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1985]

## THE ROLE OF THE RELIGIOUS LAW SCHOOL\*

REX E. LEE†

THE subject I propose to discuss this evening is the role of the religious law school in American legal education. There is a substantial segment of legal educators whose view on that subject can be stated in five words: there is no such role. And that is the middle of the road position. There are others who contend that religious affiliation will inevitably affect the quality of a law school program, and that the effect will necessarily be negative. Adherents to this view may point out that the optimistic pronouncements made at the beginnings of a church-affiliated law school about teaching the laws of God and the laws of man have seldom, if ever, withstood the test of time. In fact, the religious schools which have achieved a share of real prominence in the legal education world are invariably those that have long since ceased to take their religious moorings seriously.<sup>1</sup>

My own view completes the spectrum of theoretical possibilities. It is that church-sponsored law schools, because of their religious affiliations, have a unique opportunity to enrich the perspectives and the quality of American legal education.<sup>2</sup> I am not dissuaded either by the fact that to date no school has made much of this opportunity, or that the historical pattern of religious schools has been to achieve *either* professional excellence as secular institutions, *or* fidelity to their religious values as so-so law

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1. This phenomenon has been reported by, among others, Cassou & Curran, *Secular Orthodoxy and Sacred Freedoms: Accreditation of Church-Related Law Schools*, 11 J.C. & U.L. 293, 296-97 (1984); Berman, *The Secularization of American Legal Education in the Nineteenth and Twentieth Centuries*, 27 J. LEGAL EDUC. 382 (1975).

2. My view owes much to the writings of Thomas Shaffer. See, e.g., T. SHAFER, *ON BEING A CHRISTIAN AND A LAWYER* (1981); Shaffer, *Christian Lawyer Stories and American Legal Ethics*, 33 MERCER L. REV. 877 (1982); Shaffer, *Christian Theories of Professional Responsibility*, 48 S. CAL. L. REV. 721 (1975) [hereinafter cited as Shaffer, *Christian Theories*].

schools. To whatever extent this may be true (and I believe there are some exceptions) it proves only that prior to April 12, 1985, we had not been doing it right because I had not delivered the Giannella Lecture at Villanova University School of Law explaining how it should be done.

A quick look at the list of ABA-accredited law schools leads me to conclude that about thirty of them had some religious affiliation at some time in their history.<sup>3</sup> I conducted an informal survey of the deans of these schools in an attempt to determine how, if at all, their religion made them different (1) in the view of those who founded the schools, (2) in the way they conduct their present activities, and (3) in the aspirations they hold for the future.<sup>4</sup> Over half of the deans responded to my survey. From their answers I drew several conclusions which I consider interesting but not terribly surprising.

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3. Actually, the number would be larger if I were to include schools such as Harvard, Columbia, and Chicago, whose parent universities had religious affiliations in the more remote past. However, "[v]ery few of the religious affiliations of these early Protestant universities remain." Cassou & Curran, *supra* note 1, at 296. And I will not endeavor to count them.

4. My survey consisted of the following seven questions:

1. Were any statements made by persons affiliated either with your university, your sponsoring church, or the law school at or about the time the law school was started concerning the reasons that there should be a law school at [your university]? I would be particularly interested in any expressions that religious values should be integrated into the law teaching program.

2. To what extent have those aspirations blossomed into reality at your school? To what extent is any serious effort being made at the present time to achieve them?

3. Has your faculty given any consideration to whether either the curriculum or any other aspect of your law teaching program should draw on religious teachings or values? Is there any sentiment that those teachings are something to be avoided because they may pose an impediment to serious and effective law study?

4. Does your catalog or other official literature make any statements showing that yours is a religious law school?

5. If an outsider were to spend a day in your building, would he or she hear or see anything different than if the visit were to a school of comparable quality that had no religious affiliation? Would your answer be any different if this visitor attended the classes offered at your school? Might it make a difference which classes he happened to attend?

6. Do you take religion into account in either your faculty hiring or your admissions, and if so, how? Are you aware of the religious composition of either your faculty or student body? About what percentage of either your faculty or student body is a member of your sponsoring church?

7. Do you have any view as to whether religiously affiliated American law schools in general are drawing too much, too little, in the wrong way, or just about right, from their religious affiliations?

Not more than three or four of the responding deans were able to point to any general statements of mission made by the schools' founders from which the administration, faculty, and students today draw any sense of special character or purpose.<sup>5</sup> Several of the schools were "inherited" by religious universities after having been started under other auspices, and appear to have taken their place in these universities without any memorable fanfare.<sup>6</sup> Others were started by the church-sponsored universities themselves, but of these, only a handful were begun with any explicit recognition of their religious connections, at least so far as their present deans are aware.<sup>7</sup>

Most of the law schools in religiously affiliated universities, like their counterparts in secular universities, were relative latecomers to campus life. These law schools were established not so much to further the universities' overall religious purpose, as to fill a need in a particular region for a good professional school for lawyers.<sup>8</sup>

Given this background, it is not surprising that faculty mem-

5. The schools with the strongest statements of religious purpose, at least among those responding to my survey, tend to be the most recently established schools. For example, the mission statement of the O.W. Coburn School of Law at Oral Roberts University, written by University President Roberts, emphasizes that "[w]e are unashamedly Christian and we live to minister." Similarly, the mission statement of the Mississippi College School of Law says that the school "strives to impart to its students quality legal education within the context of the Christian institution." Brigham Young University President Dallin Oaks, at the dedication of the J. Reuben Clark School of Law, said that "[t]he special mission of this law school and its graduates will unfold in time," but emphasized that "there are fundamental principles on which there is no latitude" for debate, including "the existence of God or man's intimate accountability to Him," and "the wrongfulness of taking a life, stealing, or bearing false witness."

6. The St. Mary's University of San Antonio School of Law, for example, was originally the San Antonio School of Law, its current Dean James Castleberry informed me. According to Dean Castleberry, in 1934, some seven years after the school's founding by members of the San Antonio Bar,

the bar association requested St. Mary's University to "take over the School of Law and operate it as a part of the University." So far as we are aware, this move was motivated primarily by the desire of the San Antonio Bar Association to have the law school affiliated with an established university in the local area.

7. Dean John E. Murray, Jr., of the Villanova University School of Law, in a response that was typical of the responses of many of the deans, reported that "I have been waiting for the results of inquiries which I hoped might uncover some evidence about the early years of the School and its religious direction; but unfortunately, no one seems to be able to find any formal statements."

8. Several of the schools in my survey, in fact, were apparently founded for the specific purpose of serving people who, as Dean Theodore Clements of Gonzaga University School of Law wrote, "wanted a legal education but could not leave the area to obtain it."

bers in only a few of the schools responding to my survey have given any explicit consideration to whether the law school curriculum should draw on religious values. Indeed, as Dean Alton Harvey of the Mississippi College School of Law wrote, “[t]here would be a variety of opinions on our faculty as to the propriety or wisdom of attempting to do so.” None of the schools admits to any urge to avoid religious teachings, but most appear to leave consideration of religion to the individual professor. It is a topic that is seldom discussed at faculty meetings.

On the other hand, a majority of the religiously affiliated law schools allow some room in the curriculum for reflection on religious teachings and the moral foundations of law. This tends to occur in specialized courses such as ethics and jurisprudence, as well as in courses on family law, which all lend themselves quite naturally to the consideration and expression of religious values. The consensus among the schools was perhaps best expressed by Dean Carl Hawkins of Brigham Young University’s J. Reuben Clark Law School, who wrote in response to my survey that the faculty “rel[ies] more upon implicit statements about who and what we are” than upon any explicit attempt to incorporate religious teachings into the law school curriculum. This attitude carries over to the catalogs published by these law schools, most of which acknowledge but do not emphasize the schools’ religious affiliations.

One of the survey questions asked whether an outsider visiting one of these church-sponsored law schools would notice anything “different” about them.<sup>9</sup> According to the survey answers, our outside observer might notice two kinds of differences. First, religious symbols, places of worship, and other indicators of a religious orientation are readily visible in a number of these schools and on the campuses on which they are situated.<sup>10</sup> The second difference is less measurable, but in the view of my re-

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9. Tom Shaffer recently wrote an article about “Brother Justinian,” a fictional monk from an island off the coast of Ireland who is hired as a consultant by a law school and submits a very perceptive and somewhat tongue-in-cheek report on what he finds there. Shaffer, *Moral Implications and Effects of Legal Education, or: Brother Justinian Goes to Law School*, 34 J. LEGAL EDUC. 190 (1984). But I was thinking of a less astute outsider, just an ordinary man or woman who took a day off to wander the halls and classrooms of a religiously affiliated law school.

10. For example, it appears that a reported trend toward removing crucifixes from the walls has not taken hold in the Catholic law schools. See Nelson, *God and Man in the Catholic Law School*, 26 CATH. LAW. 127 (1981). At Touro Law School in New York, a sign in the cafeteria announces that Kosher food is served.

spondents, much more important. A large majority of the responding deans felt that their religious affiliations had a positive effect on the human relationships among the students and faculty. Typical of this group was the response of Dean Frederick Davis of the University of Dayton School of Law, who wrote that visitors at this school have "commented upon the wholesomeness, the friendly atmosphere, the congeniality, and the genuine warmth of the relationships between students and faculty." This atmosphere, according to Ronald Phillips, Dean of the Pepperdine University School of Law, "is a natural outflow from the situation in which faculty and staff members attempt to practice practical Christianity in the way they go about their tasks here." As for classroom interactions, most of the deans doubted whether an outside observer would notice anything different in these schools, other than in value-laden classes such as ethics and family law.

At most of the schools, religion plays no part in the majority of admissions or faculty hiring.<sup>11</sup> Some schools do not keep any data, even of an impressionistic nature, as to the proportion of students and faculty who practice the faith of the sponsoring religious sect. However, a few of the deans wrote that their respective schools historically have had at least a core minority of faculty who share the religious beliefs of the sponsoring church. The same appears to be true, though in lesser numbers, of the students in these schools. In many, a fairly sizable minority of students identify themselves with the beliefs of the sponsoring church, although usually a lesser proportion than in the undergraduate student body. On the other hand, in a few of the schools a large majority of faculty and students share the religious beliefs of the sponsoring church.<sup>12</sup>

My final question in the survey asked whether church-spon-

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11. A notable exception in this regard is Oral Roberts University (ORU), where all students, including those in the law school, sign a Code of Honor Pledge which affirms that "it is my aim to follow in [Christ's] footsteps and to develop in the same ways in which he did." As for faculty at the law school, Dean John Stanford wrote that "we specifically require that they not only profess to be Christians in the sense of accepting Jesus of Nazareth as Lord and Saviour but also that in the probationary period that they manifest the fruits of Christianity and praying in the Spirit." Both ORU and Brigham Young University also require students to follow a dress code and to adhere to university regulations which prohibit, among other things, consumption of alcoholic beverages, gambling, and extra-marital sex, on and off the campus.

12. This appears to be especially true of some of the newer religiously affiliated law schools. For example, Dean Hawkins of Brigham Young University's law school reported that fewer than five percent of his faculty and students are non-Mormon.

sored law schools are drawing too much, too little, or just about right from their religious backgrounds. As you might expect, some of the deans said “too much,” some said “too little,” and some said “just about right.” But the dominant answer was that these schools can and should draw more on their religious roots than they now do, especially by instilling a greater commitment to ethical principles in the lawyers they turn out. Most would appear to agree with Dean Richard Huber of the Boston College Law School, who wrote that “religion has been the basis of moral codes historically and some sort of fuzzy humanism cannot replace it.” Most felt, too, that allowing greater vent to religious teachings would enhance the quality of the law school educational experience. “The world is a more interesting place,” said Dean Davis of the University of Dayton School of Law, “when people have beliefs, convictions, and a song to sing.”

In general, the answers reflect an enthusiasm for religious affiliation that ranges from neutral (I am happy to say that none was negative), through mild, and, in a few cases, beyond mild.

Against the background of this highly unscientific (but I suspect fairly accurate) survey of religiously affiliated American law schools, I return to the question that I posed at the outset. A fairly persuasive case can be made for the proposition that, with few exceptions, the religious schools that have achieved a position of prominence and influence in the law school world are generally not those that have made any serious attempt to blend their religion into their law training program.<sup>13</sup> Assume with me for purposes of this discussion that the conclusion is correct as a matter of fact. Is it possible, then, that the best that a religious school can ever hope for is that the effect of its religious ties on its academic program will be zero? Let me begin by exploring three possible supporting arguments for that proposition, each of which has to be taken seriously.

The first is a simple allocation of resources argument: Faculty members' time and energy and classroom hours are scarce; spending them for anything is necessarily accomplished at the expense of something else. To whatever extent, therefore, a law school attempts to achieve objectives that are religion-related, it necessarily forgoes something else that would be achieved with those resources.

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13. Among those who have noted this tendency are Cassou & Curran, *supra* note 1, at 296-97; Berman, *supra* note 1, at 383-84; and Shaffer, *Christian Theories*, *supra* note 2, at 721-22.

Second, the atmosphere at a religious law school may nurture what I will call the “seek ye first the Kingdom of God” syndrome. This notion is that God will surely care for those of his children who are righteous. The last thing he would suffer is that the truly righteous should flunk out of law school. There is little risk, therefore, in sacrificing law studies if necessary to the achievement of more important spiritual objectives. In my book, this notion is as deficient in theological foundation as it is in common sense. But I can qualify as an expert witness testifying that this attitude is a very real one among many people, and that it can constitute an impediment to the rigorous effort that is essential to a good legal education.

Third, I think one may legitimately ask whether the teachings which lie at the core of most religions are compatible with what good law schools try to teach. Religious values usually include a willingness not only to accept on faith things that cannot be understood, but also to give these values a preference over things that we can understand when the two come into conflict. Are those kinds of values so inherently at odds with the tough-minded, analytical skepticism that is characteristic of good law training as to render the two hopelessly incompatible?

I believe that these three arguments, while representing valid concerns, are not sufficient to carry the day. With regard to the first, allocation of law school resources in the sense of occupying a segment of the curriculum and thereby consuming faculty time is not the most important law school resource allocation problem. And to the extent there is some curricular preclusion due to an attempt to infuse some religious values into it, the case simply cannot be made that there is little room for anything else in today’s law school curriculum. Give me the course catalog of any ABA-accredited law school, and in thirty seconds I can give you a dozen offerings whose deletion would accomplish no serious detriment to the law school’s effort to train its students. And finally, why should we assume that curriculum offerings which are religion-related will not contribute just as much to the making of the lawyer as anything they might displace? If that has not been our experience thus far, maybe we haven’t tried hard enough.

The problem with the second argument is that it ignores the real issue. Many persons with profound religious convictions complete law school and enter the profession. The continuing existence of those people is not likely to depend on the existence or nonexistence of religious law schools. Those people—pre-



cisely *because* of their religious beliefs—are going to have some questions that will have to be resolved at some point in their careers, with or without help. Better that these questions be answered earlier, rather than later, and that this occur in a setting in which the professors and other students have some understanding of what the questions are because they share the religious perspectives of the person who asks the questions.

My answer to the third argument is similar to the second. Developing the capacity to practice skepticism in some realms while rejecting it in others, and the companion ability to recognize which subjects belong in which realms, is something that must be developed by every lawyer who believes in powers and realities beyond those that can be tested by the physical senses or by reason.<sup>14</sup> The worst possible conclusion that could be drawn from the tension between faith and legal analysis is that the law schools should pretend that the problem does not exist. The only difference between the religious law school and any other law school in this respect is that the former has the capacity to do something more about the problem than simply to acknowledge its existence.<sup>15</sup>

Moreover, even if there were no answers to these arguments, I believe that they are more than offset by countervailing considerations. Of all the many deficiencies of modern American legal education, none is more prominent or more pressing than its failure to imbue its students with a sense of the larger mission of our profession, a sense that their legal training and their status as lawyers should mean more to them than just another way to make a living.<sup>16</sup> We do not teach law very well unless we teach its moral

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14. Shaffer argues, correctly, that an ability to probe into dimensions beyond the rational is a necessary professional skill for the lawyer. Shaffer, *Christian Theories*, *supra* note 2, at 751. He writes that “[p]art of the truth within a human being is that much of his deepest life, a depth the law reaches rarely and lawyers reach often, is not rational.” *Id.* This is not a skill, however, that comes easily to many lawyers. “Rationalization is a lawyer’s style and pretense, and thus a way to live under the shadow of the awesome word law. It is a defense. Perhaps with love the lawyer can lower his defenses long enough to be useful to the community.” *Id.* at 750.

15. As Shaffer observes:

Sophisticated law in America, like sophisticated American political life, prefers to pretend that morals have nothing to do with the enterprise. The road less traveled by, the road not often taken in law school, is the road on which the analysis and exploration of moral propositions become an intellectually important part of professional education.

T. SHAFFER, *supra* note 2, at 166-67.

16. In his much publicized critique of legal education, Harvard University

dimensions<sup>17</sup> and give our students some appreciation of what it means to be a "good lawyer."<sup>18</sup> It is irrefutable, I think, as the founders of the Touro Law School write in their initial application for registration with the New York Education Department, that "law is not and cannot be morally neutral." In his response to my survey, Touro's present law school dean, John Bainbridge, summed it up nicely with a quote from Lord Moulton, who once said that "to my mind the real greatness of a nation, its true civilization, is measured by the extent of [its] Obedience to the Unenforceable."<sup>19</sup>

Most of what is good and moral in our profession and in our broader society has religious roots that are both ancient and deep. This includes the higher moral aspirations of our profession: love of truth, love of justice, love of teaching and public service, and concern for the welfare of others. This is not to say that those qualities cannot be found in just as rich abundance in the atheist or the agnostic, but they too must acknowledge the historical contribution that religion has made to moral values which they

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President Derek Bok described a "striking lack of professional commitment" among law students, characterized by an

unwillingness] after their first year to prepare their coursework or participate in class discussions. If law faculties wish to counter these attitudes, they should welcome the chance to motivate their students by giving them a larger vision of their calling, a sense of what a life of leadership in the bar might entail, an awareness of the urgent problems of the profession that they could help to resolve.

Bok, *A Flawed System of Law Practice and Training*, 33 J. LEGAL EDUC. 570, 584 (1983).

17. The bearing that a religious perspective has on the moral dimension of our profession was well expressed by Professor Berman:

When we reach the question of the relationship of our beliefs about law as an instrument of justice, as an instrument of reform, to our fundamental beliefs about creation and redemption, our beliefs about our relation to divine providence, our relation to the universe, our destiny on this earth, when we reach the religious questions, then I think the law takes on a different aspect.

Berman, *supra* note 1, at 385.

18. As one commentator has written:

The nature of the good lawyer is a large and central question because those engaged in educating others must have and justify a conception of what their students can and want to do once they are no longer students. . . . Without a conception of the kind of persons graduates should be after—and as a result of—their education, it is very difficult, if not impossible, to have a clear or defensible answer to any number of more specific and persistent questions within legal education.

Wasserstrom, *Legal Education and the Good Lawyer*, 34 J. LEGAL EDUC. 155, 155-56 (1984).

19. Moulton, *Law and Manners*, ATLANTIC MONTHLY, July 1924, at 2.

and others held. That contribution need not and should not be limited to things that have happened in the past. I would hope that those of us who hold religious convictions would freely acknowledge to our students and to the world that the things we do which are good cannot be separated from our religious beliefs.

The profession is concerned and the law schools are concerned about how to teach ethics—how to develop an understanding that the lawyer's ethical standards should see beyond the black letter requirements of written canons.<sup>20</sup> Other important problems are the lack of a spirit of public service among lawyers, and an insufficient sensitivity for the effect of the lawyer's conduct on his profession and on society. As one legal educator, Derrick Bell, has written:

Lawyers need conscience as well as craft. To borrow an old but picturesque phrase, skilled lawyers without conscience are like loose guns on a sinking ship, their very presence is so disconcerting that they wreak damage whether or not they hit anything. . . . Lawyers must have the courage to apply conscience, as well as competence in each situation they face. This courage must be taught and nurtured. It must be practiced on a daily basis if it is to be relied upon in times of crisis.<sup>21</sup>

I suspect that there would be little disagreement among legal educators that the inculcation of these kinds of values is fundamental to the training of lawyers. Yet there would also have to be consensus that neither the profession as a whole nor its smaller law school component is making much progress toward the accomplishment of the objective. We know it is important, but we do not have much of an idea how to go about it.

Viewed in this light, the case for the religious law school can be simply stated. These values which are so important to and yet so lacking in American legal training—a consciousness of the importance of public service, a concern about ethical standards that reach beyond the sterile content of written rules, and the notion that our well-being depends in part on the well-being of others—are part of the values which for millenia have constituted the foundation stones of Jewish and Christian teachings. Thousands of years before there was a Langdell, or a Wythe, or a Litchfield

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20. See, e.g., Burger (Chief Justice), *The Role of the Law School in the Teaching of Legal Ethics and Professional Responsibility*, 29 CLEV. ST. L. REV. 377 (1980).

21. Bell, *Humanity in Legal Education*, 59 OR. L. REV. 243, 244 (1980).

Law School, the Old Testament Prophet commanded people to love their neighbors as themselves.<sup>22</sup> And the man from Galilee said that all the law and the prophets hang on two great Commandments. The first was to love God, and the second was to love one's neighbor as one's self.<sup>23</sup> As one commentator has put it, "[i]n both the religious enterprise and the legal enterprise, we are in universes of persons who transcend the written documents: Our belief is in the persons."<sup>24</sup>

I submit that the religious law schools all along have had legal education's biggest boon right under their noses and have failed to take advantage of it.<sup>25</sup> To the extent that they can successfully incorporate that powerful—note that I do not say simple, but powerful—admonition to love our neighbors as ourselves, we will have taken very large steps toward solving some of legal education's most important challenges. The whole principle is larger than any of its constituent elements, but let me review a couple of constituent elements, just to illustrate the whole principle.

One of the great unsolved law school problems is how to preserve the benefits while avoiding the drawbacks of the terror that law professors instill in students, particularly in the first year.<sup>26</sup>

Dean Paul Carrington of Duke University School of Law wrote a fascinating article in the *Journal of Legal Education* in which he compared, based on Mark Twain's description of his training as a cub pilot of steamboats, the professional training of pilots in the preceding century with the training of lawyers in this one.<sup>27</sup> Dean Carrington describes Horrace Bixby, Twain's teacher, "as a devotee of the Socratic method."<sup>28</sup> Carrington explains:

He asked Twain a lot of questions and commented force-

22. *Leviticus* 19:18.

23. *Mathew* 22:34-40.

24. Noonan, *Belief in Law and Belief in Religion*, 27 J. LEGAL EDUC. 386, 389 (1975).

25. In the area of ethics and professional responsibility, for example, Shaffer has persuasively argued that Christian law schools could contribute much by drawing more readily on the religious teachings of their founders. Shaffer, *Christian Theories*, *supra* note 2, at 721-22.

26. One critic, dwelling on the negative side of this process, has written that law school employs "rank authoritarianism . . . in the educational process," and that "[f]ear, intimidation, and psychological manipulation of a law student's sense of self is an integral part of the first year of legal education." Halpern, *On the Politics and Pathology of Legal Education (Or, Whatever Happened to That Blindfolded Lady with the Scales?)*, 32 J. LEGAL EDUC. 383, 388 (1982).

27. Carrington, *Of Law and the River*, 34 J. LEGAL EDUC. 222 (1984).

28. *Id.* at 225.

fully when his responses were inadequate. When Twain missed his first question, Bixby denounced him as the “stupidest dunderhead I ever saw or heard of.” On another occasion, Bixby summed up his appraisal of Twain: “taking you by and large, you do seem to be more kinds of an ass than any creature I ever saw before.” Twain reciprocated these hard lessons and harsh comments with unspoken hostility and often when discouraged he would withdraw, manifesting the familiar traits of alienation.<sup>29</sup>

The pros and cons of this familiar relationship that exists between most if not all law students and many of their teachers—and whether the pros or the cons weigh more heavily—are the subjects of legitimate debate.<sup>30</sup> Regardless of who has the better side of that debate, two propositions would seem beyond question. First, the frightful image occupied by many law teachers in the minds of most of their students always has been and will necessarily continue to be an inevitable component of American legal education. Second, the drawbacks of that image could be lessened if the student could see the teacher not just as a threatening adversary, but also as a real human being who shares the student’s belief that the worth of each human soul is great, and that of all the laws, none is more important than that we love one another.<sup>31</sup> Every instinct tells me that if we could couple the inevitably vertical relationship between law teacher and law student with a forthright, unashamed acknowledgement by both parties of a shared commitment to the importance of loving one’s neighbor, that vertical relationship would incline more toward the horizontal, with a concomitant tempering of its harsher dimensions and little if any sacrifice of its salutary aspects.

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29. *Id.* (footnotes omitted) (quoting M. TWAIN, *LIFE ON THE MISSISSIPPI* 61 (1883) (Harpers ed. 1902)).

30. My own experience suggests that the negative aspects of the Socratic method are often overstated, and its benefits overlooked, by those who speak and write on the subject. In many cases, law professors and their students manage to forge bonds of friendship and mutual respect despite the allegedly alienating aspects of the Socratic method. Indeed, as Shaffer and Redmount have written, “[l]awyers typically demonstrate a nostalgia and affection for their favorite teachers which is much like the regard the medieval man might have shown for the wise, distant, and unwordly monks.” Shaffer & Redmount, *Legal Education: The Classroom Experience*, 52 *NOTRE DAME LAW* 190, 193 (1976).

31. Shaffer has written that “Christian philosophy regards love as the key to human understanding. I doubt that we can learn to respect the irrational in ourselves, in our brothers and sisters, and in the law, without love.” Shaffer, *Christian Theories*, *supra* note 2, at 750 (footnote omitted).

To me, this seems so obvious that the only real question is why the religious schools have not pressed their advantage. For some reason, there has been a reluctance, almost an embarrassment, by legal educators with religious convictions to acknowledge anything other than a hermetically sealed relationship between their faith and what they teach. As Tom Shaffer has said, “[t]oo many candles are under too many bushels.”<sup>32</sup> In part, perhaps, matters of faith are so deeply personal that those of us who hold them do not want to subject them to the view of those who do not. Another impediment may be an ill-defined notion that reliance on things learned through faith may somehow imply a lack of ability to learn through reason. In any event, if these are the hurdles, the religious law schools and the religious law teachers of this country need to get over them. These teachers must start using their religious anchorage for what it is, a source of strength and enrichment, rather than something to be hidden or explained away.<sup>33</sup>

My second example concerns the lawyer’s vision of the profession and his or her role in it. Does being a professional mean more than membership in a club? Does it mean more than another way to make a living? Does it include an affirmative responsibility for the welfare of other lawyers, the very people who in so many phases of our endeavor constitute our competitors? To paraphrase a question that has withstood the test of 6,000 years: Are we the keepers of our brother and sister lawyers?

I answer each of those questions with a yes. Let me give you two accounts of people who exhibited those higher manifestations of professionalism.

A central player in the first example is one of my oldest and

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32. *Id.* at 722 (citing *Matthew* 25:15-16).

33. Dean Frank DeGuire of Marquette University Law School was one of the respondents to my survey. He included with his response a pamphlet about Marquette called “University and Catholic.” The pamphlet is based on a larger report prepared about 15 years ago by a committee set up to explore what it meant for Marquette to be both a university and a Roman Catholic institution. A couple of sentences from page one of the pamphlet describe very well how I think a religious affiliation can give special meaning even to disciplines which have no religious content—although I would not include law in that category:

[I]t may well be that some disciplines which superficially seem removed from a particularly Catholic focus are in fact open to this focus by their practitioners’ recognition of the integrity of things. Thus, for example, an engineering education at Marquette may well be an experience different from one elsewhere—not by way of difference in engineering technique but in the environment of reception of those things technically engineering in character.

best friends, Judge Monroe McKay, now a member of the United States Court of Appeals for the Tenth Circuit. Soon after he started practice in Phoenix, he encountered a difficult problem for which there seemed to be no precedent. One of his colleagues informed him that Mark Wilmer, one of the senior and most respected members of the Phoenix Bar had had a similar problem. With some hesitation, lest he appear presumptuous, my friend called Mr. Wilmer, who offered to have lunch with this young lawyer whom he had never met. As they broke bread together, one of the most seasoned veterans of the Arizona Bar told one of its greenest rookies, "Monroe, so far as I know there is nothing in the books that will tell you how to handle that problem. But here's the way that I dealt with it when I faced it . . . ."

The second experience is mine, and it also occurred in Phoenix, where I practiced law. On one Friday afternoon I received a telephone call from our firm's largest client, asking for advice in connection with a wildcat strike. After going through a brief siege of panic when I found that both of the labor lawyers in our firm were out of town and could not be reached, I called John Boland, a labor law expert in a competing firm. I told him of my dilemma. To my great relief, he responded that he would be happy to do what he could. He suggested that since time was of the essence, it would probably be better if he talked directly to our client, rather than dealing through me, as he would prefer to do but for the time problems. That conversation occurred about 2:00 p.m. At 5:00 p.m., Mr. Boland reported to me on his efforts. He expressed his confidence that the matter would not need further legal guidance until Monday, but he gave me his home telephone number in case I needed to call him over the weekend.

It was obvious that he had spent the entire afternoon dealing with my client's problem. I thanked him as best I could, and then asked if he would prefer to send his bill to our firm, or directly to the client. His response was one whose every word will remain with me throughout my life: "No, you should bill these services for whatever you think they are worth. Your firm has always been very decent with us, and I was happy to help out a brother lawyer when he needed help."

Those performances, in my opinion, represent professionalism at its best. They are the kind of thing for which our profession as a whole, including its law schools, should strive. My point is not, of course, that what Mark Wilmer or Jack Boland did was influenced in part by their religious convictions. But whether

they were or were not, this kind of professional conduct, which sees other lawyers not only as competitors, or adversaries, but also as brother and sister professionals, is a responsibility borne by the entire legal profession, including the law schools. Common sense cries out that while a religious milieu is not essential to the achievement of that objective, it certainly provides a large head start.

Over the past decade and a half, the accrediting authorities of the American Bar Association and the Association of American Law Schools have grappled seriously for the first time with the special accreditation problems posed by religious law schools.<sup>34</sup> That chapter in the history of religious law schools was a necessary one. And it is now largely behind us. Those of us who believe that religious schools are a legitimate component of American legal education have passed the initial test. Our schools are members of the American legal education club. It is now time to address the next question: Will it be a better club with us than without us? I know what the answer should be. The challenge for the religious schools is to make the "should be" become an "is."

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34. See Cassou & Curran, *supra* note 1; Hawkins, *Accreditation of Church-Related Law Schools*, 32 J. LEGAL EDUC. 172 (1982); Kadish, *Church-Related Law Schools: Academic Values and Deference to Religion*, 32 J. LEGAL EDUC. 161 (1982); Vernon, *The Importance of Intellectual Diversity to Educational Quality*, 32 J. LEGAL EDUC. 189 (1982).



