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THE ROLE OF THE CHRISTIAN LEGAL SCHOLAR: THE CALL FOR A MODERN ST. BENEDICT

LEE J. STRANG*

INTRODUCTION

In his book, *After Virtue*, the philosopher Alasdair MacIntyre issued a stinging indictment of modern society.¹ In the famous last sentence of *After Virtue*, MacIntyre stated that “[w]e,” our society, “are waiting . . . for another—doubtless very different—St. Benedict.”²

I want to propose that Christian law professors should see themselves and their role in accord with MacIntyre’s call. In this Article, I will explain why. First, I will review St. Benedict’s life and argue that he created the institution, the form of community—Western monasticism—that preserved much of classical civilization and which was instrumental in synthesizing a new, Christian civilization. Second, I will discuss the state of American culture as diagnosed by MacIntyre.

I will then propose how Christian legal scholars should respond: what our role is in American society. I will argue that Christian law professors have three analytically distinct possible roles: building Christian law schools, rebuilding Christian law schools, and what I will label “engaging in the debate.” Scholars may assume different roles over their careers and aspects of more than one role concurrently.

Then I will briefly discuss how one can know what role(s) one should assume, as a Christian legal scholar. Lastly, I will return to St. Benedict and how his legacy of preserving and creating offers a model for Christian law professors fifteen hundred years later.

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1. ALASDAIR MACINTYRE, *AFTER VIRTUE* 2 (2d ed. 1984) [hereinafter MACINTYRE, *AFTER VIRTUE*].

2. *Id.* at 263.

I. SAINT BENEDICT: PRESERVER OF CLASSICAL CIVILIZATION AND BUILDER OF A CHRISTIAN CIVILIZATION

To understand why MacIntyre would invoke the name of St. Benedict, I will briefly review St. Benedict's life.³ Saint Benedict was born to a Roman noble at Nursia, a village in the mountains North of Rome, in the year 480.⁴ Benedict lived during the time of the disintegration of the West. Towards the end of the fourth century the Constantinian revival of the Empire began to give way and the Germanic tribes again invaded: in 380 the Western Goths attacked Constantinople; in 382 the Eastern Goths invaded Asia Minor; in 396 the Western Goths overran Italy and in 410 sacked Rome; in 420 the Western Goths settled in Spain and established their own kingdom; in 429 the Vandals overran Roman North Africa and established a kingdom; in 450 the Angles and Saxons overran Britain; and four years prior to Benedict's birth, the last Emperor of the West was deposed by Odoacer.⁵

Benedict went to Rome in his youth to study.⁶ However, when he was approximately twenty years old, he left Rome to escape the licentious world that had surrounded him.⁷ As his famous biographer Pope St. Gregory the Great wrote: "But for as much as he saw many by reason of such learning fall to dissolute and lewd life, he drew back his foot, which he had as it were not set forth in the world, lest, entering too far in acquaintance therewith, he likewise might have fallen into that dangerous and godless gulf."⁸

Benedict settled in a town called Enfide (likely modern Affile) about forty miles from Rome. After performing many miracles, becoming a hermit for three years, and establishing a number of monasteries, Benedict established the famous monas-

3. The primary historical source for St. Benedict's life is ST. GREGORY THE GREAT, *DIALOGUES* (Philip Lee Warner 1911) (593 A.D.). For a review of St. Benedict's impact see CHRISTOPHER DAWSON, *THE FORMATION OF CHRISTENDOM 169-71* (1967) [hereinafter DAWSON, *FORMATION OF CHRISTENDOM*]. For an overview of monasticism in general, see 9 *NEW CATHOLIC ENCYCLOPEDIA* 786-804 (2d ed. 2003).

4. Hugh Edmond Ford, *St. Benedict of Nursia*, *THE CATHOLIC ENCYCLOPEDIA* (1907), available at <http://www.newadvent.org/cathen/02467b.htm> (Oct. 27, 2005).

5. R.R. PALMER ET AL., *A HISTORY OF THE MODERN WORLD* 18 (9th ed. 1960).

6. ST. GREGORY THE GREAT, *supra* note 3, at 51.

7. *Id.*

8. *Id.*

tery at Monte Cassino around 520.⁹ While there, Benedict wrote his famous *Regula Sancti Benedicti*, or *Rule of St. Benedict*, to govern the life of his monks.¹⁰

In establishing Monte Cassino and writing his *Rule*, Benedict created Western monasticism. Men and women of faith entered monasteries to worship God, live in an intimate community with other Christians, and leave a declining world behind. The Benedictine *Rule* of monastic life and the communal practice developed at Monte Cassino ordered the lives of most Western monks for the next six hundred years.¹¹ During this time monks preserved much of the culture, learning, texts, and practices of the ancient world that was then falling away.¹² The monastic communities preserved the corpus of the ancient world until the High Middle Ages when the new peoples of Europe were able to reclaim what was lost and begin to build a new, different, Christian civilization.

During their golden age, the monasteries of Western Europe, modeled on Benedict's example, were centers of spiritual, intellectual, cultural, and economic life.¹³ As the historian Christopher Dawson noted: "[I]t was the monasteries that were the saviors of Christian culture and of the Christian way of life. The abbey was a microcosm of Christian culture, an island which preserved the tradition of Christian culture."¹⁴ The monks dutifully employed themselves in manual arts such as farming, liberal arts such as teaching, and speculative activities such as theology.¹⁵ Benedict was, therefore, instrumental in creating the means—the form of community—that preserved much of what was good from the classical world, which was collapsing.

But that is not the end of the story. Western monasticism also played a crucial role in synthesizing a new, Christian civilization out of the remnants of the classical Roman and Greek civilization that was passing away and the new Germanic cultures that had overtaken Western Europe. Unlike their Eastern counterparts who "were retreating from the dying culture of the ancient

9. THE SAINTS: A CONCISE BIOGRAPHICAL DICTIONARY 83–84 (John Coulson ed., 1958).

10. *Id.* at 84.

11. *Id.* Evidence of the popularity of the *Rule* is that early translations of the *Rule* from almost every European language remain extant. ST. GREGORY THE GREAT, *supra* note 3, at xxiv.

12. TERRENCE KARDONG, THE BENEDICTINES 145 (1988) ("The monks played an even more important transitional role in the production and preservation of manuscripts.").

13. *Id.*

14. DAWSON, FORMATION OF CHRISTENDOM, *supra* note 3, at 189.

15. KARDONG, *supra* note 12, at 144–47.

world" into the deserts, Western monasticism "was becoming the creator of a new Christian culture."¹⁶ Western monasticism, following Sts. Augustine and Basil, centered monastic life around the community based on "the social nature of man and the Christian doctrine of the common life of the Mystical Body."¹⁷ Western monasticism's greater openness found its way into Benedict's *Rule*.¹⁸

While the first step in achieving this synthesis was the preservation of classical thought and culture, the second step was bringing the Germanic conquerors of Europe to Christianity. The monks were instrumental in converting the tribes to Christianity.¹⁹ For example, in 596 Pope St. Gregory sent the monk, St. Augustine, on a mission to England after Roman civilization had been eliminated by the tribal migrations.²⁰ Saint Augustine's mission brought with it St. Benedict's *Rule* and established the great monasteries at Hexham, Jarrow, and Wearmouth.²¹ The monks drawn to these monasteries came from both Roman and German stock. Monks following the *Rule* of Benedict evangelized, besides Britain, the tribes in northern and central Europe such as the Saxons, the Danes, Swedes, Norwegians, Slavs, and Hungarians.²²

The monasteries served as centers for education of the new elites in Western Europe along with the men (and women) of lower classes who became monks (and nuns) or who received their education as part of the monastery's charitable work.²³ The monks "shared a common Latin Christian culture which they communicated" to their pupils.²⁴

The monasteries also assimilated positive aspects of the barbarian culture with the classical Christian tradition. For instance, Christian poetry made "use of the traditional heroic imagery . . . in poems like *The Dream of the Rood* or *Andreas*."²⁵ And the monks created Christian historiography whose subject was the new peo-

16. CHRISTOPHER DAWSON, RELIGION AND THE RISE OF WESTERN CULTURE 49 (1991) [hereinafter DAWSON, RISE OF WESTERN CULTURE].

17. *Id.* at 47.

18. *Id.* at 48.

19. DAWSON, FORMATION OF CHRISTENDOM, *supra* note 3, at 173.

20. *Id.* at 170.

21. *Id.*

22. *See id.* at 171; NEW CATHOLIC ENCYCLOPEDIA, *supra* note 3, at 791.

23. DAWSON, FORMATION OF CHRISTENDOM, *supra* note 3, at 175-76, 184-86.

24. *Id.* at 185.

25. DAWSON, RISE OF WESTERN CULTURE, *supra* note 16, at 52. I do not want to overstate the intellectual contribution of Western monasticism. Its monks were primarily concerned with preserving past learning and passing that

ples of Europe, such as the Venerable Bede's *Ecclesiastical History of England*.²⁶

In this way monasteries became the great cultural centers of Europe. During the missionary activity of the late eighth and early ninth centuries, which was carried out primarily by monks, the monasteries founded were not simple affairs. These monasteries were meant to serve as the religious, cultural, and economic centers of their areas: they included "a vast complex of buildings, churches, workshops, store-houses, offices, schools, and alms-houses, housing a whole population of dependants, workers and servants."²⁷

Perhaps the most important practical aspect of the rise of Western monasticism along the lines created by St. Benedict was the economic success of the monasteries.²⁸ The monks ventured into parts of the vast areas of Europe left a wilderness through depopulation (caused by the barbarian invasions) and brought them into cultivation.²⁹ When one monastery became overcrowded the abbot would send a group of monks to establish a daughter house where the monks would repeat what had been done so often already: cutting down the forests, building a monastery, cultivating the land, providing religious services to (any) neighbors, educating, and performing charitable works.³⁰

Slowly, through the centuries, a new, Christian society was created by "the grafting of Latin Christian traditions on the native barbarian stock."³¹ This new entity known as Christendom was the product of—in no small measure—St. Benedict's monastic vision and his *Rule*.

II. MACINTYRE'S CALL FOR A MODERN ST. BENEDICT: HIS ASSESSMENT OF AMERICAN (AND WESTERN) CULTURE AND THE *AFTER VIRTUE* PROJECT

At the end of *After Virtue*, published in 1981, MacIntyre referred to St. Benedict. He stated:

It is always dangerous to draw too precise parallels between one historical period and another; and among the most

on to the new nations of Europe and less concerned with original contributions. *Id.* at 64–65.

26. BEDE'S ECCLESIASTICAL HISTORY OF THE ENGLISH PEOPLE (A.M. Sellar trans., 1907).

27. DAWSON, RISE OF WESTERN CULTURE, *supra* note 16, at 63.

28. PAUL JOHNSON, A HISTORY OF CHRISTIANITY 148–52 (1976).

29. *See id.* at 148–49; DAWSON, RISE OF WESTERN CULTURE, *supra* note 16, at 53.

30. JOHNSON, *supra* note 28, at 148–52.

31. DAWSON, RISE OF WESTERN CULTURE, *supra* note 16, at 51.

misleading of such parallels are those which have been drawn between our own age in Europe and North America and the epoch in which the Roman Empire declined into the Dark Ages. Nonetheless certain parallels there are. A crucial turning point in that earlier history occurred when men and women of good will turned aside from the task of shoring up the Roman *imperium* and ceased to identify the continuation of civility and moral community with the maintenance of that *imperium*. What they set themselves to achieve instead . . . was the construction of new forms of community within which the moral life could be sustained so that both morality and civility might survive the coming ages of barbarism and darkness. If my account of our moral condition is correct, we ought also to conclude that for some time now we too have reached that turning point. What matters at this stage is the construction of local forms of community within which civility and the intellectual moral life can be sustained through the new dark ages which are already upon us. . . . This time however the barbarians are not waiting beyond the frontiers; they have already been governing us for quite some time. And it is our lack of consciousness of this that constitutes part of our predicament. We are waiting . . . for another—doubtless very different—St. Benedict.³²

Why a *different* St. Benedict? And *what* is different about the modern St. Benedict that MacIntyre envisions? To answer these questions, below I review MacIntyre's diagnosis for our society.

Alasdair MacIntyre was born in Scotland in 1929 and went to graduate school for philosophy in 1949.³³ He was a Marxist during this period, and his writing up to 1971 was sustained social criticism from this standpoint.³⁴ MacIntyre immigrated to the United States in 1971 and, after a "period of sometimes painfully self-critical reflection," he began what has become known as the *After Virtue* project.³⁵ Part-and-parcel of MacIntyre's shift away from Marxism—and perhaps the impetus for the *After Virtue* project—was his conversion to Catholicism.³⁶

32. MACINTYRE, *AFTER VIRTUE*, *supra* note 1, at 263.

33. Mark C. Murphy, *Introduction*, in ALASDAIR MACINTYRE 1 (Mark C. Murphy ed., 2003).

34. *Id.* at 2.

35. *Id.* at 1.

36. Or perhaps the philosophical reflection which led to *After Virtue* provided the impetus for his conversion to Catholicism.

After *Virtue*, MacIntyre's most famous work, provided the foundation for his subsequent work.³⁷ MacIntyre's works that continue the course set out in *After Virtue* are: *Whose Justice? Which Rationality?*,³⁸ *Three Rival Versions of Moral Enquiry*,³⁹ and most recently, *Dependent Rational Animals*.⁴⁰ Primary among the goals of the *After Virtue* project is an accurate diagnosis of our society's current ethical discourse, an analysis of how we arrived at our present state, and a prescription for a rational, coherent, and adequate ethical discourse.

In *After Virtue* MacIntyre argued that our culture's "language of morality is in [a] state of grave disorder."⁴¹ We use words—"fragments"—of morality, but because these words and the ideas they represent have been ripped from their original "conceptual scheme" they "now lack th[eir] contexts."⁴²

In our society this has led to "interminable" moral debate for which "[t]here seems to be no rational way of securing moral agreement in our culture."⁴³ A good example of this phenomenon is abortion: how many of us have had discussions (arguments?) over abortion only to leave the discussion with the feeling that we have accomplished nothing?

MacIntyre points to three revealing characteristics of the stunted moral debate in our society. First are the conflicting, incommensurable premises that people bring to moral debates such as abortion. One person in an abortion debate starts from the premise that individual autonomy is valuable and, hence, those states of affairs that promote autonomy should be encouraged. Think of the plurality's argument in *Planned Parenthood v. Casey*,⁴⁴ which is very similar to the arguments put

37. See, e.g., ALASDAIR MACINTYRE, *DEPENDENT RATIONAL ANIMALS: WHY HUMAN BEINGS NEED THE VIRTUES* x (1999) ("[T]his book is not only a continuation of, but also a correction of some of my earlier enquiries in *After Virtue*, *Whose Justice? Which Rationality?* and *Three Rival Versions of Moral Enquiry*.") [hereinafter MACINTYRE, *DEPENDENT RATIONAL ANIMALS*].

38. ALASDAIR MACINTYRE, *WHOSE JUSTICE? WHICH RATIONALITY?* (1988) [hereinafter MACINTYRE, *WHOSE JUSTICE? WHICH RATIONALITY?*].

39. ALASDAIR MACINTYRE, *THREE RIVAL VERSIONS OF MORAL ENQUIRY: ENCYCLOPAEDIA, GENEALOGY, AND TRADITION* (1990) [hereinafter MACINTYRE, *THREE RIVAL VERSIONS OF MORAL ENQUIRY*].

40. MACINTYRE, *DEPENDENT RATIONAL ANIMALS*, *supra* note 37.

41. MACINTYRE, *AFTER VIRTUE*, *supra* note 1, at 2.

42. *Id.*

43. *Id.* at 6.

44. See *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992) ("These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment.").

forth by the prominent legal philosopher Ronald Dworkin.⁴⁵ Another person in the debate over abortion might begin his argument from the premise that encouraging human beings to reach their end is valuable and, hence, those states of affairs that promote humans reaching their ends should be encouraged. Pope John Paul II has argued along these lines.⁴⁶

The second characteristic is that while we make arguments from incommensurable premises, we purport to use "impersonal rational arguments" to argue that our opponent should or should not believe a proposition, not because "I say so," but because of some reason external to ourselves.⁴⁷ So, in our debates on abortion, opponents of abortion do not argue that "abortion is wrong because I say it is." Instead, they argue that abortion is wrong because it is the taking of innocent human life that should receive the protection of the law. Proponents of a right to abortion offer similarly impersonal arguments.

Third, MacIntyre shows that the incommensurable premises from rival arguments have their home in different historical contexts.⁴⁸ In the hypothetical abortion debate, the argument used in *Casey* has its initial home in the Enlightenment thought, from John Locke to more modern exponents such as John Rawls and Ronald Dworkin.⁴⁹ The arguments utilized by the Pope have their home initially in Aristotle and Aquinas.⁵⁰

Rival arguments are based on incommensurable premises that "were originally at home in larger totalities of theory and practice in which they enjoyed a role and function supplied by contexts of which they have now been deprived."⁵¹ As a result, in

45. See, e.g., RONALD DWORIN, *FREEDOM'S LAW: THE MORAL READING OF THE AMERICAN CONSTITUTION* ch. 4 (1996).

46. See, e.g., POPE JOHN PAUL II, *ENCYCLICAL LETTER EVANGELIUM VITAE* No. 2 (1995).

Man is called to a fullness of life which far exceeds the dimensions of his earthly existence, because it consists in sharing the very life of God. The loftiness of this supernatural vocation reveals the greatness and the inestimable value of human life even in its temporal phase. Life in time, in fact, is the fundamental condition, the initial stage and an integral part of the entire unified process of human existence.

Id.

47. MACINTYRE, *AFTER VIRTUE*, *supra* note 1, at 8–9 (emphasis omitted).

48. *Id.* at 10.

49. See *id.* at 6–10 (giving modern arguments for and against abortion that have their source in earlier ethical systems).

50. *Id.* Pope John Paul II's indebtedness to St. Thomas is explicit in *Fides et Ratio*. POPE JOHN PAUL II, *ENCYCLICAL LETTER FIDES ET RATIO* Nos. 43–44 (1998).

51. MACINTYRE, *AFTER VIRTUE*, *supra* note 1, at 10.

our society it appears *arbitrary* when a person begins from one premise rather than another: when a person *chooses* the premise of autonomy rather than teleology. This leads to a pervasive de facto emotivism where participants in debates on ethics assume that arguments regarding morality are “nothing but expressions of preference.”⁵² Further, our society has no mechanism to weigh or evaluate these conflicting premises. Hence, the continually rising decibel level of what passes for debate in our society: if we, as a society, cannot rationally choose one premise over another, then debate is useless and all that is left is protesting and yelling, and coercion.

MacIntyre famously—and controversially—argued that Western Civilization, and our society in particular, reached the present point of moral disorder through a long period of decline: the Enlightenment.⁵³ The period of the Enlightenment was the time where Western civilization moved away from the Aristotelian tradition, characterized primarily by the concept of teleology, through successive attempts at “an independent rational justification for morality.”⁵⁴ The failure of the Enlightenment project of a non-teleological justification for morality has created the moral disorder in our society where “moral debate [is conducted] in terms of a confrontation between incompatible and incommensurable moral premises and moral commitment [is] the expression of criterionless choice between such premises, a type of choice for which no rational justification can be given.”⁵⁵

Relatedly, MacIntyre has argued that the university has evolved through different stages that correspond to the rise, dominance, and fall of the Enlightenment tradition.⁵⁶ The first stage was the pre-modern stage, lasting from the creation of universities in the thirteenth century until the Enlightenment.⁵⁷ The pre-modern university was characterized by a common vision of the good: what it means to live a good human life.⁵⁸ To create

52. *Id.* at 12 (emphasis omitted).

53. *Id.* at 38.

54. *Id.* at 37–38. In *After Virtue* MacIntyre reviews the thought of Kierkegaard, Kant, and Hume by placing them within their historical context of providing a philosophical justification for moral norms they inherited from the preceding Christian culture. *Id.* at ch. 4.

55. *Id.* at 39.

56. MACINTYRE, THREE RIVAL VERSIONS OF MORAL ENQUIRY, *supra* note 39, at ch. 10.

57. *Id.* at 232–34; MACINTYRE, WHOSE JUSTICE? WHICH RATIONALITY?, *supra* note 38, at 206–07.

58. See MACINTYRE, WHOSE JUSTICE? WHICH RATIONALITY?, *supra* note 38, at 206 (“The past had provided a set of *auctoritates*.”); *id.* at 399 (“Each such

and maintain the common vision, a university ensured that the educational background of its members was similar, and the university used mechanisms to maintain the common vision such as religious tests and promotion based on adherence to the common vision of the good.⁵⁹

The paradigmatic manifestation of the pre-modern university was the *disputatio*.⁶⁰ A lecturer and his audience shared a common understanding of which texts were authoritative and the relationships of those texts.⁶¹ Following a lecture, the audience would dialectically test the lecturer's arguments in a *disputatio*.⁶² "It was just because both audience and lecturers accepted standards of truth and rationality independent of either that each could summon the other to test any particular thesis in the forum of disputation, the intellectual equivalent of trial by ordeal."⁶³ So while there was ethical disagreement and debate, it was not radical—it did not go to the premises employed by the participants in the debate—and instead was constructive as the participants built on a common foundation.⁶⁴

In *Whose Justice? Which Rationality?* MacIntyre presented an extended review of Scottish society, including Scottish universities, in the late sixteenth and early seventeenth centuries.⁶⁵ Scottish society possessed a common vision of the good centered on an Aristotelianism refracted through the prism of Calvinist theology.⁶⁶ This society provided a common education to leaders such as ministers, professors, lawyers, and other professionals.⁶⁷ It also maintained its common philosophical vision through non-coercive and coercive measures.⁶⁸ Scottish society defended its

preliberal university was therefore to some degree an institution embodying either one particular tradition of rational enquiry or a limited set of such traditions.”).

59. *Id.* at 399; MACINTYRE, THREE RIVAL VERSIONS OF MORAL ENQUIRY, *supra* note 39, at 223–24.

60. MACINTYRE, THREE RIVAL VERSIONS OF MORAL ENQUIRY, *supra* note 39, at 32.

61. *Id.*

62. *Id.* at 32–33.

63. *Id.*

64. See MACINTYRE, THREE RIVAL VERSIONS OF MORAL ENQUIRY, *supra* note 39, at 223 (“[A]chievements in rational enquiry . . . required as a precondition a high degree of homogeneity in fundamental belief, especially as regarded standards of rational justification Creative rational disagreement characteristically takes place against a background of agreement . . .”).

65. MACINTYRE, WHOSE JUSTICE? WHICH RATIONALITY?, *supra* note 38, at chs. 12–16.

66. *Id.* at 209.

67. *Id.* at 220.

68. *Id.* at 239, 241–46.

vision of the good through apologia by scholars, ministers, and others.⁶⁹ It also utilized state, church, and other institutions to enforce the common vision.⁷⁰

The second stage in the evolution of universities, brought about by the dominance of the Enlightenment tradition, was the liberal university.⁷¹ The premise of the liberal university, grounded in the Enlightenment tradition, was that an individual *qua* individual could “objectively” approach knowledge and determine what was and was not correct.⁷² “The false premise” of the liberal university was “that human rationality is such . . . [that] if freed from external constraints and most notably from the constraints imposed by religious and moral tests, it will produce not only progress in enquiry but also agreement among all rational persons.”⁷³ Unlike the pre-modern university, its liberal counterpart refused to enforce a common vision of the good.⁷⁴ How could it? The premise of the liberal university was that, if presented with knowledge, all rational individuals would come to the correct understanding of that knowledge, making coercion unnecessary.⁷⁵

The paradigmatic manifestation of the liberal university was the lecture: the authoritative professor disseminated knowledge to his listeners who were able to assimilate the knowledge into a coherent whole.⁷⁶ The professor’s duty was to synthesize all of the information on a given topic using the model of the natural sciences, and offer it to the audience.⁷⁷ Then, the members of the audience, who were “all rational persons [that] conceptualize data in one and the same way,”⁷⁸ would assimilate the professor’s “encyclopaedic pronouncements.”⁷⁹

Today, MacIntyre argued, the liberal university and its institutions are empty shells.⁸⁰ The formerly unified philosophical allegiance of the professoriate and the public has become “fragmented into a series of independent, specialized, and profes-

69. *Id.* at 247–59.

70. *See id.* at 241 (stating that ecclesiastical and secular courts defended the common vision of the good); *id.* at 245–46 (describing heresy trials).

71. MACINTYRE, THREE RIVAL VERSIONS OF MORAL ENQUIRY, *supra* note 39, at 224–25.

72. *Id.* at 225.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* at 33.

77. *Id.* at 19–21.

78. *Id.* at 16–17.

79. *Id.* at 33.

80. *Id.* at 216–18.

sional activities.”⁸¹ However, many of the institutions and practices of the university that were formed during the period of the liberal university remain as hollow reminders of a past era.⁸²

For example, does anyone any longer believe that a professor’s lecture is simply an objective dissemination of knowledge? Absent the previous “unified secular vision of the world and of the place of knowledge and of enquiry within it” that served as the foundation of the liberal university, today the lecture is viewed as nothing more than one person’s contestable view on a particular topic.⁸³ The lecture, according to MacIntyre, is a “ghostly representation of the thinkers and thought” of the liberal university’s founders.⁸⁴

The university has, therefore, proceeded through stages of evolution that correspond to the rise, dominance, and fall of the Enlightenment tradition. The primary characteristic of today’s university is like that of our larger society: radical disagreement. It is in light of this current state of affairs, and other manifestations of the university such as the pre-modern university, that I will below discuss the possible roles of Christian law professors.

III. ROLE(S) OF THE CHRISTIAN SCHOLAR: BUILDING, REBUILDING, AND ENGAGING

A. *Introduction*

If MacIntyre is right—and, with some qualifications, I think he is—then Christian legal scholars play an important role in preserving the truth and shining the light of the truth on our culture. In this Part, I will argue that, assuming MacIntyre’s analysis is correct, Christian legal scholars have three possible roles: building communities of virtue, rebuilding communities of virtue, and engaging in the conflict between traditions. These roles are not mutually exclusive: the same scholar may take on different roles at different points in his life, and the same scholar may assume aspects of more than one role simultaneously. As will become clear below, I believe that each role is important—and accordingly Christian legal scholars must fill all of them—but the roles of building and rebuilding (to the extent possible) communities of virtue should receive special attention.

81. *Id.* at 216. The fragmentation of the professoriate corresponds to a fragmentation of education itself, where students specialize in one particular profession. *Id.* at 217.

82. *Id.* at 218.

83. *Id.* at 216–18.

84. MACINTYRE, THREE RIVAL VERSIONS OF MORAL ENQUIRY, *supra* note 39, at 217–18.

B. *Building and Rebuilding Communities of Virtue*

MacIntyre argued that our society is unable to achieve consensus on the great issues facing it. In response to our society's radical disagreement, Christian legal scholars must first work to build communities of virtue. A community of virtue is a group of people who together share a common vision of the good. They have essentially similar answers to questions regarding the meaning of reality, what it means to be human, and how one attains integral human fulfillment.⁸⁵ Central to this common vision is the role of virtue, helping the individual achieve his end: happiness in this world and Beatitude⁸⁶ in the next.

The paradigm example of a community of virtue is the Church: church members have a common vision of the Good—God—and work together to realize that Good. The Church is also a good example for another reason: it is a non-geographic community. In our society today, with its deep philosophical and religious divisions and migrant populace, it is difficult any longer to find a group of people located in a compact, recognizable geographic area who hold a common, thick vision of the good.⁸⁷ Our nation's states and major cities are too populous to qualify. Only in smaller groupings, such as a small town in Iowa or an urban religious community, is it possible to have a community of virtue defined geographically.⁸⁸

85. ROBERT P. GEORGE, IN DEFENSE OF NATURAL LAW 51 (1999) (describing integral human fulfillment).

86. As Aquinas stated:

It is impossible for any created good to constitute man's happiness. For happiness is the perfect good, which lulls the appetite altogether; else it would not be the last end if something yet remained to be desired. Now the object of the will, i.e., of man's appetite, is the universal good; just as the object of the intellect is the universal true. Hence it is evident that naught can lull man's will save the universal good. This is to be found, not in any creature, but in God alone; because every creature has goodness by participation alone. Wherefore God alone can satisfy the will of man. . . . Therefore God alone constitutes man's happiness.

ST. THOMAS AQUINAS, SUMMA THEOLOGICA Pt. I-II, Q. 2, Art. 8 (Benziger Bros. 1947).

87. See, e.g., MICHAEL J. SANDEL, DEMOCRACY'S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC POLICY 13–17 (1996) (discussing competing thick and thin visions of persons).

88. But even here, under the pervasive influence of the secular culture, the common vision of the good—the community itself—is slipping away. Unless parents are vigilant, the media will expose their children to antagonistic belief systems. Absent strong religious and cultural commitments, divorce will eat away at the solid family structure. Additionally, the lure of the community's best and brightest to far-away jobs will, of course, inhibit the rise of local leaders.

Other than the quickly disappearing relics of a past age's society, today's communities of virtue do and will take the form of voluntary associations defined by membership in the association and not geography. The parish or congregation—and I will argue the Christian law school—are focal examples of today's local communities of virtue. Individuals who share a common vision of the Good (a belief in Jesus) come together to pursue that Good (worship Him). They may travel from a wide geographic area, live in different geographic locales, and live among people with radically different visions of the good, but together, they pursue the Good.

In a society such as ours, with its interminable ethical debate, perhaps the primary role of Christian legal scholars is to build communities of virtue.⁸⁹ In the law school context, creating a common vision of the good includes a common understanding of the nature of law and the role law does and should play in human society.⁹⁰ Christian legal scholars must help build communities of virtue because without that community it will be difficult to impart—to teach—the true nature of law. Further, Christians need to create communities of virtue where an accurate understanding of the law can be preserved and expounded in a society hostile to that understanding.

Persons in our society have great difficulty agreeing on issues of import because of their different philosophical allegiances. Law is no exception.⁹¹ A good example of this inability to agree is the field of constitutional interpretation. Scholars and judges make wildly divergent claims about what and whether there is an appropriate mode of interpreting the Constitution.⁹²

89. For a provocative vision of the Christian law school see Thomas L. Shaffer, *Erastian and Sectarian Arguments in Religiously Affiliated American Law Schools*, 45 STAN. L. REV. 1859, 1869–78 (1993). For a much different perspective see Michael J. Perry, *The Idea of a Catholic University*, 78 MARQ. L. REV. 325 (1995).

90. See Christopher Wolfe, *The Ideal of a (Catholic) Law School*, 78 MARQ. L. REV. 487, 488 (1995) (listing some of the “general principles” of a “Catholic vision of law”).

91. See Steven D. Smith, *LAW'S QUANDARY* 19–21 (2004) (noting our deeply conflicted legal discourse).

92. For a broad discussion of the division within constitutional interpretation and an argument that the division reflects a deeper philosophical divide, see Lee J. Strang, *The Clash of Rival and Incompatible Philosophical Traditions Within Constitutional Interpretation: Originalism and the Aristotelian Tradition*, 2 GEO. J.L. & PUB. POL'Y 523 (2004). On one end of the spectrum are originalists, such as Justice Scalia, who have argued that judges may use only the original meaning of the Constitution to strike down acts of the elected branches. See ANTONIN SCALIA, *A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW* (1997). Justice Scalia based his argument on the fact that the Constitution is “a

In a secular law school, the radical disagreement from the broader society spills over. The faculty disagrees about the nature of law, and faculty and students disagree as well (although not at the level of sophistication as the intra-faculty disagreement). In this environment the *most* one can generally expect is to teach the “black-letter” law: what this case means and how the court arrived there. One will not be able to fruitfully teach why a case is wrong or why an interpretative methodology is correct.

In fact, in a secular law school one may have difficulty in teaching simply the positive—“black letter”—law because of the deep disagreements that exist regarding “what the law is.” For instance, a student who takes—either explicitly or intuitively—a Marxist approach to law will not agree with a professor who has a Dworkinian view of law. The professor will argue that the law in principle can arrive at one correct answer to legal questions and proposed how judges do so.⁹³ The Marxist student, by contrast, will reject any such argument, because the student’s premise is that law is part of the social superstructure of legitimation; simply a mask for domination that judges enforce.⁹⁴ As a result, the great distance between members of secular law schools regarding the nature of law will dramatically impede teaching the true nature of law.

Relatedly, many students will have difficulty perceiving the truth because of their background. Even the concept of virtue—as habits of good character that one forms over a lifetime—is foreign to many Americans and law students are no exception. The odds are against people striving for and obtaining virtue who come of age in our current culture. First, given the absence of the very notion of virtue in our popular culture,⁹⁵ it is difficult for youth to strive to possess it. Second, one of the key notions in the Aristotelian tradition is that while all persons have the capac-

democratically adopted text.” *Id.* at 40. I have argued elsewhere that the most powerful understanding of originalism—an argument Justice Scalia employs—is based on the Aristotelian tradition. Strang, *supra*, at 568–70. On the other end are non-originalists who argue that judges may use normative values in place of, or in addition to, the original meaning. Ronald Dworkin, for example, has argued that judges must employ the “morally best” conception of democracy—democracy with conditions such as “equal concern and respect”—and hence may strike down acts of the elected branches that do not treat members of our society with equal concern and respect. DWORKIN, *supra* note 45, at 7–8, 15–19. The premise of Dworkin’s theory is a strongly individualistic understanding of human beings.

93. RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 286 (1977).

94. See, e.g., Karl Klare, *Law-Making as Praxis*, 40 *TELOS* 123 (1979).

95. See MTV Home Page, <http://www.mtv.com> (last visited Mar. 24, 2006).

ity for virtue, without social assistance—either from family, subsidiary communities, or the government—that capacity will not be realized for many people.⁹⁶ Our society not only does not aid in the cultivation of virtue, it often inverts vice and virtue and encourages young people to reject traditional mores.⁹⁷ This leads to law students who lack the virtues—the habits of character—that would enable them to recognize the truth.

Without a modicum of virtue, one may not recognize the truth or may reject what one knows is the truth.⁹⁸ As a result, a law professor may, for instance, present an accurate understanding of the law, but the student will be unable or unwilling to accept that understanding.

In light of the obstacles faced by those who teach in secular law schools, obstacles that hinder Christian legal scholars from effectively imparting a full understanding of the law, Christian legal scholars should carefully consider the alternative of teaching in a Christian law school community. In a Christian law school, a Christian legal scholar will have colleagues and students who begin from the same foundational—even if, in the case of students, inchoate—understanding of human beings, society, and the law. Further, in the Christian law school, students are generally eager and able to receive a full understanding of the law because of their habits of character. Of course, this is not to say that secular law schools do not have many faculty and students who also start from the same foundational premises and possess the necessary habits of character, only that, depending on the circumstances, it is more likely that such individuals will be found in the setting of the Christian law school.

A further reason to build communities of virtue is that these communities will preserve and expound the rich heritage of Christian belief, theology, and philosophy in a hostile society and legal academy.⁹⁹ A good example of this phenomenon is the way

96. ARISTOTLE, *NICOMACHEAN ETHICS* 1103a–b (Terence Irwin trans., Hackett Publ'g Co. 1985).

97. See Patricia Gurin, *Expert Report Submitted on Behalf of the University of Michigan: The Compelling Need for Diversity in Higher Education*, 5 MICH. J. RACE & L. 363, 368 (1999) (arguing that the purpose of higher education is to encourage student “experiment[ation]” with different “philosoph[ies] of life”).

98. ARISTOTLE, *supra* note 96, at 1179b–1180a (“For he that lives in obedience to passion cannot hear any advice that would dissuade him, nor, if he heard, understand.”).

99. See William J. Stuntz, *Christian Legal Theory*, 116 HARV. L. REV. 1707, 1711–12 (2003) (reviewing *CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT* (Michael W. McConnell et al. eds., 2001)) (“[T]he conventional wisdom among legal academics [is]: religious convictions should be kept out of debates about law and politics.”).

in which Christian law schools preserve and build upon the natural law tradition. As noted by Christopher Wolfe, “[n]atural law teaching . . . would be an essential part of [the] framework” of a Christian law school.¹⁰⁰ The natural law tradition, once the foundation of Western legal thought, has today largely been relegated to the margins of secular discourse. In contrast, Christian law schools, through their teaching and scholarship, continue to emphasize natural law.

At Ave Maria School of Law, where I teach, the natural law is incorporated into the curriculum in each class, as appropriate.¹⁰¹ Many of the professors at Ave Maria explicitly rely on the natural law tradition in their scholarship.¹⁰² They make arguments that are unique in the scholarly discourse.¹⁰³ The nurturing community at Ave Maria makes this possible in a way that secular law schools cannot because of institutional constraints.

I believe current examples of Christian legal scholars attempting to build legal communities of virtue include: Ave Maria, Liberty, Regent, and St. Thomas. Each of these institutions is attempting to create a community of Christian legal scholars who teach, preserve, and expound the Christian understanding of the law.

How should Christian scholars go about building communities of virtue? To have a community of virtue, the members of the community must share a common vision of the good and, particularly, of the law. Christian law professors building a Christian law school will need to use that common vision as a criterion for the institution’s important decisions. When hiring faculty, for example, the law school will want to ensure that the candidates possess a Christian vision of the law, without which they will be less able to teach, write scholarship, and engage in public advocacy for that understanding.¹⁰⁴ The hiring criteria for a Christian law school “would be all the usual characteristics of

100. Wolfe, *supra* note 90, at 488.

101. See *id.* at 489–90 (arguing that in a Catholic law school the natural law tradition along with Catholic social thought “would help to provide a unifying principle undergirding (and, ideally, infusing) much of the ‘standard’ law school curriculum . . .”).

102. See, e.g., Kevin P. Lee, *Deeper Longings: The Relevance of Christian Theology for Contemporary Rights Theories*, 3 AVE MARIA L. REV. 289 (2005); Edward C. Lyons, *In Cognito—The Principle of Double Effect in American Constitutional Law*, 57 FLA. L. REV. 469 (2005).

103. See Patrick McKinley Brennan, *Christian Perspectives on Legal Thought*, 16 J.L. & RELIGION 667, 668 (2001) (book review) (“Christians have distinct perspectives on law . . .”).

104. See Robert J. Araujo, “*The Harvest is Plentiful, but the Laborers are Few*”: *Hiring Practices and Religiously Affiliated Universities*, 30 U. RICH. L. REV. 713

professional legal excellence, *plus* willingness to accept and an ability to contribute to the purpose or mission of the school”¹⁰⁵ This is not to say that a Christian law school must be “exclusively a community of believers”¹⁰⁶ However, to achieve its goal of a common understanding of the law, a sufficient percentage of faculty must attend to the common understanding such that it is the community’s understanding. Similarly, the Christian law school will encourage incorporation of the Christian understanding of the law in teaching, scholarship,¹⁰⁷ communal life, and public advocacy.

Much of the discussion above is applicable to Christian legal scholars who are attempting to *rebuild* communities of virtue. There are many law schools that were initially founded as Christian institutions, but have lost the Christian vision of law.¹⁰⁸ In these institutions, Christian scholars must work to rebuild a common, Christian vision of the law.¹⁰⁹

The most prominent examples of law schools that lost their initial Christian orientation are Harvard and Yale. Both institutions were founded as Christian seminaries and their law schools were created during the period when the broader universities remained recognizably Christian. Yet, over the course of the late nineteenth and early twentieth centuries, these law schools eliminated—whether intentionally or not¹¹⁰—the common Christian vision of the law. Today Harvard and Yale law schools are paradigmatic examples of modern secular institutions characterized by deep and fundamental disagreement on every issue of substance.

To reverse the secularization of their institutions, those rebuilding Christian law schools should consider hiring “candidates who would enthusiastically support and further the mission of the religiously affiliated school.”¹¹¹ They will also

(1996) (discussing the legal, practical, and theological implications of hiring to preserve the Christian character of a law school).

105. Wolfe, *supra* note 90, at 500.

106. Mark A. Sargent, *An Alternative to the Sectarian Vision: The Role of the Dean in an Inclusive Catholic Law School*, 33 U. TOL. L. REV. 171, 181 (2001).

107. See, e.g., CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT (Michael W. McConnell et al. eds., 2001).

108. GEORGE M. MARSDEN, THE SOUL OF THE AMERICAN UNIVERSITY: FROM PROTESTANT ESTABLISHMENT TO ESTABLISHED NONBELIEF 440 (1994).

109. For a discussion of the difficulty and costs entailed by rebuilding a Christian law school see Sargent, *supra* note 106, at 179.

110. See MARSDEN, *supra* note 108, at 5 (arguing that the shift was unintentional).

111. Araujo, *supra* note 104, at 768.

(re)incorporate the Christian vision of law into teaching, scholarship, community life, and public advocacy.

One example of an institution where Christian law professors are rebuilding a common, Christian vision of the law is Villanova. It has strong Christian roots that became attenuated. And in it Christian law professors are at work rebuilding a community of virtue.

C. *Working from Within Secular Institutions: Engaging in the Debate*

Returning to a central theme of his work, MacIntyre argued in *Three Rival Versions of Moral Enquiry* that our present condition is characterized by a radical pluralism, which makes institutional and society-wide moral inquiry “barren” because of the lack of any common ground from which to build.¹¹² Our society no longer has a common standard of moral inquiry. Our society can no longer evaluate claims regarding morality because individuals and communities employ different evaluative criteria to judge the efficacy of such claims.¹¹³ “What then is possible?” asks MacIntyre.¹¹⁴

The answer is: the university is a place of constrained disagreement, of imposed participation in conflict in which a central responsibility of higher education would be to initiate students into conflict. In such a university those engaged in teaching and enquiry would each have to play a double role. For, on the one hand, each of us would be participating in conflict as the protagonist of a particular point of view. . . . On the other hand, each of us would also have to play a second role, that not of a partisan, but of someone concerned to uphold and to order the ongoing conflicts, to provide and sustain institutionalized means for

112. MACINTYRE, *THREE RIVAL VERSIONS OF MORAL ENQUIRY*, *supra* note 39, at 216, 227.

113. The lack of any agreed-upon standard for evaluating moral claims in our society has led philosophers to attempt to construct a means for members in a radically pluralistic society, such as our own, to arrive at the minimum consensus necessary to continue to live together in social cooperation. *See, e.g.*, JOHN RAWLS, *A THEORY OF JUSTICE* 4–5 (rev. ed. 1999) (1971) (“Some measure of agreement in conceptions of justice is, however, not the only prerequisite for a viable human community.”). Rawls wanted to do so without appealing to the competing contested standards employed to evaluate moral claims. *See* ROBERT P. GEORGE, *MAKING MEN MORAL: CIVIL LIBERTIES AND PUBLIC MORALITY* 133 (1993) [hereinafter *GEORGE, MAKING MEN MORAL*] (“The function of the veil [of ignorance] . . . is to eliminate bias from the selection of principles of justice . . .”).

114. MACINTYRE, *DEPENDENT RATIONAL ANIMALS*, *supra* note 37, at 230–31.

their expression, to negotiate the modes of encounter between opponents, to ensure that rival voices were not illegitimately suppressed, to sustain the university . . . as an arena of conflict in which the most fundamental type of moral and theological disagreement was accorded recognition.¹¹⁵

A last role for the Christian legal scholar—and one, by necessity, which most Christian legal scholars will take up—is described by MacIntyre as having two components: (1) advocating one particular view; and (2) maintaining the institutional structures within which competing views may interact.

The first component of the Christian legal scholar's role in a secular institution is to offer a true understanding of the nature and role of law to students, colleagues, and the broader public. Like his counterpart in the Christian law school, he will present a coherent vision of the nature of law that is better than other, competing views.

For instance, the Christian legal scholar will provide students with access to seminal explanations of the Christian understanding of law. In contracts class, he might have students read the later Scholastics' explanation of the nature and role of contract.¹¹⁶ By going through these Christian philosophers, he will allow others to come inside the Cathedral, so to speak; he will allow others to see the rich depth of the Christian legal tradition and how it better fits and justifies their own lived experience of contract. Then, the Christian legal scholar will offer the students competing visions of contract law rooted in a different, competing philosophical tradition. After reviewing our actual American contract doctrines, he will ask his students which of these competing views best explains and justifies our American contract doctrines. In this way, the Christian law professor conforms to the norms of his secular institution, while also advancing the Christian understanding of the law.

This component of the Christian legal scholar's role is challenging because, if MacIntyre is right, then it is very difficult to show those who adhere to another understanding of law—either consciously or unconsciously—why the Christian understanding of law is correct. This is a difficult process for a couple of reasons

115. *Id.*

116. See, e.g., James Gordley, *The Moral Foundations of Private Law*, 47 AM. J. JURIS. 1, 1 (2002) (arguing that the philosophical foundation that best fits and justifies American private law is the Aristotelian tradition as explained by the Spanish Scholastics).

discussed above.¹¹⁷ First is the possibility that the recipient will not be able correctly to perceive the truth of what is offered. The recipient might not possess the habits of character, the lack of which impedes his ability to recognize the truth.

Secondly—and less provocatively—the understanding of law (effectively) followed in our society and in secular law schools is liberal (liberty enhancing); it is the lived tradition. This makes it difficult to show another the rich depth of the Christian vision without somehow showing them the lived tradition, the tradition put into practice. As MacIntyre argued regarding Aquinas' accomplishment in synthesizing the rival and incompatible Augustinian and Aristotelian traditions: to understand the claims made by rival and incompatible traditions one must "inhabit . . . both alternative conceptual schemes, [one must] know . . . and [be] able to utter the idiom of each from within, [one must] become, so to speak, a native speaker of two first languages, each with its own distinctive conceptual idiom."¹¹⁸ Therefore, unless one becomes conversant in the Christian understanding of the nature of law, one will have difficulty in accepting that understanding as correct.

A prominent example of a Christian legal scholar who has performed this first component well—advancing the Christian understanding of the law—is Robert P. George at Princeton. George is well credentialed by any standard—he received his Juris Doctor from Harvard Law School and his doctorate in legal philosophy from Oxford.¹¹⁹ He holds the prestigious McCormick Chair of Jurisprudence at Princeton University.¹²⁰

George has utilized his position, first of all, to teach an accurate understanding of the law to his students. His classes are well subscribed, and for many of his students, this is their first exposure to the Christian vision of law.¹²¹ George is able to offer his

117. See *supra* notes 93–98 and accompanying text (discussing the difficulties of imparting the Christian understanding of law in the context of a secular law school).

118. MACINTYRE, THREE RIVAL VERSIONS OF MORAL ENQUIRY, *supra* note 39, at 114.

119. See EXECUTIVE COMMITTEE, JAMES MADISON PROGRAM IN AMERICAN IDEALS AND INSTITUTIONS, <http://web.princeton.edu/sites/jmadison/people/committee.htm> (last visited Oct. 31, 2005).

120. Anne Morse, *The Conservative Heavyweight: The Remarkable Mind of Robert P. George*, CRISIS, Sept. 2003, at 36–42.

121. See *id.* ("George's class on constitutional interpretation and civil liberties are huge by Princeton standards and always jammed despite his reputation as a tough-grading GPA-wrecker.").

students a cogent and coherent view of the Christian understanding of law, and his efforts are not without success.¹²²

Of course, George's position at an elite secular institution also provides him with opportunities to spread the Christian vision of the law beyond the classroom. George is a prolific and popular scholar whose work defending natural law is both widely read and influential.¹²³ George has engaged, through his work, the leading secular minds of the day.¹²⁴ George has also had an impact through the media where he writes and appears in many fora.¹²⁵

The second component of the Christian legal scholar's role in secular institutions is preserving the institution as a forum for the clash of differing views. MacIntyre argued that in today's university, one of the roles of university members will be to "sustain the university . . . as an arena of conflict in which the most fundamental type of moral and theological disagreement [i]s accorded recognition."¹²⁶

Christian legal scholars can fulfill this aspect of their role in many ways. Primarily they can do so through their own engagement in the scholarly debate, both within their law school and in the broader legal academy and society. Christian law professors can also create institutional means of preserving a space within the university to present and debate about unpopular views, such as the Christian vision of law.

Again, Robert P. George is a good example. George created the James Madison Program in American Ideals and Institutions.¹²⁷ The Madison Program is an entity within Princeton University that addresses questions and issues central to our society, in light of American ideals.¹²⁸ Students may take classes

122. *Id.*

123. *See id.* (discussing George's impact on the broader public).

124. *See, e.g.,* GEORGE, MAKING MEN MORAL, *supra* note 113 (discussing a wide array of influential contemporary philosophers).

125. Morse, *supra* note 120 (discussing George's impact on the broader public).

126. MACINTYRE, THREE RIVAL VERSIONS OF MORAL ENQUIRY, *supra* note 39, at 230–31.

127. *See* James Madison Program in American Ideals and Institutions, <http://web.princeton.edu/sites/jmadison> (last visited Mar. 24, 2006).

128. *See id.* The University identifies the mission of the Madison program as an inquiry into:

[T]he nature of free political institutions and the cultural conditions for their establishment and maintenance; the relationship between political institutions and institutions of civil society, and that between political liberty and civic virtue; the implications of such doctrines as the rule of law, subsidiarity, and social solidarity for the scope and limits of governmental authority; federalism; the moral bases of pri-

under the auspices of the Madison Program, and scholars may visit as fellows of the Program, and many work in the Program teaching students.¹²⁹

Through the Madison Program, George is able to offer students an extended study of the law grounded in a Christian, natural law understanding. The importance of this extended study cannot be overestimated. To come to grasp—and eventually to assent to¹³⁰—a particular vision of the law, one must in effect learn to speak a second language. One must learn to use different concepts—teleology, for example—and one must learn to apply familiar concepts in new ways.¹³¹ This takes time. Perhaps more importantly, it takes a teacher (a master) who is fluent in the tradition to guide one to that new understanding.¹³² Institutions like George's Madison Program provide these necessary ingredients; they provide a space within which debate over the nature of law can take place within a secular university.

D. *Activities of Christian Legal Scholars: Not Limited by Their Role(s)*

Although the activities a particular Christian legal scholar takes on are to some extent determined by the nature of the scholar's institution and his role within that institution, Christian legal scholars, regardless of their institutional affiliation, should engage in other activities as well. This means that all Christian legal scholars should engage in professional and public debate through scholarship; that all Christian legal scholars should publicly advocate for the Christian vision of the law; and that all Christian legal scholars should build communities of virtue, though of course, the particular type of community will vary.

The Christian law school—and the Christian legal scholars that are the heart of the school—fulfill roles that their secular

vate property and free enterprise; the constitutional separation of powers and systems of checks and balances; executive leadership; democratic deliberation and accountability; judicial independence and the scope and limits of judicial power; America's role in the world and the conduct of her relations with foreign powers; and the place of religion and religiously informed moral judgment in American public life.

Id. at Mission page.

129. *See id.*

130. For a discussion of the meaning of "assent," see JOHN HENRY CARDINAL NEWMAN, AN ESSAY IN AID OF A GRAMMAR OF ASSENT (Notre Dame Press 1979) (1870).

131. *See supra* note 39 and accompanying text (discussing MacIntyre's argument of how one comes to understanding a rival philosophical tradition).

132. For an understanding of the role of the craft analogy in the Aristotelian tradition, see *infra* note 144.

counterparts can only fulfill at the margins. These roles, as discussed above, include teaching a true understanding of the law and preserving and building upon that understanding. However, Christian legal scholars at Christian law schools have additional roles not directly related to creating communities of virtue, roles more analogous to those, discussed above, that Christian legal scholars should play in secular institutions.

Christian legal scholars should engage in public advocacy. Our society is deeply torn over fundamental issues, issues which in our society are also legal issues. Alexis de Tocqueville's characterization of our society remains accurate: "There is almost no political question in the United States that is not resolved sooner or later into a judicial question."¹³³ Christian legal scholars possess the tools to be effective advocates to influence those open to persuasion. There are numerous means open to Christian legal scholars: scholarship, public speaking, and the media. The means chosen will depend on the anticipated audience. The law school and legal community are reached through scholarship and debate. The larger society is reached through public speaking and the media.

Scholarship is an especially important avenue. Ideas matter, and it is through scholarship that the Christian vision of the law can best be articulated, refined, and offered to the legal and broader publics. One small example of the impact Christian legal scholars can have is the contemporary revival in natural law, which many attribute to John Finnis and his book, *Natural Law and Natural Rights*.¹³⁴ Finnis' goal was to offer "a re-presentation and development of main elements of the 'classical' or 'main stream' theories of natural law."¹³⁵ In this vein, Neil MacCormick has argued that *Natural Law and Natural Rights* "has brought back to life the classical Thomistic/Aristotelian theory of natural law."¹³⁶

Anglo-American jurisprudence, outside of Catholic law schools,¹³⁷ has for years been dominated by a caricature of natu-

133. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 257 (Harvey C. Mansfield & Delba Winthrop eds. & trans., Univ. of Chi. Press 2000) (1835).

134. JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (1980).

135. *Id.* at v.

136. Neil MacCormick, *Natural Law and the Separation of Law and Morals*, in *NATURAL LAW THEORY: CONTEMPORARY ESSAYS* 105 (Robert P. George ed., 1992).

137. And even in many Catholic law schools it appears discussion of natural law is absent. John M. Breen, *Justice and Jesuit Legal Education: A Critique*, 36 *LOY. U. CHI. L.J.* 383 (2005).

ral law and by a strong positivist strain.¹³⁸ Finnis' work helped make claims about and arguments from natural law respectable, or at least within the pale of respectability. My own experience has confirmed this. While studying at Harvard Law School, I was speaking with a professor about my master's thesis and specifically about the natural law tradition. The professor, educated at one of the most prestigious universities and law schools, had very little knowledge of the tradition, and was skeptical of it, but he had read *Natural Law and Natural Rights*, and he respected it.

E. *What Role(s) a Christian Legal Scholar Should Assume*

One of the most difficult questions a Christian legal scholar must face—after answering the question of whether one should become a Christian legal scholar—is what role(s) one should assume.¹³⁹ There are, I believe, a number of ways by which one can answer this important question.

Before addressing how Christian law professors answer the question of what role(s) they should assume, I will first discuss the ontological orientation one must have in order to correctly answer the question.¹⁴⁰ As followers of Jesus Christ, we have oriented ourselves—our being—towards Him.¹⁴¹ God's will for human beings, which is built into our teleological nature, is to know Him, love Him, and serve Him.¹⁴² As a result, before one can ask the question of what role(s) one should assume—with the expectation of correctly seeking an answer to the question—one must first possess the requisite grace¹⁴³ and character. With-

138. See MacCormick, *supra* note 136, at 106 (discussing the dominant false understanding of natural law).

139. For a broader discussion of Christian vocation see GERMAIN GRISEZ & RUSSELL SHAW, *PERSONAL VOCATION: GOD CALLS EVERYONE BY NAME* (2003).

140. The question of what role(s) a Christian legal scholar should assume presupposes and is a narrower manifestation of a law professor's faithfulness to the Great Commission: "Go, therefore, and make disciples of all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Spirit, teaching them to observe all that I have commanded you." *Matthew* 28:19–20.

141. See CATECHISM OF THE CATHOLIC CHURCH No. 1694 (2d ed. 2000) ("Following Christ and united with him, Christians can strive to be 'imitators of God as beloved children, and walk in love' by conforming their thoughts, words, and actions to the 'mind . . . which is yours in Christ Jesus,' and by following his example.").

142. *Id.* at No. 1721.

143. I have not thought through whether one must possess both grace and virtue or whether, in some cases, virtue alone will suffice to enable one to accurately seek an answer. My initial belief is that one must possess both qualities because one is seeking to answer the question of what role a *Christian* legal scholar should assume, and thus one must first have a relationship with Jesus to understand what roles one could and should assume when one is a Christian.

out these qualities, one will not have the ability to seek an answer in the appropriate manner or to know when one has found the correct answer.¹⁴⁴

Given the appropriate disposition to be open to God's call¹⁴⁵ and the requisite qualities to properly seek and know the answer when one finds it, I will turn to some of the possible means by which a Christian legal scholar may come to know his role(s) his calling(s). First, and most dramatically, is direct personal revelation from God. God could simply manifest His will to the individual—either as a voice or through some other mode of manifestation.

Perhaps the most compelling example of God doing so is Jesus' questioning of Saul of Tarsus: "Saul, Saul, why dost thou persecute me? . . . I am Jesus, whom thou art persecuting."¹⁴⁶ Jesus spoke to Saul in an audible voice.¹⁴⁷ There are countless other, only slightly less dramatic, means for God to manifest His will to us. In answer to a prayer, He might speak to us through Scripture.¹⁴⁸ Alternatively, He might open some and close other

An analogous situation is where a person is seeking to answer the question of what it means to be—to assume the role of—a Christian father. A virtuous non-Christian man would arrive at the best understanding of what it means to be a father, but that understanding would not encompass within it aspects of fatherhood that the virtuous Christian man would understand the role of father to include. For instance, the virtuous Christian man's understanding would include teaching his children about the personal sanctification that one can acquire through suffering in union with Jesus. See, e.g., *Colossians* 1:24 ("I rejoice now in the sufferings I bear for your sake; and what is lacking of the sufferings of Christ I fill up in my flesh for his body which is the Church.").

144. The argument presented here is a variant of the craft analogy which is prominent in the Aristotelian tradition. In short, the craft analogy is the idea that absent obtaining the skills necessary for the craft, one cannot judge a particular specimen of the craft as good or bad because one does not adequately know the standards of the craft. My understanding of the craft analogy is taken in large measure from MACINTYRE, *THREE RIVAL VERSIONS OF MORAL ENQUIRY*, *supra* note 39, at 127–33.

145. For a discussion of the nature of a Divine calling or vocation see Larry O. Natt Gantt, II, *Integration as Integrity: Postmodernism, Psychology, and Religion on the Role of Moral Counseling in the Attorney-Client Relationship*, 16 *REGENT U. L. REV.* 233, 257–59 (2004).

146. *Acts* 9:4–5.

147. See *id.* at 9:7 ("The men who journeyed with him . . . hear[d] indeed the voice.").

148. Consider the final call of St. Augustine:

Now when deep reflection had drawn up out of the secret depths of my soul all my misery and had heaped it up before the sight of my heart, there arose a mighty storm, accompanied by a mighty rain of tears. . . . I flung myself down under a fig tree . . . and gave free course to my tears. . . . I cried to Thee: "And Thou, O Lord, how long? How long, O Lord? Wilt Thou be angry forever? Oh, remember not

doors to us, a manifestation often only understood with hindsight.¹⁴⁹ Of course, He may speak to us through others.¹⁵⁰

Another possible means for one to discern God's will is through the gifts, talents, and inclinations one possesses.¹⁵¹ God creates some individuals with a specific combination of gifts and inclinations¹⁵² whose full expression can only occur within one or a few specific life-plans.¹⁵³ If one has a love of plants and animals and has the virtue of performing hard physical labor, then one should consider farming as a possible occupation. If one has a love of debate, both oral and written, and if one has the intellectual capability to write and speak persuasively, then one should consider practicing law as a possible occupation.

against us our former iniquities." For I felt that I was still enthralled by them. . . .

I was saying these things and weeping in the most bitter contrition of my heart, when suddenly I heard the voice of a boy or girl I know not which—coming from the neighboring house, chanting over and over again, "*Tolle et lege; tolle et lege.*" . . . So damning the torrent of my tears, I got to my feet, for I could not but think that this was a divine command to open the Bible and read the first passage I should light upon. . . .

. . . I snatched [up the Bible], and in silence read the paragraph on which my eyes first fell: "Not in rioting and drunkenness, not in chambering and wantonness, not in strife and envying, but put on the Lord Jesus Christ, and make no provision for the flesh to fulfill the lusts thereof." . . . [I]nstantly, as the sentence ended, there was infused in my heart something like the light of full certainty and all the gloom of doubt vanished away.

ST. AUGUSTINE, *CONFESSIONS* 170–71 (Albert C. Outler trans., Thomas Nelson 1999).

149. For example, St. Ignatius of Loyola's conversion occurred when he turned from his life as a soldier to become a servant of Jesus. As St. Ignatius himself describes it: "Until the age of twenty-six he was a man given over to vanities of the world; with a great and vain desire to win fame he delighted especially in the exercise of arms." ST. IGNATIUS LOYOLA, *THE AUTOBIOGRAPHY OF ST. IGNATIUS LOYOLA* 21 (John C. Olin ed., Joseph F. O'Callaghan trans., Fordham Univ. Press 1992). After being wounded and forced to recuperate, St. Ignatius read "a Life of Christ and a book of the lives of the saints." *Id.* at 21–23. This was a period of great reflection on his former way of life and on his future life, and upon the happening of a vision of Mary holding the infant Jesus, St. Ignatius reoriented himself to follow the Lord. *Id.* at 23–25.

150. For example, God spoke to the Jewish people and to individuals through prophets such as Samuel and Isaiah.

151. GRISEZ & SHAW, *supra* note 139, at 99.

152. See, e.g., *Jeremiah* 1:5 ("Before I formed you in the womb I knew you, and before you were born I consecrated you.")

153. For a discussion of the concept of life-plans, see FINNIS, *supra* note 134, at 103–05.

Christian legal scholars have different combinations of talents and inclinations.¹⁵⁴ Some are very adept at persuasively discussing deeply contested issues with colleagues and students who do not share the same fundamental premises. Such scholars should consider teaching at a secular institution. Others are equally adept at cooperating with colleagues and students to build upon agreed fundamental premises. These scholars should consider teaching at a Christian institution.¹⁵⁵

When deciding what particular role to assume—when trying to discern God’s will for them—Christian legal scholars should also consider the needs of the Church and society.¹⁵⁶ This may, in some instances, lead the Christian law professor to, as St. Paul wrote, “do not do what I want, but do the very thing I hate.”¹⁵⁷ For example, in a society that is in a state of severe decline, as the Roman state of Benedict’s time arguably was, the greatest need of that society may be to build communities of virtue to preserve the truth while the society’s other institutions fail.

Our society, I believe, is one where Christian legal scholars should take up all three roles discussed above: building communities of virtue, rebuilding communities of virtue, and working within secular institutions. Our society has a need for all the roles Christian legal scholars can perform. Christian law schools are valuable as institutions to teach effectively the Christian vision of law, preserve that vision, and more effectively explore that vision through scholarship and discussion. Christian legal scholars are needed in secular institutions to defend and advance the Christian understanding of law, and to preserve the structured debate that can occur in these institutions.

Each of us is called, by God, to a particular vocation.¹⁵⁸ However, it is often difficult to discern what God is asking of us except “in the unfolding of the history of our lives and its events.”¹⁵⁹

154. See U.S. CONFERENCE OF CATHOLIC BISHOPS, STEWARDSHIP: A DISCIPLE’S RESPONSE 20 (10th Anniv. Ed. 2002) (“Each has received a different ‘sum’—a unique mix of talents, opportunities, challenges, weaknesses and strengths, potential modes of service and response—on which the Master expects a return.”).

155. Saint Paul repeatedly exhorted Christians to use their respective gifts to fulfill their respective callings. See *Romans* 12:4–8; *1 Corinthians* 12:14, 19, 28.

156. GRISEZ & SHAW, *supra* note 139, at 78 (“A personal calling from God is not an invitation to pursue individualistic self-fulfillment apart from the needs and interests of others.”).

157. *Romans* 7:15.

158. *John* 10:3 (“[H]e calls his own sheep by name.”).

159. POPE JOHN PAUL II, POST-SYNODAL APOSTOLIC EXHORTATION CHRISTIFIDELES LAICI No. 58 (1988).

F. *The Christian Law Professor as the Modern St. Benedict*

Saint Benedict left the crumbling Roman society to found a monastery at Monte Cassino, which became the pattern for Western monasticism for the next six hundred years. In doing so, St. Benedict was instrumental in preserving the learning of the classical era, but the monasteries he helped create also—slowly—formed a new society through a synthesis of the old and the new: the dying classical world and the new Germanic nations that occupied Europe.

The Christian law professor's vocation in our society is the same: preserving and creating. The Christian law professor has the role of preserving the Christian understanding of law: preserving the best of Western civilization's legal thought. To do so, he will build (and rebuild) Christian law schools. Further, Christian legal scholars will synthesize a Christian understanding of law that meets the challenges of today's world.

But how Christian scholars live out their roles is different. Christian legal scholars are not retreating within monastic walls. Instead it is through engagement with the legal community and broader culture that they will synthesize and expound a Christian understanding of law that meets the challenges of today's world.

CONCLUSION

I have proposed that Christian law professors should see themselves and their roles in accord with MacIntyre's call for a modern St. Benedict. In this Article, I attempted to explain why. First, I reviewed St. Benedict's life and argued that he created the institution—Western monasticism—that preserved much of classical civilization and was instrumental in synthesizing a new, Christian civilization. Second, I discussed the state of American culture as diagnosed by MacIntyre.

I then proposed how Christian legal scholars should respond: what our roles are in American society. I argued that Christian law professors have three analytically distinct possible roles: building Christian law schools, rebuilding Christian law schools, and what I labeled, engaging in the debate. Each scholar may assume different roles over his career and aspects of more than one role concurrently.

Then I briefly discussed how one knows what role(s) one should assume, as a Christian legal scholar. Lastly, I returned to St. Benedict and how his legacy of preserving and creating offers a model for Christian law professors fifteen hundred years later.

