A Theological Method for Legal Education

Raymond C. O'Brien

The Catholic University of America, Columbus School of Law

Follow this and additional works at: https://scholarship.law.edu/scholar

Part of the Legal Education Commons, and the Religious Thought, Theology and Philosophy of Religion Commons

Recommended Citation

This Article is brought to you for free and open access by the Faculty Scholarship at CUA Law Scholarship Repository. It has been accepted for inclusion in Scholarly Articles and Other Contributions by an authorized administrator of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.
A Theological Method for Legal Education

Raymond C. O'Brien

I. The Issue

Is it possible to engraft theology¹ into legal education? Does the law school seeking to inculcate any particular theology into its curriculum jeopardize the fabric of legal education? Are theology and law irretrievably broken, one to speak only of the things of God and the other to speak of Caesar? Finally, if there is to be interaction between law and theology within the context of legal education, is there a methodology that can offer significant and fruitful dialogue? This is the real issue.

It is possible to engraft theology into legal education without jeopardizing the quality, quantity, or product of either. History reveals there is a rich tradition of Judeo-Christian involvement with law and legal education; few law school courses are devoid of biblical precedent. There might have been a separation, but never a divorce between law and theology. Indeed, scripture, theological reflection and the corporate and personal predicated upon them both, have freely exercised and established both law and law schools.

Only the historically illiterate would dismiss the impact theology has had upon the law. Today is an excellent time to admit this, when American legal history is booming.² But what of tomorrow? Is there to be a present

---

¹ When using the word theology, specific reference is intended to a system of religious theory or observance. WEBSTER'S NEW COLLEGIATE DICTIONARY 881(2d Ed. 1951). More specifically: "Theology is the science of faith. It is the conscious and methodical explanation and explication of the divine revelation received and grasped in faith. This methodical reflection is possible and necessary because the 'official' revealed word of God already contains a conceptual and propositional element which as an element of faith and its responsible communications to others demands further explanation, reflection and confrontation with other truths." ENCYCLOPEDIA OF THEOLOGY 1687-1688 (Edited by Karl Rahner, 1975).

² Friedman, American Legal History: Past and Present, 34 J. LEGAL EDUC. 563 (1984). In discussing the various approaches (or schools) within American legal history, the author writes that there is one single idea that underlies them all: "... it is that the law matters in society and matters a great deal." Id. at 571. Because it does matter so much offers yet another reason why theology should interact.
interaction between law and theology, one that is significant and fruitful? This is the ultimate issue confronting those persons and schools professing a theological perspective. The issue is particularly challenging today because inside and outside of theological perspective schools are critics challenging the product of legal education. Accusing law school graduates of inattention to the poor,\(^3\) malaise,\(^4\) and simply being the product of a rotten system;\(^5\) the accusers indict legal education as well. Persons and schools responsible for integrating theology into legal education—and there are many (including students)—have an opportunity moment, for there seems to be significant argument that legal education needs something.\(^6\)

Theology has been and can be the something missing in legal education. This should not be surprising. The theological perspective of the Judeo-Christian tradition has always emphasized community, justice, truth, responsibility, and compassion. More than reflections upon human nature, these are theological emanations from the Word of God. Widows and orphans did not originate in a Langdell hypothetical.\(^7\) Persons, and especially those law schools, defining themselves as theological in perspective have a unique moment to answer the issue facing legal education: Can a methodology be found to offer significant and fruitful dialogue between law and religion?

**II. Confronting the Issue**

If the issue is to discover a methodology, then the methodology must be faithful to the best in theology and the best in law. Furthermore,

---

6. Sandalow, *The Moral Responsibility of Law Schools*, 34 J. LEGAL EDUC. 163, 171 (1984). While Terrance Sadalow, Dean and Professor of Law at the University of Michigan, may not be expressly concerned with a theological perspective; he does express the need for something more in today's legal classroom: "The real failing of legal education is not that it overemphasizes developing the skills of 'thinking like a lawyer,' but that it gives inadequate attention to the use of those skills in dealing with materials and issues that are not formally legal."
because both are to operate through the methodology in an educational institution, the methodology must have pedagogical significance. This can be done. Four elements are necessary.

First, the theological perspective must be one that can be taught. Legal educators today identify predictable virtues that seem to be missing from education and law. They all have theological roots. For instance, goodness and justice, service and family life, community and forgiveness, truth and integrity. Can these be taught? Here we face the issue by Professor Richard Wasserstrom before the Association of American Law Schools 1984 annual meeting: Whether virtue can be taught, and if so, how? He answers his question affirmatively, saying: "If I am right about what happens to many law students during law school, there is some evidence that virtue, to some degree at least, can be taught, and that law school practice is not teaching it very well." Dean Sandalow, through emphasis upon the importance of faculty-student ratios, also suggests that development of character is possible. Finally, through his demand that law schools assume institutional responsibility, Dean Redlich assumes that virtue (professional standards) can be taught.

The law school or person, be this student or professor, should identify those virtues particular to the theological perspective sought and treat this as the first element necessary to develop a methodology.

The second element is to identify within the law school curriculum a method through which the theological perspective may be taught. This method may be courses in jurisprudence or professional responsibility.

12. Wasserstrom, supra note 8, at 160.
13. Id.
14. Sandalow, supra note 6, at 169.
15. Redlich, supra note 9, at 220-221.
16. A specific list of theological virtues, identified and utilized as parameter for the theology of Paul's Body of Christ shall be described in this article.
17. Often, those seeking to define and present a theological perspective in legal education are among the most fanatic in condemnation of law, law schools, and the product of those schools. They forget that the purpose of a law school is to teach law. Better stated: "The purpose of law school is to teach legal thinking." Luban, Against Autarky, J. LEGAL EDUC. 184 (1984). Any methodology seeking to allow for fruitful interaction between religion and law must allow law and its process to be itself. One is reminded how Yahweh grasped the right hand of Cyrus, allowing the gentile king to do his work. ISAIAH 45:1.
Perhaps personal and continual involvement of students with faculty, or perhaps a speakers program that emphasizes the values, virtues or goals identified. But one method that deserves more than cursory review is clinical legal education. This is an acceptable methodology.

"The 1970's was the decade of the clinic."18 Law schools, professors, and even the public saw in it a complement to "thinking like a lawyer" and an "opportunity for the student to develop as a moral person, even if the teacher is not always virtuous."19 It was a means to "welcome the infusion of . . . values into the process of legal education,"20 and a "resource for a deeper and more functional dialogue throughout the law school."21

In the mid 1980's schools, professors, the public, and even students are questioning the utility of clinical legal education. Some, like Robert J. Condlin, argue clinics' teaching morality is limited by habits and relationships. The system permeates the clinic. Others say the clinics are expensive and should be left to well-endowed schools or those schools claiming to be clinical law schools like Antioch or CUNY Queens. Even students, many affected by the 80's and hungry for employment to pay massive tuition debts, ignore clinical offerings. Nonetheless, there are those who see in the method of clinical legal education distinctive opportunity within the law for an infusion of theological perspective. Any problems with clinical education, "will not be solved in the clinics, they will be solved in the profession or even society as a whole, or else they will not be solved at all."22 This is a sound assessment.

Clinical education is a viable method for the inculcation of theological goals; it is a viable means through which theology may enter into fruitful and significant dialogue in the classroom and the curriculum.

The third element necessary for a methodology that offers significant and fruitful dialogue between law and religion is an accountability to a larger community than the professor, peer, or school environment. Any pedagogical effort that seeks to elicit the best of law and theology must confront the larger community in which it operates. There is always

18. Condlin, Clinical Legal Education in the Seventies: An Appraisal of the Decade, 33 J. LEGAL EDUC. 604 (1983). While professor Condlin writes that clinical teachers—in the way they instruct—teach students to manipulate and dominate others as a matter of habit, he considers "clinical legal education to be an effective method of instruction, particularly for the teaching of ethics." See also Id. at 605.


20. Id. at 618.


the danger that any institution will lose itself in the tedium of its own narcissistic mission. The inhabitants of the institution can become the object of a critical observation by Hermann Hesse: "We no longer want to know anything about the enormous human sacrifices our foundation walls were laid on, nor anything about the ordeals of which we are the beneficiaries, nor anything about history which favored or at least tolerated the building of our mansion."23 This is why the public seems critical of all institutions and increasingly concerned that the country is no longer working well.24

Not all of the law school curricula need confront the community in which it is situated. Nonetheless, any methodology having as part of its purpose the inculcation of the Judeo-Christian ethic must include this element. This is the "realistic context"25 of which David Vernon writes when he admits: "Law is only one element in a very complex society. Presenting it as a separate entity is unrealistic and incomplete."26 Theological perspective is just as pertinent to legal education as the historical, philosophical, and social science foundations of law mentioned by Professor Vernon.27

Other professional schools have confronted the community in which they existed. For instance, medical schools created teaching hospitals and then outreach clinics in poorer neighborhoods, even creating prepaid health plans for the middle class. "By comparison the record of our law school is modest."28 Perhaps the reason lies in the theoretical-hypothetical basis of most legal study. This is not to be rejected as without value. Nonetheless, as another element within the curricula there needs to be a spot where this theory can take root and grow into perspective. Such a spot is the community.

Harvard President Derek C. Bok was correct when he stated that: "All graduate schools risk becoming captives of their professions, absorbed in preparing skilled professionals and seeking new knowledge for practitioners to employ."29 Reflecting upon the nature of institutions in Hermann Hesse and present critics of legal education and lawyers themselves, others share his observation and laments its effect. Some suggest reform, among them Roger Cramton and David Vernon. Some

23. Hesse, MAGISTER LUDI 328 (1943).
26. Id.
27. Id.
28. Bok, supra note 24, at 583.
29. Id. at 570.
offer particular suggestions. But any attempt at reform, be it inclusive of religious perspective or not, must look first to the place where the institution is planted. For what makes it possible to change the world, if it does not make it possible to change the community?

The fourth and final element necessary for an effective methodology is effective evaluation. There must be constant and educated evaluation of any methodology by which a law school seeks to integrate law and religion. Likewise, there is no substitute for a proper understanding of the law, nor is there any substitute for the proper understanding of theology. Good intentions as a substitute for either will not suffice.

So the first task is to reject the suspicion that clinical legal education cannot be evaluative because clinical teachers do not write and thus have "nothing to say." Clinical legal education must be evaluated and this is particularly true if this education contains a religious perspective. The evaluation must contain the best legal method and the best theological method.

Critical observations of clinical education today reveal that the earliest forms of clinical legal education were ethical in scope and practice. Yet, because that ethical scope is difficult to articulate and even more difficult to empirically gauge, it drifts into a subliminal death, resurrected only to obtain funding or publicity. Unlike the Socratic method used to track large numbers of students, the presence of religious perspective in legal education will require careful and attentive evaluation to service. This is the case even in the unlikely event the law school should find itself in a totally friendly religious environment. The danger to the religious perspective in such a climate would be more subtle, more iconoclastic, possibly seeking after form rather than substance.

30. See supra note 6.

31. Condlin, supra note 18, at 607: Professor Condlin admits that the "nothing to say" view is not unreasonable. "By failing to write about our work, we reinforce the belief that we have nothing to say. Traditional law teachers logically assume that a person with insights into the legal system will share those views, and that a failure to do so is evidence of lack of insight."

32. Id. at 604-612. A careful reading of Professor Condlin's article emphasizes the need for evaluation in the clinical process. He demands improved empirical methods, a critical tradition, and maturity that comes from self criticism. Bellow, supra note 21, at 621. Even those who criticize his conclusions agree that clinicians need to write more, look harder at themselves, and be less afraid of criticism.

33. Gee and Jackson, Current Studies of Legal Education: Findings and Recommendations, 32 J. LEGAL EDUC. 471, 505 (1982). The authors write that the reason the Socratic method has survived so well is that it is less costly, easy to administer, congruent with habit, and consistent with incentive and sanction systems that are already in law schools. Because a clinical program would demand extensive support and evaluation and still be an "outsider," it would need constant attention and support.
It is important to repeat the four elements previously defined. They are necessary for the establishment of a methodology that offers significant and fruitful dialogue between law and religion. This is the issue facing religious perspective law schools today. Again, the four elements are: (1) a theological perspective that can be taught, (2) a law school curriculum vehicle that can accommodate the theological perspective, (3) a pedagogy that confronts a larger community than the school, and (4) effective evaluation. The four are necessary for the establishment of a religious perspective methodology that will effectively operate within a law school, bringing the perspective into the formulation of the law and the lawyer.

But the four only provide the framework. What is the substance? What is the theology for a religious perspective law school? Partly, this answer will depend upon the school; many religious faiths claim responsibility for many schools. But for a school operating within the ambit of Christianity, the following theological perspective is suggested.

III. Developing a Response

A. Theology Threshold

The theological perspective should be simple, it should originate in scripture, and should be consistent with the earliest Christian teachings. The theology suggested is St. Paul’s Body of Christ, a metaphor used first by Paul in I Corinthians expressing the corporate identity of Christians with Christ. Some call Paul’s metaphor of the Body of Christ, the “key to his whole thought.”

The person accepting this theological metaphor adopts also the responsibility envisioned by Paul. This is the law of Christ: “bearing one
another's burdens." Paul becomes even more explicit when he repeats the fifth, sixth, seventh, and eighth Commandments and sums them up as: "You must love your neighbor as you do yourself."

Paul's theology was often developed and applied during the first centuries of Christianity. Cyril of Alexandria applied it directly to refute the early heresy of Arianism and for others, the Body of Christ "constitutes the core of the patristic notion of the church and its most fruitful element."

An essential ingredient to be found within Paul's metaphor is service. Service to and among the members of the Body constitutes fraternal charity, love, and unity. St. Augustine defines this service as the life-principle of the church. He writes, "It is precisely this unifying, quickening love or charity which is the church's essence; it welds the members together and unites the Body with its Head."

The theology of the Body of Christ thus allows for the plurality of members, postulates the necessity of service, and even provides a setting in which the plurality, and service may meet: Eucharist. Liturgies that recognize Jesus in the breaking of bread, can also serve as teaching and reinforcing communities in which students, faculty, clients, and others may emphasize the essential element of Paul's theology of the Body of Christ: love.

B. Law School Curriculum

Should religious perspective schools be able to settle upon a theology, how can it then interface with today's law school curriculum? Both curriculum and theology are unsettled in a pluralistic United States and even a common sense of morality evades definition. While it may seem

37. In a context of fraternal charity (GALATIONS 6:2) we find a source of service. This is the connection with the clinical element in legal education.
38. ROMANS 13:8-10.
39. Brown, Fitzmyer & Murphy, supra note 35, at 826.
41. Id. at 414.
42. Abbott, Decree on the Ministry and Life of Priests, THE DOCUMENTS OF VATICAN II, 541 (1966). Eucharist has a distinctive meaning for Roman Catholics. "Hence the Eucharist shows itself to be the source and the apex of the whole work of preaching the gospel. Those under instruction are introduced by stages to a sharing in the Eucharist. The faithful, already marked with the sacred seal of baptism and confirmation, are through the reception of the Eucharist fully joined to the Body of Christ." Nonetheless, every religious community can find within its tradition ceremonies and liturgies that have particular significance to the theology used. The important point however, is that the liturgy and the theology are involved with the curriculum of the law school, and not parallel to it as we often find in campus ministry programs.
43. Rhode, Moral Character as a Professional Credential, 94 YALE LAW JOURNAL 491, 584 (1985). The absence of a common moral definition is most recently pro-
confusion of moral purpose exists only within secular law schools, sufficient evidence exists that confusion of purpose permeates all schools and all curricula.

The confusion is particularly unsettling when stated in public. When Dean Roger Cramton introduced the 1984 Plenary Session of the Association of American Law Schools, he broke the deafening calm of plurality when he opined: “It’s not that we have no moral values, it’s that we have too many. No one has cleared the field and taken charge.” Then, as evidence, he presented Normal Redlich (Dean of New York University), Terrance Sandalow (Dean, University of Michigan) and Thomas L. Shaffer (former Dean at the University of Notre Dame). But in their presentations and the debate that followed, there was no call “to win” or to challenge the academic freedom, free exercise, or plurality which has governed American law schools. Instead, each listener was challenged to consider his or her academic contribution to moral responsibility in legal education.

A possible response to this curricula confusion is use of a device presently existent in legal education: clinical legal education. The element of service—or love—necessitated in the theological perspective of Paul’s Body of Christ can be engrafted into value oriented clinical legal education. In fact, the practical and community based direction of the clinic makes it opportune for absorbing the religious perspective into the curriculum.

Nonetheless, use of the word clinic in the law school of the eighties is not met with the same enthusiasm as the sixties. Some legal educators associate it with a realism that lacks scholarly depth. Even in religious circles, a clinic and the specific works which it envisions can be held suspect as being too much a part of “this world.” A comparison of the religious perspective of the elder Reverend King and the junior Martin Luther King would present a dilemma of a father called to the things of the soul and a son called to the social gospel of teachers like Walter

44. See 34 J. LEGAL EDUC. 155 (1984). Articles represent the views of the participants in the Plenary Session of the Association of American Law Schools.
45. Id. at 215.
46. Id. at 163.
47. Id. at 190.
48. See generally, the discussion on clinical legal education, 33 J. LEGAL EDUC. (1983) and Stevens, supra note 7, at 212-216.
Students perhaps associate a clinic with courses like Professional Responsibility: a learning experience, but not the equal of Constitutional Law or Corporations. Thus, the word should be used guardedly because of past and present connotations. Nonetheless, the word clinic can hold great promise for those seeking to structure a religious perspective. It has in the past.

Perhaps it is the continuing presence of the so-called clinical schools like Antioch, and Queens College, the City University of New York that gives today’s meaning to the word. Also, at least in America, there was a meeting of theory and practice in such movements as the Catholic Worker and the Catholic left of the 60’s and 70’s. Today and in the future, the legacy of these movements can be analyzed and practiced in the arena of the clinic. A clinic is a useful learning vehicle. This is particularly true for the Catholic religious perspective. “Catholic social ethics as a discipline has significant theoretical concerns but also entails a more acute interest in what is done in practice than other types of ethics.” This is especially accurate when social ethics refers to the economic order and the rights and duties of all those involved in that order. Thus, the concept or use of clinics should not be abandoned. Justice, arrived at through the interaction of theory and practice, can find a proper framework in the interaction between religious perspective and a proper use of clinics.

The theology of Hans Kung, and particularly the questions he raises in his book, On Being A Christian, prompts inquiry into what makes clinical service particularly religious. Surely any institution can develop a clinical program to aid the poor, protect the homeless, and obtain aid for those unable to even speak the language. A religious institution can do the same, and while it may be sanctified with a religious name—the history of a founder or modeled in the image of a saint—what is it about that particularly good human act that makes it different? “Is there something more to being a Christian than being human? Is Christianity a superstructure? A substructure? Just what does it mean to be a Christian, what does it mean to be a Christian today?” To quote

50. Ryan, The Church and the Workingmen, 89 CATH. WORLD 776-778. (1909). Walter Rauschenbusch was a liberal Protestant with a broad approach to social problems through faith and scripture. He was rejected by persons like the elder Dr. King and Roman Catholic ethicist like John A. Ryan because, “The mission of the Church is not to realize the kingdom of God on earth but to save individual souls and render them fit for the kingdom of God in heaven.”


the watchword of the sixties: How is the fact of Christianity relevant to social service?

How, first of all, would you translate the word ‘God’? How would you speak of Jesus in such a way that another person can get some idea of the importance he has in your life, his real meaning for you, a meaning which is relevant to the life which these others lead?  

This is a very real challenge. The greatest temptation is to answer it with a condemnation of the world, thus defining my particular mission by what is wrong or lacking in secular authority. This seems, in the words of the Lutheran minister Bonhoeffer, “cheap grace.” Instead, any clinic accepting a religious perspective must look to its own theological truth for definition and allow the “world to be world.” The methodology for forming this truth has already been explained, but the actual choice as to implementation within the clinic should be left to each school.

In its individual clinical programs, any law school seeking to inculcate religious perspective would do well to incorporate specifically the “radical” nature of its theology. While this radical element may be captured in doctrines of eschatology, its practical focus must be upon the reason why human acts are performed. A theology that offers reasons and incentives for particular human acts of service, also offers a relevance and meaning particularly absent in secular human activities. Thus, the theology offers hope and even an added dimension of personalism.

Students and teachers can be particularly sensitive to this added theological dimension. For one thing, it answers the challenge of Hans Kung as to what makes human activity particularly Christian. The answer, a radical or eschatological humanism might be best described as this:

Since I confidently decide for a primal reason instead of a groundlessness, for a primal support instead of unsupportedness, for

---

55. Rahner, Courage to Let the World Be World, THE PRACTICE OF FAITH 217-224 (1983). The author writes that until recently the Church experienced itself as the force in the world that fostered and formed nearly everything all by itself. And today the Church does not find it easy to have the courage “unabashedly” to let the world be world, to let the world be secular; see also Id. at 218-219.
56. McBrien, CATHOLICISM 1103 (1980). Richard P. McBrien, Chairman of the Theology Department at the University of Notre Dame relates eschatology with Paul’s metaphor of the Body of Christ. He writes:

The anticipation of these final events occurs not only in faith, in hope, and in active love of one another in charity, but also sacramentally in the Eucharist, where we eat and drink of the Lord’s body and blood ‘until he comes’ (I CORINTHIANS 11:26), and in the Church itself, which is the eschatological community, the Temple of the Holy Spirit, the carrier even now of the divine glory. (EPHESIANS 5:27).
a primal goal instead of aimlessness, I have now reason to recognize
a unity of the reality of the world and man despite all meaninglessness,
a value despite all worthlessness. . . . This is no mere abstract security,
isolating me from my fellow man, but always involves ‘Thou’: how
is man to learn what it means to be accepted by God, if he is not
accepted by any human being? I simply cannot take or create for myself
ultimate certainty, assurance, stability.57

This was a dramatic statement for it offers the students a reason
for human suffering that is not “pie in the sky,” and prepares them
to assume some responsibility for the lot of their neighbors. Both of
these qualities are essential. They result from a radical perception of
humanism.
This radical aspect of the clinic’s theological perspective is also
evangelical and shall say something different to those who may have
abandoned the theology for the humanism. The person who muttered
that there were no atheists in foxholes would agree with the statement
that, “[t]here are no chemically pure secular humanists.”58 Even those
persons “concerned wholly and entirely with social conditions and the
reform or even revolution of structures,”59 would find that persons with
religious perspective made a difference and often set the best example.
Persons motivated by religion have burned out, left, made mistakes,
and were sometimes corrupt; but they came back, others filled their shoes,
they, for the most part, were exemplary. “A number of people have
been surprised by the influence of the Churches in new ways on the
Civil Rights and peace movements in the Third World, particularly in
the struggle against poverty and in the struggle for national independence
in Africa and South America.”60 This surprise was an integrating factor
for law and religion. It was also evangelism for those concerned about
proclaiming the religious perspective of the institution.
Thus, the evangelism of Paul’s Body of Christ could best be absorbed
into the law school curriculum through clinical legal education. The
apparatus is there today, the value history of the clinics remembered,
and the spark of renewed theological interest could benefit all involved.

C. Theology Parameters

To mention theology in association with a school that identifies itself
as Jewish, Evangelical, or Catholic seems to state the obvious. By defini-

57. Küng, supra note 53, at 76.
58. Id. at 31.
59. Id. at 582.
60. Id. at 63.
Theological Method for Legal Education

A school that calls itself religious, must provide a methodology by which that religion is imparted. But this is not the case. Each of the major religious traditions in the United States that finances and charters higher educational institutions would be able to give testimony pertaining to the difficulties of imparting that religious tradition. No where is that more true than Roman Catholicism after the Second Vatican Council in 1965. Extensive plurality still exists.

Nonetheless, even so pluralistic an ecclesiastical institution as the Roman Catholic church in the United States maintains certain parameters within which a theology such as Paul's Body of Christ may operate. These parameters can actually enhance the theological metaphor, strengthening international and ecumenical communications. In so doing, these parameters actually expand the community base and meet an objective of the methodology.

The first parameter is the most obvious. That is, any Roman Catholic institution—particularly a law school—is Roman Catholic simply because it is recognized in the Code of Canon Law as being instituted or recognized by competent ecclesiastical authorities. Nonetheless, the Code does not mention the nature of Catholic life, nor does it offer detailed guidelines to the authorities in their supervision. Thus, while the Code can be a parameter of theological perspective, it does not offer substance to a law school wishing to integrate law and theology.

Individual theologians are more pointed in affirming specific parameters of religious perspective: Monika Hellwig offers five specifics that are integral to any institution purporting to be Catholic:

61. A good description of a Roman Catholic law school prior to the Second Vatican Council can be found in Nelson, *God and Man in the Catholic Law School*, 26 CATHOLIC LAWYER 127-146 (1981). He correctly observes that today's "typical Catholic law school is indistinguishable from its secular counterpart." See also Id. at 127. The process of secularization "began during the 1960's and 1970's." To reverse the trend towards secularization in the Catholic law schools the author suggests greater emphasis upon natural law, history, church teachings on justice, and a "vigorous spiritual life" should be fostered. See also Id. at 145. In addition to asking how this could come about, any reader is also confronted with an image of the Catholic Church that does not exist twenty years after the Council. It is impossible to return to that image or reality.

62. And while the parameters are Roman Catholic in substance, they have counterparts in other religious traditions.

63. Since the first Sunday in Advent in 1983, the Roman Catholic Church has had a new Code of Canon Law. Canon 803 (1) states: "That school is considered to be Catholic which ecclesiastical authority or a public ecclesiastical juridic person supervises or which ecclesiastical authority recognizes as such by means of a written document." *Canon Law Society of America, CODE OF CANON LAW* 301 (1983). And of great import: "For his own diocese the local ordinary has the right to name or approve teachers of religion and likewise to remove or demand that they be removed if it is required for reasons of religion or morals." See also Id. at 303.
First. Sacramental principle. Catholics are committed to high visibility and the importance of that visibility for life and relationships.

Second. Faith is not seen as discontinuous with reason, but all is permeated by faith understanding.

Third. Redemption is not seen as saving souls out of this world; it is a corporate activity in society and for society.

Fourth. There is concern to value the accumulated wisdom of the past, of tradition.

Fifth. There is concern to be non-elitist, concern for the poorest and the outcast, commitment to the pursuit of social justice.  

John Langan, S.J. offered a paper at the Catholic Hospital Association meeting in April 1982. The paper was entitled: "One and the Same: A Philosophical and Theological Meditation On the Catholic Identity of Catholic Institutions in a Pluralistic World." The topic is important in any search for a structure because Father Langan establishes parameters from which we may offer criteria: philosophy, theology, meditation, and pluralism. Upon reading the paper, perhaps we could add another penumbra parameter: dynamism. A criteria of Catholic institutions is growth. "The point of the Catholic institution is to continue and share in certain saving works of Jesus and not to erect a set of sacred environments, paralleled and alternative to the institutions of the world."

This sense of dynamism is the imperative for John Langan:

64. Monika Hellwig presented these criteria at a Catholic Hospital Symposium at Woodstock Theological Center, Georgetown University in April 1982. In addition to the five Roman Catholic specifics, she offered three others:

(1) A confession of Christian faith in the founding documents and hiring policies.

(2) In its institutional practice there should be some form of worship, some form of chaplaincy.

(3) The institution should understand itself as involved in tension that characterizes all Christian life: challenging, healing, prophet and reconciler.

65. Address by J. Langan to the Catholic Hospital Assoc. Symposium at Woodstock Theological Center, Georgetown University, April, 1982. Copies available at the Woodstock Center, Georgetown University, Washington, D.C.

66. Id. at 8.
There is no adequate way of conceiving Catholic identity which reduces it to a statement of purpose, legal characters, professions of belief, conformity to external norms, or the performance of certain rituals. The struggle to achieve and express Catholic identity has, because of our roots in the prophetic tradition of the Hebrew Scriptures and of Jesus, to be both practical and transcendent at the same time. Though it is expressed in particular deeds, Catholic identity is not definitively tied to any one set of signs or deeds.\(^6\)

This implies danger for there is safety in signs and deeds. Fanaticism, bigotry, and violence are often the fruits of dynamism. Nonetheless, implicit in Christianity, regardless of its creed, is the imperative of "pilgrim, disciple, and going forth." Thus there is no escaping the necessity of action in any theological framework in legal education.

But action is not blind, especially as it transmits a theological perspective with extensive historical roots. For instance, John Langan draws upon the Greek philosophical traditions of Aristotle and the dogma of St. Thomas Aquinas to include virtue among the parameters of deeds and dynamism in Christianity. Virtue "provides a crucial middle state between the bare capacity to act common to all human beings and the performance of good or successful actions on a regular basis."\(^6\)\(^8\) Virtue thus implies action based on our beliefs. It admits of failure and yet persistence. It calls forth risk and reconciliation. The dynamism of which John Langan writes is based on virtues which Christians have identified as good. Mentoring these virtues through words and deeds is a function of religious perspective in American law schools.

What virtues should be incorporated into any theological perspective of legal education? Again, borrowing from John Langan and his suggestions for Catholic hospitals, there are the following:

Justice. If we define this as a willingness to give to each person his or her due,\(^6\)\(^9\) then the Bill of Rights, the Code of Professional Responsibility, and such daily concerns as court administration and procedural norms assume a different context. If human dignity is the essence of the virtue of justice, a Catholic legal institution has an obligation to foster this both in belief and practice.

Temperance and Courage. While these virtues are probably most associated with religious institutions,\(^7\) their specific reference to legal

\(^{67}\) Id. at 14.
\(^{68}\) Id. at 15.
\(^{69}\) Id. at 16.
\(^{70}\) Anthony J. Scanlon, Associate Dean of New York Law School, New York City,
education may be attenuated. Nonetheless, when these virtues are considered in the context of teaching a profession, the nexus and the value in Catholic institutions become clearer. Thus, in a Catholic law school, there is a place for "word and example" concerning the use of alcohol, wealth, and consumption. There is a further necessity to challenge the law and ferment change. But most of all, this must happen within the institution.

Prudence. The classical definition of prudence is the practical reason within us which directs appropriate means to good ends. Webster defines it as the ability to regulate and discipline oneself through the exercise of reason. While Catholic law schools have a duty to instill this in students about to become legislators, judges, and managers, the average institution may well have to learn the lesson itself. Rising tuition, declining applications, and expensive institutions may force hard decisions including whether to close the institution. For some, they may be the example of prudence. Catholic health care facilities discovered this lesson in prudence from 1968 through 1982. During this time, there was a decrease in Catholic health care facilities from 777 to 633. The lesson this teaches is prudential: "Being Catholic, well-motivated, and a paragon of high-quality care in the early 1900's is not the slightest justification to continue existing if quality if absent. Neither nostalgia nor Catholicism is any compensation for deteriorating quality of facilities."Faith, Hope, and Charity. These theological virtues are also implicit in religious perspective schools, but how may they be integrated into the law school? Perhaps it is best to phrase the answer in terms of a fundamental option. That is, within the institution there should be a distinctive witness that the profession of law has a preferential option for the poor, for those who are in need and are unable to help themselves.

often quips that the greatest virtue of any Roman Catholic institution is its ability to stretch a dollar. The sacrifice of men and women, lay and religious, working for minimum salaries to provide maximum results is the manner in which these dollars are stretched.

71. For an essay on the use of temperance and courage in the profession of law, see Shaffer, The Moral Theology of Atticus Finch, 42 U. PITT. L. REV. 181 (1981). The small town Alabama attorney defended a black man accused of raping a white woman. The essay is about risk and integrity and the virtues of temperance and courage. In the words of Dean Shaffer: "The argument Atticus has to make to modern lawyers is that it is better to bear the discomfort of trying to be a Christian (or a Jew) and a lawyer at the same time, than it is to pretend that the symbols of faith have nothing to do with law offices, law schools, or courts." Id. at 223.

72. WEBSTER'S NEW INTERNATIONAL COLLEGIATE DICTIONARY 681 (2d ed. 1951).

73. Brady, Charism and Identity: Signs of Hope in Catholic Health Care, HOSPITAL PROGRESS 38 (Nov. 1982).

74. Id. at 40.
While all of the resources of the school need not be directed toward such an end, a distinctive and fundamental witness must be present for the law school to call itself Christian or Catholic. This institutional witness may take the form of clinics, courses may stress the role of mediation and common good, and faith as a cause of hope and charity, may be represented through a chaplain, liturgy, seasonal celebrations, or displays. Such virtues respond to the core of the institution's purpose and must reflect the traditional sense of mission. Yet, there is a need to be dynamic as persons if these core virtues are to be taught to those seeking to learn.

Being present as person to person is integral to the teaching profession. Incorporation of virtues as criteria for religious authenticity must be reflected in at least some of the faculty because the faculty is the only vehicle through which this person to person mentoring relationship can develop. Indeed, this relationship is so important that it has been listed as one of the five most significant in our lives. When Daniel J. Levinson wrote *The Seasons of a Man’s Life,* he said there are five components that may have great significance in a person’s life. One of these is forming mentoring relationships. This has a definite place in education and particularly religious oriented education. Further still, it has a place in the legal profession. And yet, Dr. Levinson laments, “Our system of higher education, though officially committed to fostering the intellectual and personal development of students, provides mentoring that is generally limited in quantity and poor in quality.” Since most students in today’s law schools are older and more able to develop mentoring relationships, the institution with a religious perspective should foster these as one means of incorporating virtue into the enterprise. Is this not the very reason why the American

---

76. Id. at 331.
77. Id. at 334.
78. In its criteria for academic tenure, universities list such qualities as “Serving the goals of the institution.” It can be argued that the parameters herein mentioned would serve the institution regardless of the faculty person's religious affiliation. Thus, these parameters would apply within statements of qualification for academic positions in all announcements by the Catholic University of America:

The Catholic University of America is sponsored by the Roman Catholic bishops of the United States as a national university and center of instruction and research. Its faculties are composed of teachers from diverse backgrounds and religious traditions, but members and associates of faculties are expected to respect the religious commitment and mission of the University and to be supportive of its aims and ideals. This example now used by the Catholic University of America was published by the office of the Academic Vice President and announced to the Deans and Department Chairmen, January 8, 1985.
Bar Association demands office hours and small student to faculty ratios in accredited schools?

These theological parameters are not sufficient alone, they need and most recently have lost the specific theological substance which made them radical, eschatological, and distinctively religious. Nonetheless they are valuable and essential to any effective interaction between law and theology in legal education, particularly those claiming to be Roman Catholic.

D. Theology Implemented

We have discussed Paul's theology of the Body of Christ and listed parameters that give structure and broader understanding to the Pauline metaphor. Also, we have suggested that clinical legal education, may be the best point at which the theology may fruitfully enter the law school's curriculum. Furthermore, in the clinics, the students may have the opportunity to develop the parameter virtues in the manner of St. Augustine's love. How then, may all of this come about?

We begin with St. Paul's strange use of a secular term like body to determine Christian community. But Paul is bold in his use and repeats that there is a new temple that "is holy in the Lord and which is constituted by the Christian community." He continues, and suggests the dynamism of which St. Augustine refers four centuries later. Paul writes to the Ephesians:

Let us, then, be children no longer, tossed here and there, carried about by every wind of doctrine that originates in human trickery and skill in proposing error. Rather, let us profess the truth in love and grow to the full maturity of Christ the head, through him the whole body grows, and with the proper functioning of the members joined firmly together by each supporting ligament, builds itself up in love.

Christ thus directs the community through spiritual gifts and there is an added significance for dynamic growth through use of these gifts as they gradually replace the importance of unity or sameness.

---

81. EPHESIANS 4:14-16.
82. Cerfaux, _supra_ note 80, at 506.
83. Id. In comparison with Robert Banks, the latter writes that Paul’s comparison of community with the Body of Christ is integrally concerned with “the nature and exercise of the various gifts that are present in the community and with the source from which they come.” See Banks, _supra_ note 79, at 62.
Within Paul's metaphor there is also emphasis upon virtues, some of which were discussed earlier: "He (Paul) exhorts them to the virtues connected with love, to lowliness, meekness, patience, and forbearance." These virtues, animating the Body, result in unity and the radical nature of Christian service. Hence the source, motive, and effect become unique, separating the Christian from the humanist.

Paul's metaphor of the Body of Christ has a unitive element for the Christian: "The idea that the Christian is united with the Lord like a member is joined to the body is developed in connection with the celebration of the Last Supper." In this meal, "the unity of the community, despite the multiplicity of its members", is demonstrated. For a Roman Catholic, this Last Supper meal or Eucharist, is more than a remembrance—it is a direct and real presence of Christ Himself. While there have been many statements, the Fourth Lateran Council "defined the identity of the consecrated gifts with the historical body and blood of Christ, by virtue of transubstantiation, the change of the being of the natural elements into the being of the body and blood of Christ." The importance of this in the faith of Roman Catholics cannot be overstated. To quote one theologian, Johannes Metz:

It is the greatest gift of the Lord, the initial transfiguration of worldly things, the inclusion even of the body in the glory of salvation, the bond of the most intimate unity of man with God and of men with each other, through Christ.

But while the community aspect and the theological significance of Paul's metaphor may be important to Roman Catholics and Christians of other perspectives, there is a tension present when seeking to adapt it to today's clinical legal education. Persons working within the clinic will not understand the metaphor, or will associate it only with specific ideas or injunctions. Others will remember the words of immortality spoken by the priest as he greets the body of a Christian at the doors of the Church, reminding all that if we have lived in the Lord then we shall share His resurrection. "With Paul, however . . . Christ remains Lord; the believer is his property (Romans 8:7, 14:7 ff.) and the liberating union with Christ comes about in his service (Romans 6:15 ff.)."

84. Cerfaux, supra note 80, at 505.
85. Id.
86. Banks, supra note 79, at 63.
87. ENCYCLOPEDIA OF THEOLOGY, supra note 1, at 454.
88. Id. at 459.
89. Bornkamm, PAUL 155 (1971).
But with education and renewed utilization of the parameters, the
dynamism of Paul’s metaphor will present itself in opportunities for
service in the clinics. Students and faculty serving in the religious perspec-
tive law school will be invited through the law school curriculum to witness
something new about Paul’s theology: “It is not an organism in the
strict sense of the word, but rather—though this too is open to
misconception—an organ, a means and tool through which Christ himself
organizes his lordship and gives it effect by the Spirit.”90 Believing that
the Spirit is part of all and open to “many gifts,” the Catholic Service
Clinic seeks to function as a Body in service to the poor with the legal
gifts at its disposal (I Corinthians 12:13; 10:17). Thus, we operate not
simply as a metaphorical body, “but in a real and actual sense as Christ’s
body” (I Corinthians 12:17). The clinic seeks to be “something which
cannot be compared with any other earthly community and yet of the
earth, founded in the One who gave his body to die on the cross and
is present in the Church.”91

When St. Paul wrote the first four chapters of Corinthians, he wrote
to confront the division that he found within the Church among those
who called themselves “enthusiasts” and “authorities.” He reminds them
of the lesson he taught concerning the Body of Christ and the unity
that is presented.92 We all need to be reminded that there is unity possi-
ble in our pluralistic land.

By reminding students, the religious perspective schools shall hear
the lesson themselves. This is essential for, as a foremost church historian
writes: “We are surrounded today by fictions about the past contrary
to common sense and to an elementary perception of good and evil.”93
History, in addition to other related disciplines can better impact the
clinic than classrooms. Once introduced, lessons good and bad,94 are
learned and utilized: “To know who one is, is to know one’s intellectual
progenitors, a decided advantage when all is called into question.”95

Finally, in the implementation of the theology of Paul into the clinic
of the law school curriculum, heroes should be employed. That is, models
of persons who have served and at the same time drawn explicitly from
Paul’s Body of Christ unity and purpose. There are many, past and
contemporary. They need not be attorneys, but they should be pertinent
to the community.

90. Id. at 194.
91. Id.
92. Id. at 71.
94. Id. at 187-188.
95. Dougherty, Intellectuals With Dirt Under Their Fingernails: Attitudes Towards
Science and Technology and the Difference They Make, COMMUNIO 224 (Fall 1982).
One such hero would be Paul Hanly Furfey. The potential for dynamism of social service, the radical utilization of gifts, the eschatological significance of virtue, and the diversity of perspective found expression in these celebrations. Indeed, the use of Eucharist and social action of the Body of Christ is probably best paralleled in the writings of the Catholic priest-sociologist, Paul Hanly Furfey. Extensively identified with Dorothy Day and the Catholic Worker Movement, he had a radical interpretation of traditional Catholic philosophy and theology, a literal interpretation of the New Testament, and a supernatural sociology. There were few Catholics in 1936 who emphasized the role of the liturgy within the Mystical Body of Christ as connected with the social apostolate.

In the cause of social action Furfey was unabashedly Catholic, yet he accused the faithful of mediocrity when they are really called to extremism. In the use of Eucharist, Furfey associated it with the spiritual gifts received from the Head by the Body. The members received grace and the greatest source of grace is the Mass: “The Mass is the supreme social act which the Mystical Body performs. The Mass is action, not just something to be said or heard.” For a Roman Catholic at that time in American history, such challenges were extremely radical. This is not so today in the post Vatican II ecclesiology. While Furfey cannot model for every clinic seeking heroes or examples, his use of liturgy, radicalism, and Christian social concern, provide perspective.

Dorothy Day, as a convert to Roman Catholicism, as a social worker, as a mother, as a woman, as a human called to be a servant within the Body of Christ, is an excellent example of what the clinic seeks to foster among the students and peer community. No, not that all would do as Dorothy did, but that all would see the service she accomplished as something more than “good,” and the prayer that she lived something more than mystery. She was His Body:

Whatever the public acts of resistance in which Dorothy participated she never did it just as Dorothy Day. As she once said, quoting St. Teresa of Avila, she did it as a “daughter of the Church.”

96. Curran, supra note 51, at 146-147.
97. Id. at 138.
98. Furfey, FIRE ON EARTH 38 (1936).
100. Id. at 162. In describing Furfey, Charles Curran offers the following: “Furfey gives as radical an interpretation of social ethics as possible on the basis of traditionally accepted Catholic theology and ecclesiology.”
[Dorothy’s response to being labeled a pacifist or anarchist] First of all we are Catholics—then Americans, Germans, French, Russian, or Chinese. We are members of the Body of Christ or potential members. We are sons of God.102

[Dorothy describing the unique aspect of Christian social service] Once they [the poor in New York City] are taken in, they become members of our family. They are our brothers and sisters in Christ.103

[Dorothy’s self concept as a member of the Body of Christ] I instinctively felt, as a little old Italian lady told me down on Mott Street, 'God has all the grace but he wants you to use your hands, your feet, your time, and your brain, and that is what Catholic action is.104

[Even though Dorothy was often accused of being a communist, she felt this a heresy because the only true community was Christianity.] It was Maurin’s [Dorothy’s friend] mission “to bring back the communal aspects of Christianity. It would not be the I but the personalist We that would mark the Second Coming.”105

There are other stories and examples beyond the ones retold here to develop our memories. Others with equal fervor, such as the story of Martin Luther King, Jr., give convincing testimony to the Body of Christ theological framework. This black Baptist preacher was motivated by more than can be documented. Part of his motivation in leading his people in the dreams he so eloquently defined on the steps of the Lincoln Memorial, was his black religious experience. When we recall what has been said of a need for a unifying principle to premise the existence of God, we can understand why Dr. King saw in his unity of God and self such a motivating force:

It has been suggested that the dignity of man is an essential of Black religion. This is profoundly true, not because such a doctrine is uniformly preached from the Negro pulpit (though it is preached), but because a religious experience, engraved in spiritual and sermon and frenzy alike, lies at the heart of that religion, and that experience is an ex-
perience of God and self at one. From this unity, all further unities can spring.\textsuperscript{106}

There are many other examples of men and women, embraced within the metaphor of the Body of Christ, effectuating social change but doing so with a motivation of being Christian, one with God. Perhaps the singular example of those like Dorothy Day and Martin Luther King, Jr., also demonstrates the racial nature of this framework, rather than the secular humanism that in itself is good\textsuperscript{107} yet not radical. Within the educational context the clinic can offer a dialogue among pluralistic views. It can offer an opportunity to remember the teachings of the "faith and morals" and a positive rationale upon which faith and reason can interact. As the clinic develops, so shall the theology upon which it is based. As Avery Dulles writes, "Christians are increasingly conscious that faith, in the concrete, involves certain social attitudes and commitments. The surfacing of this consciousness entails a mutation in the concept of faith itself—a mutation that calls for careful theological evaluation."\textsuperscript{108}

If Avery Dulles' warning of mutation is in order, then so is the warning of Peter Berger: In spite of any framework we establish, "the future of Christianity will not depend on any [one] theological program. One must be very careful...to resist the temptation to present one's own theological program as the one thing that will save the faith or the Church in this time."\textsuperscript{109}

**IV. Conclusion**

The issue is raised for a final time: If there is to be interaction between law and theology within the context of legal education is there a methodology that can offer significant and fruitful dialogue? This article has been more than an affirmative response; it has been the develop-

\textsuperscript{106} McClendon, *BIOGRAPHY AT THEOLOGY* 82 (1974).

\textsuperscript{107} Fromm, *THE ART OF LOVING* (1956). Dr. Fromm writes: "The deepest need of man, then, is the need to overcome his separateness, to leave the prison of his aloneness." Id. at 9. As a theological methodology, the Body of Christ responds to this need for unity, and yet offers a radical eschatological dimension because it offers through service none of the physical or material rewards of satisfaction. This is distinctive from humanism.


ment of a plan of action for any religious perspective institution seeking to implement the interaction.

To implement such a program, the law schools must have a theology that can be taught. Paul's metaphor of the Body of Christ with its dynamic element of service is such a theology. There then must be a law school curriculum vehicle that can accommodate the religious perspective. Clinical legal education is ideal for this. Third, there must be a pedagogy that confronts a larger community than the law school itself. This is a demand made by many seeking to reform legal education today. The methodology presented in this article achieves this through inculcation of disciplines like theology, philosophy, and history, but also by forcing students to interact with community problems. Finally, there must be effective evaluation to find what Avery Dulles calls a mutation in the concept of faith itself.

The methodology is an evolving one. There is the tradition of the particular Catholic perspective, the historical understanding of virtue and action, but there is also the dynamism within these that has been discussed: the living object of service and the theological mandate to serve "one who needs him here and now." This framework operating within the pluralist American law school has no use for any of the static signs or possibly discriminatory symbols or codes more characteristic of past religious education enterprises. Indeed, any static symbol must be viewed in the same manner by which Jesus viewed them, inherently suspect. There is risk in such an enterprise, but is this not the essence of academic freedom and education itself? Religious perspective legal education, above all others, must be conscious of its primary mission:

We must attend to the fact that moral and religious life is not just a matter of specific decisions about dilemmas or specific sacred acts of devotion; but that both realms involve highly integrated sensitivities, responsibilities, attitudes—matters of character, will, thought, and affection—that run through all of life. Hence the style of education, the qualities of relationships it fosters, and the total life involvement with persons may be just as important as the content "thought."

110. Küng, supra note 57, at 602.