make an explicit connection between the issue of justice in Jesuit legal education and what may be the most powerful learning experience in legal education: direct service to the poor and underserved. As Fr. Kolvenbach, S.J. stated, it is contact rather than concepts<sup>92</sup> that shapes men and women for others. Professor Breen is correct by suggesting that a clinical experience alone or a clinical experience in which there is some general reflection would ultimately be insufficient: What is missing is an integration of contact with concepts.

#### IV. A COUNTER PROPOSAL

Jesuit legal education, consistent with the pedagogical method discussed in Part II, should challenge a law student's conceptions of justice and should present alternative conceptions, including those from the Catholic tradition. Further, Jesuit legal education must include a direct service component as well as a structured opportunity to reflect and integrate these experiences. The ultimate objective must be to allow the student to engage in a social analysis of the conditions that would lead someone to seek their aid. Students must tie together the law, the lawyer's role, and the legal process to understand how unjust structures and systems create the need for legal help. Ideally, students should be prompted to reflect on their vocational choices as well as how their faith or moral beliefs have been changed by their experience. In this way, Jesuit law schools will produce students with a well-informed solidarity who are likely to recognize their life as men and women for others.

##### A. *Weaving Justice Issues into the Curriculum*

It may appear that my proposal is not far from Professor Breen's when it comes to exposing students to jurisprudential concepts of justice.<sup>93</sup> However, rather than requiring a mandatory jurisprudence course, I recommend that such jurisprudential issues be woven into the fabric of the legal curriculum. There are many ways to integrate a philosophical or even a theological component of justice, depending on the course subject, the professor's comfort level and expertise, and the number of students in the class. This approach allows for flexibility, given the diversity in Jesuit law schools.

The starting point of this process is the context of the students' legal education. Students should understand why they are being taught in a particular way and why the American legal system functions the way it does. The "ordinary religion" of law school should be brought into the open in this process because it is the current context

---

identities as lawyers. *Id.* at 405-06. The issue is about methodology and what will work with the diverse student bodies of the diverse Jesuit law schools given the goals of Jesuit legal education.

92. Kolvenbach, *supra* note 21.

93. Breen, *supra* note 1, at 401.

in which a student's values are implicitly shaped. This need not be a substantial portion of any course, but students should be exposed to the development of legal education.<sup>94</sup> Students should recognize that they are undergoing a conversion process through honing their logical thinking and challenging their moral reasoning.<sup>95</sup>

For example, in my first year torts class, I give an explanation of how the casebook came into existence and how it was patterned on the model of education at Harvard Law School, which started in the 1870s.<sup>96</sup> I discuss the so-called "Socratic method" and its objectives so that students understand that the point is not to inculcate a cynicism toward rules or develop a nihilistic approach to values.<sup>97</sup> Along these same lines, I also give the students an appreciation of how various movements in philosophy have shaped American jurisprudence—from natural law, to legal realism that embraces utilitarianism, to law as power theories that demonstrate a moral skepticism.<sup>98</sup> This overall narrative can be tailored to look more particularly at the development of a specific field of law. However, the important point is that the context is made clear so that students understand the values that come from our legal system and from our culture that shape their sense of justice.

Another way to integrate substantive justice issues into legal training is through storytelling in the cases that comprise the substance of a course. One important feature of legal education that law students implicitly absorb is a de-humanization of the people involved. Cases and casebooks turn a person into a "plaintiff" or a "defendant" so that the significance of a case is the legal issue, not the human beings involved in the matter.<sup>99</sup> As one scholar put it, we "use . . . people to teach things."<sup>100</sup> Re-humanizing parties helps students reconnect legal doctrine with the fact that real people are on either side of a case or dispute.

For instance, in torts, I take a couple of cases each semester (usually the *Palsgraph* case<sup>101</sup> or *Hymowitz v. Eli Lilly*<sup>102</sup>) and provide the students with

94. For a history of legal education in the United States, see STEVENS, *supra* note 80.

95. See Andrew Moore, *Conversion and the Socratic Method in Legal Education: Some Advice for Prospective Law Students*, 80 U. DETROIT MERCY L. REV. 505, 505 (2003); Elliott M. Abramson, *Puncturing the Myth of the Moral Intractability of Law Students: The Suggestiveness of the Work of Psychologist Lawrence Kohlberg for Ethical Training in Legal Education*, 7 NOTRE DAME J.L. ETHICS & PUB. POL'Y 223, 225 (1993).

96. See STEVENS, *supra* note 94, ch.3 & 4.

97. For a good, but incomplete, explanation of the Socratic method, see Phillip E. Areeda, *The Socratic Method (SM) (Lecture at Puget Sound, 1/31/90)*, 109 HARV. L. REV. 911 (1996). See also Peter M. Cicchnio, *Love and the Socratic Method*, 50 AM. U. L. REV. 533 (2001).

98. For a discussion of this development, see ALBERT ALSCHULER, *LAW WITHOUT VALUES: THE LIFE, WORK, AND LEGACY OF JUSTICE HOLMES* (2000).

99. See JOHN T. NOONAN JR., *PERSONS AND MASKS OF THE LAW* 6 (1976).

100. Howard Lesnick, *Theoretics of Practice: The Integration of Progressive Thought and action: Being a Teacher, of Lawyers: Discerning the Theory of My Practice*, 43 HASTINGS L.J. 1095, 1096 (1992).

101. *Palsgraph v. Long Island Railway Co.*, 248 N.Y. 339, 162 N.E. 99 (1928).

additional background information on the individuals in the case and the impact the case had on their actual lives. In other words, I tell much more of the story.<sup>103</sup> This information provokes a very different sort of discussion—one that engages more than legal analysis of rules by also raising issues of justice. With *Palsgraph*, students become aware of how legal doctrines can profoundly impact people's lives, given that an impoverished person like Helen Palsgraph lost her case on appeal, thereby forcing her teenage daughters to go to work.<sup>104</sup> In *Hymowitz*, students can see the case as a pursuit of justice by people and the need for the legal system to adapt to this demand.<sup>105</sup> This approach, where more background information is presented to breathe life into the parties to the case, is becoming increasingly popular.<sup>106</sup>

A third method is to weave questions of justice into the study of cases and statutes that are covered as the doctrine of the course. While Breen asserts that students lack familiarity with moral theory and jurisprudential scholars,<sup>107</sup> students do have conceptions of what is just, as well as faith traditions that inform their consciences; they have experiences that cause them to grow and question. Prompting students to rely upon these conceptions as they explore legal doctrine is just the beginning of the reflection process. This can be informed with some outside reading from Catholic social teaching and from other thinkers who raise larger issues of the common good. But this must be done in careful measure, and it must be directed at particular questions arising from the law being studied.

For example, a colleague who teaches criminal law invited me to give a talk on Catholic Social Teaching regarding the death penalty. This was done in the context of a class discussion on the moral implications of capital punishment. My talk centered largely on the history of Church teachings, including the papal encyclical in which Pope John Paul II addressed the issue.<sup>108</sup> It was well-received by students because it

---

102. *Hymowitz v. Eli Lilly*, 541 N.Y.S.2d 941, 539 N.E.2d 1069 (1989).

103. My faculty colleague Professor Lawrence Dubin has written on this topic, see Lawrence Dubin, *Storytelling to Inspire Law Students*, MICHIGAN BAR J., December 2001, at 50.

104. See NOONAN, *supra* note 99, at ch. 4.

105. TORTS STORIES (Robert L. Rabin & Stephen D. Sugarman eds., 2003).

106. At least one legal publisher has developed a line of texts devoted to providing historical background to foundational cases in various areas of law. Foundation Press started a series of law stories in 2003, which I use to teach my classes. See TORTS STORIES (Robert L. Rabin & Stephen D. Sugarman eds., 2003); IMMIGRATION STORIES (David A. Martin & Peter H. Schuck eds., 2005).

107. Breen, *supra* note 1, at 401-02.

108. See Encyclical Letter from Pope John Paul II to the Bishops, Priests and Deacons, Men and Women Religious Lay Faithful, and All People of Good Will on the Value and Inviolability of Human Life (Mar. 3, 1995), [http://www.vatican.va/edocs/ENG0141/\\_PP.PPTM](http://www.vatican.va/edocs/ENG0141/_PP.PPTM) (last visited Mar. 31, 2006) (referred to as *Evangelium Vitae*, *The Gospel of Life*). In this encyclical, Pope John Paul II considers the death penalty in the context of the very limited circumstances when it is permissible to take another's life, which is limited to self-defense where one's own life is in jeopardy. Hence, the death penalty is only permissible when there is no other way to protect society from a criminal. Practically speaking, Pope John Paul II concludes that such circumstances are almost nonexistent with modern criminal justice systems.

was offered as an additional viewpoint, which drew questions on interpretation and application to the current use of the death penalty in the United States.

Some courses lend themselves to this method much more than others. A course in legal ethics is predisposed to a discussion on moral views that underlie the professional rules of conduct. In fact, there are descriptions in legal literature of legal ethics courses being taught through small group moral discourse.<sup>109</sup> Constitutional law, concerning itself with the relationship of the individual to the government, necessarily implicates conceptions of the human being and the common good Professor Breen finds lacking in law school discourse.<sup>110</sup>

These methods do not necessarily lead to the same end that Professor Breen advocates—a course devoted to justice theory. But justice theory can be introduced through all of the ways mentioned above, and can be applied to specific legal doctrines and cases in specific areas so that students do not treat it as material apart from the work of a lawyer. Inserting issues of justice into the curriculum in this way should go hand-in-hand with other features in a Jesuit law school, such as seminars and speakers. The end goal is to create an environment in which students are encouraged to grow in their understanding of justice.

### B. *Direct Service*

The most powerful way, however, to expose students to issues of justice, is through a direct service experience. Clinical legal education's promise of fulfilling Jesuit educational goals is a topic already being advocated by one of my colleagues.<sup>111</sup> In fairness to Professor Breen, he acknowledges that a strong case can be made that some sort of direct service or clinical training should be mandatory.<sup>112</sup> However, in response to Breen's assertion that clinical experience alone is insufficient, my recommendation is that a direct service component should include an integrative seminar component in order to fulfill the objectives of the Jesuit legal education.

It is hard to construct a "one size fits all" proposal for a direct service and integrative seminar component. There are several possible models and programs—including clinics, externships, and immersion experiences—all of which place students in contact with the marginalized. The model or program employed will often depend on the culture, student population and faculty involvement at the Jesuit law school in question. The essential feature of any program, however, remains the integrative seminar, which in the traditional meaning of the word, requires a student

---

109. See Steven Hartwell, *Promoting Moral Development Through Experiential Teaching*, 1 CLINICAL L. REV. 505, 506 (1995).

110. See Breen, *supra* note 1, at 407-08.

111. See Michael Bryce, *Forty Years of Service—1965-2005*, Oct. 13, 2005, <http://www.loyola.edu/Justice/commitment2005/presenters.html> (last visited Mar. 31, 2006).

112. Breen, *supra* note 1, at 396.

to analyze some practical experience of providing legal services and larger questions about the social or cultural situation in which the need arose. There should be some explicit spiritual or faith component to the inquiry, requiring a student to reflect on how the experience, both the clinical experience and the law school experience itself, has shaped his or her growth. All of these elements together are necessary for Jesuit legal education to fulfill its mission.

Two experiences from my life prompt me to make this proposal. The first is my time spent as a Jesuit seminarian undergoing formation toward priesthood,<sup>113</sup> a process whereby, as a student, I was asked to integrate my ministry experiences with my philosophy and theology studies. Second, and more recently, is my experience as a law professor, where I lead students through a process of integrating their clinical experience with their vocational development as lawyers. Both of these experiences are grounded in the same process.

There are many interesting parallels between Jesuit formation leading to service as a priest or brother,<sup>114</sup> and law school training leading to service as a lawyer, although the former takes considerably longer than the latter.<sup>115</sup> Both involve an individual in a vocation<sup>116</sup> of counseling and advising others on matters that are very important and personal, thereby requiring confidentiality and trust. Also, both involve an individual in an ancient tradition of service as a learned professional to the community.

My experience in integrating concepts and applying them to a direct service experience occurred as a Jesuit seminarian at Loyola University Chicago during a phase of formation called “first studies.”<sup>117</sup> In first studies, a Jesuit studies philosophy and theology and undertakes some direct ministry placement.<sup>118</sup> The first studies program culminates in an Integrative Seminar, a course in which each Jesuit

---

113. I was a member of the Society of Jesus from 1993 until 2002. I left before theology studies—the last step before priesthood.

114. Not all Jesuits pursue the path to priesthood. Some feel called to remain in service as lay men working along side their ordained fellow Jesuits. Where priests are referred to as “Father,” lay Jesuits are referred to as “Brother.”

115. From the time of entry into the Society of Jesus until to being ordained a priest usually takes twelve years, and several years afterward a final phase of formation known as tertianship completes formal formation.

116. A colleague at the University of Detroit Mercy described a calling, quite aptly, as “a journey, a search or an adventure that demands a total lifelong absorption in an activity hallowed by that individual.” David Koukal, Acceptance Speech at University of Detroit Mercy upon receipt of the Faculty Excellence Award (Oct. 22, 2004) (unpublished manuscript on file with author).

117. See Jesuit First Studies Program Home Page, <http://jesuit.ls.luc.edu/studies/index.html> (last visited Aug. 31, 2005). Formation in the Society of Jesus takes many years and is divided into several phases. *Id.* The general course of formation is novitiate, followed by first studies, regency and then theology studies for ordination to the priesthood or completion of formal studies for lay brothers. *Id.*

118. Jesuit First Studies Program Home Page, *Overview*, <http://jesuit.ls.luc.edu/studies/handbook/overview.html> (last visited Mar. 31, 2006).



graduating from the program is expected to write a substantial paper in which he uses his philosophy and theology training to analyze his ministry experience.<sup>119</sup>

I did my ministry at the Illinois Coalition for Immigrant and Refugee Protection in 1996 just after two important laws were passed which greatly restricted the access of non-citizens to federal public benefits.<sup>120</sup> Rather than representing indigent immigrants, I worked on legislative advocacy efforts to prompt the State of Illinois to increase public benefits in cases where the federal government withdrew public support from non-citizens. I interviewed those who would suffer most under the laws—recently arrived elderly immigrants—and prepared demographic data for the Illinois state legislature to explain the need for additional state support.

During this experience, I spent time with an elderly Vietnamese gentleman. He and his wife came to the U.S. in 1993. Their immigration was sponsored by a son who had previously fled Vietnam in 1975. Although well past working age, he held a job while he and his wife lived in the basement of his son's house. His wife had serious medical problems resulting in past and probable future surgery that was very costly. I also interviewed an elderly immigrant from Poland, who lived on the third floor of a walk-up apartment building on the west side of Chicago. She lived alone except for a large dog, kept for safety and companionship. Because of her inability to understand or speak English, her daughter responded to most of my questions. She came to this country in 1988 and came to live near her son (now deceased) and her daughter. She worked for a Chicago area company until it closed down and she applied for government assistance. These elderly immigrants were dependent on the governmental assistance (Medicare and SSI) that was about to be taken away and faced significant challenges in becoming citizens due their inability to understand English. These were just two of the many stories I heard.

My Integrative Seminar paper described the circumstances in which the law developed, how it impacted elderly immigrants, and analyzed the situation as a matter of justice. I critiqued the laws through the lenses of human rights theory and Roman Catholic Social Teaching.<sup>121</sup> However, the starting point for this exploration of a just

---

119. Jesuit First Studies Program Home Page, *supra* note 118.

120. The two laws to which I am referring are the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (codified as amended in scattered sections of 8 U.S.C.), and the Personal Responsibility & Work Opportunity Reconciliation Act (PRWORA) of 1996, 8 U.S.C. §§ 1601-1646 (2000). The IIRIRA expanded the grounds for deportation, limited opportunities to avoid deportation if one could be charged with a deportable offense, and made it harder to re-enter the United States. See Illegal Immigration Reform and Immigrant Responsibility Act, 110 Stat. at 3009-548. The PRWORA removed non-citizens, with a few exceptions, from receiving federal means tested benefits such as food stamps, Social Security Supplemental Security Income (SSI) and other such programs. See 8 U.S.C. § 1611. For a review of these laws, see Michael J. Sheridan, *The Affidavit of Support and Other Amendments to the 1996 Immigration and Welfare Provisions Designed to Prevent Aliens from Becoming Public Charges*, 31 CREIGHTON L. REV. 741 (1998).

121. My paper discussed the development of two “myths” in the United States regarding

immigration policy was the stories of the elderly immigrants whom I interviewed. That contact was necessary to spark within me the sense of injustice. I then used my philosophical and theological training to explain how it was unjust and what justice demanded.

I use this example to illustrate how direct service must be a crucial part of forming men and women for others, as it provides an invaluable experience through which conceptions of justice are evaluated. But, unlike Jesuit seminarians who must study philosophy and theology as part of formation, law students are in law school to become lawyers. Thus, the study of concepts of justice must be woven into the substantive classes, and the direct service and integrating seminar must be placed into the context of legal education.

My second experience, which is much more recent, demonstrates how such a model could work in a law school setting. Students in the Immigration Law Clinic at the University of Detroit Mercy School of Law handle asylum cases almost exclusively. Representing people claiming persecution can be very emotionally challenging. The stories that students hear, and must present to an immigration judge, are extremely personal and painful.<sup>122</sup> In order to help the students in the Clinic integrate their experiences into their education, I proposed "reflection questions."<sup>123</sup> These reflection questions were divided into three topical areas, each with a series of subsidiary questions: social analysis and public policy, ethics and spirituality, and personal and vocational development.

In the arena of social analysis, the students were asked to describe the push and pull factors that lead to the client arriving in the United States and the conditions in which they lived while in the United States. The ethics and spirituality dimension required students to examine the client's legal problems in the larger context (*i.e.*, immigration, welcoming the alien and the stranger etc.)<sup>124</sup> from the student's faith tradition. The students had to identify good and evil in their client's stories and the immigration system in which they were participating. Lastly, students were asked to reflect on their own growth. How had the Clinic changed them? Would they make

---

immigrants. The first myth is that the U.S. is a melting pot, in which immigrants become "American" and part of a "we." The second myth is the Lazarus myth, in which immigrants are front and center, rather than being subsumed before they can become "us." I identified these laws as emerging out of the melting pot myth. The newly arrived should not share in the bounty of this country (in the form of federal public support) until they become "us" by naturalizing. I then used Roman Catholic Social Teaching to critique this myth and provide a moral framework in which to decide upon the proper level of access to government benefits by newly arrived immigrants.

122. See David Koelsch, *Men and Women for Others in Action: The University of Detroit Mercy Immigration Law Clinic*, Oct. 13, 2005, <http://www.loyola.edu/Justice/commitment2005/presenters.html> (last visited Apr. 4, 2006).

123. I owe a considerable debt of gratitude to the director of campus ministry at University of Detroit Mercy, Fr. Gary Wright, S.J. who encouraged me to do this and developed these reflection questions.

124. See generally *Exodus* 23:9.

different vocational choices? What questions did they have that remained unanswered? We met in three sessions to discuss these reflection questions and the students produced papers of varying depth and thoughtfulness.

These reflection questions could form the basis of an integrative seminar for an immigration clinic at a Jesuit law school. If I had the opportunity to devise a seminar in conjunction with the operation of a clinic, far more time would be spent on each of the areas mentioned above. I would have the students read several works, including pieces examining U.S. immigration policy through the lens of Catholic Social Teaching.<sup>125</sup> I would also let students pick materials through which they would be able to uncover the meaning of their direct service experience. Much more would be expected of them in terms of tying together their legal education and their service experience. Consequently, their paper would require a great deal more research and reflection in the areas of social analysis, ethical and spiritual development, and vocational issues.

Of course, I am not the first to suggest that a clinic could offer a wonderful opportunity to integrate spirituality,<sup>126</sup> and many law schools, Jesuit and otherwise, have mandatory pro bono requirements.<sup>127</sup> However, my proposal is that an

---

125. See José Roberto Juárez, Jr., *The Challenges of Catholic Social Thought on Immigration for U.S. Catholics*, 1 J. CATH. SOC. THOUGHT 461, 462-63, 465 (2004); Terry Coonan, *There Are No Strangers Among Us: Catholic Social Teachings and U.S. Immigration Law*, 40 CATH. LAW. 105, 105-06 (2000); Kristina M. Oven, *The Immigrant First As Human: International Human Rights Principles and Catholic Doctrine as New Moral Guidelines for U.S. Immigration Policy*, 13 NOTRE DAME J. L. ETHICS & PUB. POL'Y 499 (1999).

126. See Lucia Ann Silecchia, *Integrating Spiritual Perspectives with the Law School Experience: An Essay and an Invitation*, 37 SAN DIEGO L. REV. 167, 204 (2000); Calvin G.C. Pang, *Eyeing the Circle: Finding a Place for Spirituality in a Law School Clinic*, 35 WILLAMETTE L. REV. 241, 250 (1999). I should note that some draw a sharp distinction between spirituality and religion, preferring to encourage one over the other. See, e.g., Pang, *supra*, at 245.

127. According to an American Bar Association survey and report, twenty nine law schools have some form of mandatory pro bono or service requirement, three of which are Jesuit law schools. Directory of Law School Public Interest and Pro Bono Programs, <http://www.aba.net.org/legalservices/probono/lawschools/pb-structure.html> (last visited Apr. 5, 2006). These schools are: Appalachian School of Law, City University of New York School of Law, Columbia University School of Law, Florida State University College of Law, Harvard University Law School, Inter-American University of Puerto Rico School of Law, Northeastern University School of Law, Roger Williams University School of Law, St. Thomas University School of Law, Southern Methodist University School of Law, Stetson University College of Law, Texas Wesleyan University, Touro College Law Center, Tulane University School of Law, University of Denver College of Law, University of Hawaii School of Law, University of Louisville School of Law, University of Maryland School of Law, University of Montana School of Law, University of Nevada Law Vegas School of Law, University of New Mexico School of Law, University of Pennsylvania Law School, University of St. Thomas School of Law, University of the District of Columbia School of Law, University of Washington School of Law, and Valparaiso University School of Law. Directory of Law School Public Interest and Pro Bono Programs, *supra*. The Jesuit law schools include Gonzaga University School of Law, Loyola Law School, and Loyola University

integrative seminar not simply allow space for reflection, but require a student to uncover the meaning behind the service of the poor and marginalized. Students must uncover the meaning for their own personal beliefs, for their future role as a lawyer, for the legal profession, and for the functioning of the law and how it impacts the community. In this arena, I would not hesitate to offer teachings of the Catholic Church for the students to consider as they integrate their training and their clinical or externship experience. I would also invite them to introduce teachings and beliefs from their own religious faiths or moral beliefs.

While this proposal is focused on immigration law, many substantive areas in clinical education provide the experience for an integrating seminar. The key for such a seminar is the integration of the direct service experience with concepts of justice to produce the desired outcome: service of others in a way that leads to addressing structural injustice.

#### V. CHALLENGES AND CRITICISMS

The primary challenge, of course, is getting a significant portion of the faculty at a given school to commit to this vision of Jesuit legal education. They must embrace their role of forming men and women for others. Accepting this end goal will shape every other aspect of pedagogy at a Jesuit law school.

Once there is sufficient faculty support, money and time may be the two biggest practical hurdles to instituting this proposal. There must be a commitment of significant resources of varying types to allow each student to go through this experience. First, having every student go through some sort of direct service experience has implications on the cost of legal education. The experience must be long enough and involved enough for it to be a basis on which to reflect on issues of justice, and each student must receive supervision, all of which becomes fairly labor-intensive. The law school must have faculty who are capable of directing students through an integrating seminar, which involves the possible necessity of providing additional staff to properly implement such a program.

Concerning issues of time, the direct service component and the integrative seminar would require credit hours in the curriculum and would therefore compete with courses and objectives. Additionally, time is an important concern for students. A direct service requirement may portend a time obligation that students may not be able to meet. This is particularly true for students who attend law school at night or who have to work in order to sustain themselves in school.

From the standpoint of the students, one could criticize an approach that would force a student into a direct service project as contrary to the spirit of altruism behind

---

New Orleans School of Law. Directory of Law School Public Interest and Pro Bono Programs, *supra*. The University of California at Davis has a special pro bono certificate program that requires pro bono service for completion of the certificate program. Directory of Law School Public Interest and Pro Bono Programs, *supra*.

doing such work. There is also the danger that a resentful student will do a poor job in a matter requiring diligence and ultimately end up harming the interests of someone genuinely needing help. Moreover, one could assert that there is also a high degree of proselytizing in requiring law students to do work in which they have little interest and to reflect on its meaning if such work would have little meaning for them. While it is not religious indoctrination, it amounts to values indoctrination.

My reply to the time and money concerns is that one size does not fit all. It may be that a particular Jesuit law school, given its resources, student population, and night program, need only tailor the scope of the program. There are a number of ways to allow students to have a direct service experience without overtaxing a school's resources. For example, a law school alumni network can be utilized to connect students with attorneys doing public interest or pro bono cases. To avoid concerns relating to students' quality of work and supervision, this approach can be used along with other offerings, such as law school clinics and externship programs. Another possibility is for a law school to form partnerships with low and no-cost service providers in the area. Of course, many of these organizations may be short-staffed and unable to supervise, but this is not always the case. A third option is for a law school to join an inter-disciplinary service entity established by the university. The law student may provide legal assistance in cooperation with students providing services from other disciplines. While the law student needs supervision, the integrative seminar, or parts of it, may be conducted by faculty from other schools or colleges. This would ease the burden on the law school faculty to direct the seminar.

In response to the assertion that it is inappropriate to compel participation in direct service, I would assert that, in order to meaningfully expose students to issues of justice and form men and women for others, this must be a requirement. It is compulsory for students to complete courses such as Contracts, Evidence, and Professional Responsibility because those courses are necessary to train competent lawyers. Jesuit legal education aims at something more for all of its students, and that must take a concrete form in order for it to be meaningful.

As for the fear of students doing poor work, the same coercion applied in other courses should apply in the service experience and integrative seminar: poor performance results in a poor grade. Compelling participation also delivers an important message about the practice of law and the profession. Lawyers do not always have a choice in clients. For example, a junior associate is usually not at liberty to tell a partner that he or she is uninterested in a case when the partner hands over the file.

More importantly, a mandatory service requirement and an integrative seminar convey an important message to law students, namely that meeting the needs of the poor and underserved are obligations of the legal profession to our society and not merely a matter of altruism. A fundamental issue of justice is access to the system itself.<sup>128</sup> Our profession is primarily responsible for addressing this issue.

---

128. This point has already been well made in previous scholarship. See Rose, *supra* note 84,

However, a deeper criticism to this proposal exists. This criticism is that it is not sufficient to imbue the Jesuit law school with a distinctive character. Behind such a criticism lies an ecclesiological view<sup>129</sup> in which the primary responsibility of the Catholic or Jesuit law school is the proclamation of a received truth with the objective of converting those who disagree. According to this view my proposal would be inadequate, and Jesuit and Catholic Identity would remain a fuzzy abstraction.<sup>130</sup>

To this criticism I would respond that Jesuit identity is not found in the proclamation of a received truth. As noted by other scholars, Jesuit education reflects an openness to the diversity of cultures and religious traditions.<sup>131</sup> It is intended to be flexible to fit different cultures, including multicultural situations in which a Catholic or even Christian culture does not predominate. Jesuit law schools today must find a way to fulfill their mission amongst the multiplicity of faith commitments of students, faculty and staff.

## VI. CONCLUSION

As I wrote this piece, my mind turned back to the elderly immigrants I interviewed nearly a decade ago. I wonder where they are today. Did their needs get addressed? The Jesuit mission, forming men and women for others so that faith and justice are promoted, means those people who are at the margins and most vulnerable are brought front and center in the community. Their interests and needs are perceived as equal to my own. If we are to have hope in forming lawyers who see the world in this fashion then we must hear the voices and see the faces of those who are removed from ordinary consciousness. The Church has a powerful intellectual tradition that explains and describes a just world; one which can provide a critical voice to our modern legal system. But this intellectual tradition is based upon a Gospel commandment; to love your God and to love your neighbor. Before we can understand the moral theory of the Church, we must love our neighbor; and before we can love, we must first meet the neighbor who is considered last and least.

---

at 444.

129. Professor Thomas Shaffer noted that debates about religiously affiliated law schools are really debates about the role of the Church in the world. See Schaffer, *supra* note 69, at 1862. Ecclesiology is the theological study of the Church's structure and role.

130. I am not asserting that Professor Breen holds this view, although I suspect he may find my proposal wanting.

131. See Daoust, *supra* note 8, at 29; Morrissey, *supra* note 15, at 557-58.