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COMMENT

REFLECTIONS OF A LAW DEAN

By Daniel A. Degnan, S.J.

This is not your usual report to the alumni. Instead of telling you that Seton Hall School of Law is doing very well and that this is important not only to the University but to the State of New Jersey, whose legal profession and public we serve. Here I want to reflect on three things I think about as Dean: too many lawyers; an overemphasis on individual rights; and Catholic law schools.

Too many lawyers

There *are* too many lawyers, although the law schools rarely advert to it. I've just returned from the law schools' convention where the fact was hardly mentioned. One speaker did say that any effort to limit law school admissions would be undemocratic. His pious hope was that the demand for lawyers would grow again to absorb the current oversupply!

We do not want to limit law schools to the elite, but there is little danger of this. The law schools, for example, are now making a joint effort to attract more minority students, whose numbers are falling off a bit. Democratic principles do not demand 135,000 law students, as there are now, in overcrowded law schools. The important question is what the flood of lawyers will do to our society and the legal profession itself. I think that an oversupply of lawyers induces more laws and more regulation. It also lowers the integrity of the legal profession.

If there are too many lawyers in competition for fees, if many good lawyers and recent law school graduates have insufficient income, it seems to me there will be inevitable harm to the legal profession's morals. Under the guise of high-flown talk, one can already see lawyers engaged in questionable trials and appeals, including some class actions a principal effect of which is to return high fees to the plaintiffs' attorneys.

Too-many-lawyers also means more rules and more lawsuits, the subjection of society to legalistic and bureaucratic regulation. I can't prove this from a set of statistics, and of course other causes are at work in the nation's slide into legalism. Experience and judgment tell us, however, that any profession with too many members (priests, lawyers, physi-

cians) will create work for itself. Lawyers, since they make the rules, have the capacity to make work for themselves. A profession will try to persuade us of the necessity of its ever expanding work.

What is to be done? I would propose a subsidy of about 300 million dollars annually — in return for the law schools' reducing their numbers by one-quarter, from 135,000 students to about 100,000 students. At a relatively reasonable cost, the government and our society could reap an enormous benefit. The economic and political climate for this proposal is hardly favorable, however. Certainly the law schools and the legal profession should address the issue of oversupply. A cap should be placed on the size of existing law schools. Efforts at reductions in size, although difficult to accomplish since faculty salaries and other costs must be paid, should be attempted.

Probably only the painful and socially costly effects of economic forces on the oversupply will reduce the number of law students. Most attempts to reduce or moderate the rising number of law students and lawyers in our society will probably fail, I think, in the face of our

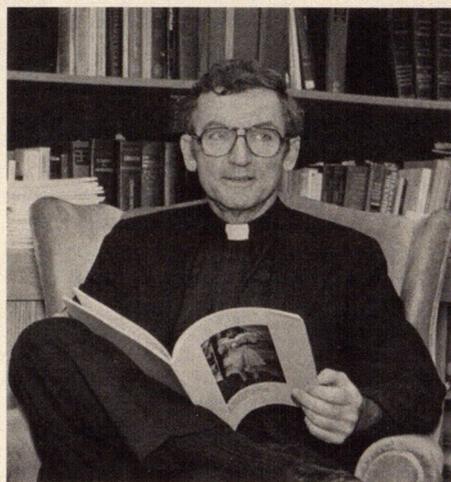
individualistic, rights-oriented legal culture. The issue will be seen as the right of any applicant to have a seat in law school, given a certain level of ability. This brings me to our second topic, an overemphasis on rights, on individual claims and interests, in the law schools.

The overemphasis on rights

I began law teaching in the heady atmosphere of the late 60's, when poverty, injustice, and social structures were the issues, when courses in urban law, housing law, poverty law, and tax policy vied with the new clinical legal education (in which law students, under supervision, actually represented indigent clients). The war on poverty and the drive to community were short-lived; only the legal clinics have survived and prospered. The dominant theme of the 70's and early 80's has been individual rights.

Many law teachers seem to me to be obsessed with individual claims and interests. They only reflect an adversary culture which seeks to confront society and authority in the name of the individual's claims and interests, his or her "rights," almost to the exclusion of society's legitimate demands and of the citizens' duties. There are hidden assumptions, ideologies, even emotions, behind this obsession. It also betrays, I think, little appreciation of man's social and political nature, and even less of history. If individual claims and interests are pushed to unreasonable extremes, to the exclusion of the needs of society, then even our most precious political and religious rights and freedoms will be jeopardized in the inevitable reaction or backlash.

The odd thing is that as legal institutions have become more dominant and more powerful in our society, lawyers' training and thought patterns have become more individualistic. Yet our basic human rights, our political and religious freedoms, will not be protected by an adversary culture or by extreme individualism. We must have reasonable protections for the individual person, but we also need to understand society's needs and citizens' responsibilities to each other. We should be training lawyers to understand and to shape our



Rev. Daniel A. Degnan, S.J., recently announced his resignation as dean of Seton Hall School of Law in order to devote his time to writing and teaching. This article sums up some of his feelings on the state of the legal profession and law schools based on his years as a dean.

enormous governments, our administrative bureaucracies, our private corporate systems, our complex system of criminal justice, our distribution of wealth. All law schools should be charged with this effort; Catholic law schools, in light of the Church's rich social theory, should be especially charged with it. This brings me to my third concern, Catholic law schools.

Catholic law schools

What is a Catholic law school? That is not easy to say. Catholic law schools have usually taught what everyone else has taught, except for (in the past) a mandatory course in jurisprudence. Most of the faculty in the old days were Catholic and this lent a certain Catholic tone, as did the generally Catholic student body. Today we have, and we need, pluralistic faculties and student bodies.

Pluralism in Catholic law schools in both desirable and necessary for many reasons. Among them is our broad role in serving the legal profession of a state. Another, of course, is the intellectual and personal exchange involved. Yet, with this pluralism I still believe that there are, and should be, Catholic law schools.

To be a Catholic law school is to be, first, as a law school, in active sympathy with the ideals of one's Catholic university. This requires some law faculty and students, a sufficient number, who not only are Catholic, but whose Catholicism has an intellectual base and content. It requires other faculty, Protestants, Jews and others, who, while religiously and intellectually free to be themselves, are sympathetic to the aims of their Catholic university.

A Catholic law school, secondly, should evince an interest in the legal and moral philosophy associated with the Church over its long history. The dominant trend in American legal and ethical thought is empirical, analytic, individualistic. It grows, speaking generally, out of the Protestant culture of post-reformation England and colonial America. It largely excludes the European classical tradition in philosophy and theology, Catholic or Protestant. Catholic law schools should draw from the mainstream, continental tradition, especially from that part which is more classical and is centered on moral and ethical values. There should, ideally, be some interest in Thomistic legal

philosophy, since Thomas Aquinas is the principal figure in classical natural law theory.

The Catholic law school, thirdly, should show a greater concern for issues of social justice. Ideally, some of its faculty should be grounded in Catholic social theory, ranging from the social encyclicals to more recent appraisals of socialist or Marxist economic and political theory. More generally, one should expect the faculty to have a grounding in the humanities, in history and literature, in political and social theory, in economics and the sciences. Only a faculty that is broadly and deeply educated, it seems to me, can understand and address the questions of justice underlying the law today.

Fourthly, the Catholic law school should manifest its Catholicity in a number of other ways. There should be a natural attraction for Catholic students, whose own faith and intellectual and religious interests will help to shape the law school's curriculum and its life. Other students, not Catholic, should be attracted not only for the school's quality, but for an atmosphere of humanity and mutual respect with pervades the school. There should be activities of a Catholic nature and interest — the Red Mass, and institutes and workshops from Catholic perspectives on issues such as Church and State, family values, nuclear war, abortion, a just social order.

There should be a Catholic chaplain at the law school, to serve a counselling function for all students and faculty and a pastoral, religious role for Catholics and others who desire it. If numbers call for it, there should be other chaplains to serve students of other churches and faiths, since in the Catholic view, faith and intellect, one's life and one's profession, are to be united, not separated.

The Catholic nature of the law school should manifest itself generally in its teaching. I do not mean that a law teacher, Catholic or not, should be constrained to manifest or project certain positions. I do mean that Catholic, Christian, and Judaic values and activities should be embodied in our teaching because they are the human values. I would see law teaching as Catholic which showed respect for the intellects and consciences of both teachers and students of a kind I have not too often found in American law schools, where dogmatism too often masquerades

under spurious openness. A truly Catholic respect and openness would build, in part, on humility: a devotion to truth even when it disturbs one's preconceptions and a respect for the dignity of human persons. As Seton Hall's first Dean, Dr. Miriam T. Rooney, knew, one of the paradoxes — only an apparent one — of being a Catholic law school is that it provides the foundation for an openness and catholicity or universality that are aspects of the truly intellectual and human.

Finally, I would hope that a sense of compassion would be engendered at a Catholic law school, compassion for those who suffer injustice, but compassion also for human frailty. Too often today, demands for justice are pursued in harsh, unforgiving ways. As Pope John Paul II has told us, the demand for justice can become cruelty if it is not accompanied by mercy.

HONOR ROLL UPDATE

The total amount raised by the Law School Annual Appeal was \$95,772.60. This is a new record for law school gifts.

Clare Silvestri ('77) and Jane Kosinski ('77) were omitted from the Arts and Sciences donors, and the Aetna Life and Casualty Foundation, Inc. was not included in the Corporate Matching Gift list. Our apologies and thanks.

Several readers asked the meaning of the asterisks next to some of the names in the Honor Roll. Four stars denote membership in the President's Council, for those who gave \$1000 or more; three stars membership in the Bayley Club, \$500 or more; two stars membership in the Crest Club, \$250 or more; and one star in the Seton Club, \$125 or more.