

HOW SHOULD A LAW SCHOOL'S RELIGIOUS AFFILIATION MATTER IN A DIFFICULT MARKET?

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FOR religiously affiliated law schools, a broad and deep understanding of professional formation should lie at the heart of our reason for being and should grow out of our own religious traditions, allowing us to educate the whole person. Articulating and cultivating this deeper understanding of professional formation is essential for deans of religiously affiliated law schools today as we seek to demonstrate the connection between our religious identity and the value proposition our schools offer to our current and prospective students.

I. INTRODUCTION

As a young attorney, I worked as part of the team defending a toxic tort class action lawsuit. One of my jobs was to conduct “deathbed depositions” of class members who were unlikely to survive until trial. One deposition stands out in my mind because the deponent was literally on her deathbed, hospitalized in the late stages of a cancer that she alleged was caused by my client’s operations. As I entered the room, she looked up from her bed, and I knew that, in her eyes, I was the personification of evil—standing in as the corporation that was responsible for her impending death. At that moment, I did not know how to respond. I had my dark suit, my deposition outline, and a zeal to make sure that my client received a robust defense against this dying woman’s allegations. But, as she lay in her hospital bed, I felt suddenly inadequate to the task of acknowledging her humanity while staying true to the reason I was there.

This tension was not limited to the dramatic cases. In a run-of-the-mill contract dispute, I visited our client’s headquarters to sit down with the mid-level manager at the center of the allegations, planning to spend only a couple of hours outlining our discovery plan and getting his input. He was an emotional wreck, and I quickly realized that the lawsuit was taking a large emotional toll on him and his family. He was not yet in any position to talk about our discovery plan. He simply needed to talk.

In both of these cases, I changed up my approach to better engage the emotional outlook of those who depended on my work and on whom my work depended. I spent more time being present and listening, I delayed or discarded

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some of my agenda items, and I worked to convey my recognition of their pain. I can never be sure that my efforts made a meaningful difference to them, but both episodes had an impact on me, reminding me that the lawyer's work is relational and, at times, intensely personal.

On reflection, what troubles me is that, in both cases, I felt as though I needed to step out of the lawyer's role temporarily in order to be fully present as a person. Whether it was my own preconceptions about lawyers, the vision of legal practice hard-wired into me by law school, the adversarial mindset emphasized by my law firm training, or some combination thereof, I carried an unduly narrow understanding of the lawyer's work. I recognized the gravity of those encounters and my need to respond with empathy because of other sources of moral formation in my life: parents, Sunday school teachers, friends, and a familiarity with suffering that comes through life experience. However, I had not yet deliberately or thoughtfully invested those moral influences with professional relevance. It was only by encountering the messiness of the human condition through actual legal practice that I became broadly, authentically, and effectively formed as a lawyer.

Articulating and cultivating this deeper understanding of professional formation is essential for deans of religiously affiliated law schools today. One reason is institutional self-interest. In an incredibly competitive market, we need to be able to explain how our schools' religious identities enhance the value proposition of the education we offer. We have a duty to prepare our students to serve others in meaningful employment in an era when the competition for good jobs is fierce. In a legal services market where the specter of artificial intelligence looms ever larger,¹ the ability to thrive in relationships will matter more to a lawyer's job prospects than research or analytical skills standing alone. Under these circumstances, the strongest connection between a law school's value proposition and religious identity is a school's capacity to facilitate relationship-centered professional formation.

I am not suggesting that a law school's religious identity is only relevant to the extent that it feeds into that value proposition. Catholic law schools, for example, are part of a university tradition marked by "that joy of searching for, discovering and communicating truth in every field of knowledge,"² and they are tasked with becoming "an authentic human community animated by the spirit of Christ."³ These attributes can—with careful thought and diligent effort—be made relevant to the positive student outcomes that drive many of today's enrollment decisions, but we cannot pretend they are one and the same. While this Essay focuses on potential connections between a law school's religious

1. Jennifer Henderson, *Latham, Wisconsin Firm Reach ROSS Intelligence Partnerships*, AM. LAW., May 20, 2016.

2. EX CORDE ECCLESIAE: APOSTOLIC CONSTITUTION OF THE SUPREME PONTIFF JOHN PAUL II ON CATHOLIC UNIVERSITIES ¶ 1 (Aug. 15, 1990), http://w2.vatican.va/content/john-paul-ii/en/apost_constitutions/documents/hf_jp-ii_apc_15081990_ex-corde-ecclesiae.html [hereinafter EX CORDE ECCLESIAE].

3. *Id.* ¶ 21.

identity and its value proposition, the value proposition is not the only important manifestation of that religious identity.

Religiously affiliated law schools' concern with professional formation does not make us unique by any means. As legal education's value proposition has come under challenge, professional formation has become more central at most law schools.⁴ Religiously affiliated law schools, however, should be distinctive in this sense: a broad and deep understanding of professional formation should lie at the heart of our reason for being and should grow out of our religious traditions, allowing us to educate the whole person. We strive to prepare competent lawyers who can pass the bar, but that can never be the extent of our aspirations. We care about the skills our student acquires, but we also care about the person—and, as a consequence, the lawyer—our student becomes.

For Catholic law schools—and I suspect all religiously affiliated law schools as well—the most authentic and effective professional formation we undertake will be premised on the centrality of relationships. The relationships that sustain and shape students within the law school community will also build their capacity to flourish in, and exercise influence through, their relationships with clients, colleagues, and others whose lives are impacted—for better and worse—by the lawyer's work. When done well, this sort of formation will produce students with the disposition to acknowledge and respond effectively to the humanity of those they encounter.

II. HOW RELIGIOUS LAW SCHOOLS MATTER

The vast majority of our nation's religiously affiliated law schools were not founded to provide an educational experience shaped meaningfully by their operative faith traditions. As John Breen and Lee Strang have explained, for example, “in almost every case the driving force behind the founding of one or another Catholic law school was the ambition of its host institution to obtain greater financial resources, attain true university status, and to serve as a means for Catholics and other immigrants seeking entry into the legal profession.”⁵ Any distinctive substance was manifested in modest curricular adjustments, such as courses in jurisprudence or legal ethics, but nothing pervasive.⁶ As time went on, the distinctions became even less noticeable.⁷

Though the aim and content of students' professional preparation at religious and non-religious law schools have tended to be largely indistinguishable over the decades, particular aspects of the student experience have been shaped by religious affiliation. Some religious law schools have functioned as venues where fellow believers could pursue legal education that

4. See Neil Hamilton & Sarah Schaefer, *What Legal Education Can Learn from Medical Education About Competency-Based Learning Outcomes Including Those Related to Professional Formation and Professionalism*, 29 *GEO. J. LEGAL ETHICS* 399 (2016).

5. John Breen & Lee Strang, *The Golden Age That Never Was: Catholic Law Schools from 1930-1960 and the Question of Identity*, 7 *J. CATH. SOCIAL THOUGHT* 489, 505 (2010).

6. See *id.*

7. See *id.* at 490-91.

included regular religious services, a faith-based code of conduct, or shared worldview. At those schools, this function can contribute to a strong sense of community.

However, most prospective law students are not choosing schools for the opportunity to study with a critical mass of fellow believers. The conventional wisdom has been that a law school's religious affiliation is a valuable asset, providing a market identity that attracts students for institutional attributes not shared by competing schools. Ten years ago, this might have been true. When law school was viewed as a safe bet with manageable debt and solid employment outcomes, prospective students felt comfortable choosing a school based on "fit"—i.e., how the school's sense of community, ideals, and values aligned with their own.⁸

In today's market, however, financial factors outweigh the conventional wisdom. Law school is no longer viewed as a safe bet, and choosing a school based on fit strikes many prospective students as a luxury they cannot afford. In my experience, for the overwhelming majority of prospective students—including students of the school's own faith tradition—a law school's religious affiliation is only relevant to their choice of school to the extent that the school is competitive on the key factors that nearly every prospect is focused on: employment outcomes, student debt, and the quality of professional preparation.

Deans of religiously affiliated law schools may be tempted to continue to promote our religious affiliations without tying them to a broader value proposition that engages the concerns of today's prospective students. Alternatively, deans may be tempted to give up on the relevance of our religious affiliations in today's market, promoting our schools in the same terms as virtually every other law school. We need to resist these temptations, however, as neither provides any assurance of a sustainable future. Instead, we must explain why prospective students who are told repeatedly that law school is a risky proposition should care that our law schools have religious affiliations.

The explanations will vary, but there will be considerable overlap. Every religiously affiliated law school speaks from a tradition, exists for a reason, and has the potential to teach and live the reality of vocation. We have a story to tell. One narrative that will find traction at many religiously affiliated law schools arises from our faith traditions' commitment to the development of the whole person, including the ability and inclination to serve others well, and the importance of relationships as both the means and end of that development.

III. RELATIONSHIP-CENTERED STUDENT FORMATION

If law schools are only in the business of providing information, we are in trouble. Online providers can do that faster and more cheaply than bricks-and-mortar law schools ever will. Obviously, a law school does not need to be religious to take formation seriously, but religious law schools have an advantage in that it's part of our DNA. From the Catholic perspective, for example, the

8. Sam Favate, *Looking for a Law School to Fit Your Politics?*, WALL ST. J. (Oct. 11, 2012, 12:42 PM), <http://blogs.wsj.com/law/2012/10/11/looking-for-a-law-school-to-fit-your-politics/>.

university community “assists each of its members to achieve wholeness as human persons.”⁹ And true wholeness will come with a recognition that “[m]utual love, in fact, sharing in the infinite love of God, is humanity’s authentic purpose, both historical and transcendent.”¹⁰ At St. Thomas, we do not invest in mentoring programs, clinics, externships and faculty-student research collaboration as a response to market trends; we do it because these are opportunities to build the formative relationships at the heart of our mission. Our faith traditions offer resources that should help us craft coherent, comprehensive, and compelling stories about *why* we do what we do.

Relationship-centered formation of the whole person will look different at different law schools, of course, though common elements will include opportunities for students to: (1) develop analytical and critical-thinking skills that are broad enough to draw connections between modes of reasoning and real-world impact on people’s lives; (2) internalize the ideals and values of the legal profession, including a commitment to serving others; (3) practice the teamwork, listening, and other relational skills that are essential to both professional and personal success; (4) integrate their own deep moral commitments and values with their emerging professional identities; and (5) invest time in their own spiritual development, including an awareness of vocation as a utilization of one’s gifts to advance the common good.

At St. Thomas, these opportunities take various forms beyond the traditional curriculum found at every law school. For example, our school provides:

- Experiential education—clinics, externships, practicum courses—that includes student reflection and extensive feedback from senior professionals, with a particular emphasis on the relationships at the center of our work;
- Courses designed specifically to help students integrate their own commitments and beliefs into their professional journey, including courses that use Catholic social teaching as a framework to facilitate a deeper discussion;
- An interprofessional clinic that offers the combined services of law, social work, and professional psychology, impressing upon students the whole-person nature of our clients’ needs;
- A mentor externship program that provides every student with a practicing lawyer or judge as a mentor for all three years of law school, with guided discussions and experiences that emphasize the importance of relationships;
- A requirement that first-year students assess their own strengths, interests, and priorities, then meet with a faculty coach to create a plan to leverage their law school experience in furtherance of their life

9. EX CORDE ECCLESIAE, *supra* note 2, at ¶ 21.

10. PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH ¶ 55 (2004), http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html.

aspirations, all pursuant to the belief that self-awareness is a prerequisite for effective service to others;

- Close collaboration among faculty and staff to ensure that students experience a coherent and intentional three-year process of formation toward meaningful employment. Faculty and staff need to understand how their work fits within, and contributes to, the overall process;
- A thirty-minute midday break in which no classes or academic activities may be scheduled so that students may attend mass, participate in activities convened by students from non-Catholic faith traditions, or otherwise use the time as a reminder that their identities predate and transcend their status as law students;
- Programs designed to facilitate the integration of faith and reason, including debates, symposia, retreats, and roundtable discussions about matters of faith that go far beyond the traditional topics of law school focus, helping nourish both the intellectual and spiritual lives of our students.

At any religiously affiliated law school, these and other formation opportunities will occur within—and will be made possible by—a community built on strong relationships among faculty, staff, and students. The importance of community is not primarily about making sure that the three years of law school are happy ones (though it hopefully will have that effect); a strong community experience must be a driver of effective professional formation and positive professional outcomes. The best learning will be done in a healthy, supportive, and mutually vulnerable community that can function as a model for the relationship skills that will prepare students to serve their clients and the broader world.

IV. FACULTY SCHOLARSHIP AND RELATIONSHIP-CENTERED FORMATION

This orientation toward relationship-centered formation has implications even for a core endeavor of our work that is often dismissed as highly individualistic: faculty scholarship. There has been increasing pushback on the amount of student tuition that is directed toward supporting faculty scholarship, with critics claiming that there is only a tenuous connection between the scholarly output of a law school's faculty and the well-being of a law school's students.¹¹ Placing a greater debt burden on students in order to maintain low teaching loads is contrary to the best interests of our students, critics claim.

A handful of law schools can blunt the force of this criticism by pointing to their lofty *U.S. News* ranking, which is based, in part, on peer assessment of their scholarly excellence¹²—students in effect are basking in the reflected glory of the

11. Edward Rubin, *Should Law Schools Support Faculty Research?*, 17 J. CONTEMP. LEGAL ISSUES 139, 139 (2008).

12. Robert Morse, *Methodology: 2017 Best Law Schools Rankings*, U.S. NEWS & WORLD REP. (Mar. 15, 2016, 10:00 PM), <http://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology?int=9d0608>.

school's elite scholarly reputation. For the vast majority of schools, however, faculty scholarship does not translate directly into the enhanced job prospects that accompany an elite ranking. For religiously affiliated law schools in particular, is the support of faculty scholarship consistent with our moral obligations to serve as faithful stewards of our students' resources?

As with universities more broadly, a foundational mission of law schools is to advance knowledge and thereby contribute to human flourishing. This role is especially important for religiously affiliated law schools, which may produce research grounded in perspectives that are otherwise overlooked within the broader academy. In nearly every field of law, scholars writing from particular faith traditions have brought valuable insight to our broader debates.¹³ As people of faith, the production of scholarship is part of our obligation to utilize our gifts in ways that advance the common good. At Catholic universities, for example, research is part of the animating vision. As the Church instructs, "[i]n addition to assisting men and women in their continuing quest for the truth, [the Catholic university] provides an effective witness ... to the Church's belief in the intrinsic value of knowledge and research."¹⁴ The value of legal scholarship is not measured solely by its benefit to the students whose tuition support its production. Many St. Thomas faculty produce scholarship that brings values from the Catholic tradition into sharper relief, placing them in real-world contexts that hold insight for a wide range of stakeholders.

While the research aims at impact outside the Law School's walls, faculty can facilitate creative paths by which the research is brought directly to bear on students' experiences in terms that resonate powerfully with the school's religious affiliation. For example:

- Professor Mark Osler, a former federal prosecutor, is a leading advocate for reform of the federal clemency system, adoption of new strategies in drug prosecutions, and rethinking capital punishment. His work is unified by questions of our legal system's capacity to practice mercy and is motivated by Christian reflections on the tension between mercy and justice. The Law School has empowered Mark to explore these perspectives with students through his teaching, including through the creation of a "real-world" criminal process course and a federal commutations clinic, the first of its kind.
- Professor Teresa Collett writes on issues implicating the sanctity of life, particularly abortion laws. As an outspoken champion of pro-life perspectives among students who hold a wide variety of views on the issue, Teresa uses her stance as an opportunity to model civil discourse and hospitality both inside and outside the classroom. The global debate is front and center in her course on international human rights, a course in which she utilizes the Catholic Church's social teaching to provide

13. See, e.g., *AMERICAN LAW FROM A CATHOLIC PERSPECTIVE: THROUGH A CLEARER LENS* (Ronald J. Rychlak ed., 2015); *CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT* (Michael W. McConnell, Robert F. Cochran, Jr., & Angela C. Carmella eds., 2001).

14. *EX CORDE ECCLESIAE*, *supra* note 2, at ¶ 15.

students with an important normative perspective on current doctrine. As part of the course, she takes the students to New York where they work for one week on behalf of the Holy See's Mission to the United Nations. Students praise the experience as an unforgettable example of how ideas matter in the world.

- Professor Tom Berg, a leading religious liberty scholar, helps students understand the importance of religious liberty in terms that transcend current "culture war" battles. He also provides them with hands-on experience exploring the power and limitations of religious liberty as an ideal, teaching a clinic through which students prepare briefs for religious liberty cases.
- Professor Virgil Wiebe's scholarship on immigration reform is animated by a broader commitment to human dignity. His scholarship aims to help readers understand the complexity of immigration laws while bringing human cost to the surface. He makes the connection between overarching, but often abstract, values and the regulatory state in a survey course on immigration law and a clinic.

I could continue down the faculty roster in similar terms, as could other deans. The point is not that our faculty are unique in the connection between their scholarship and the animating values of the faith tradition from which our law school emerges; the point is that these connections will not always be obvious to students or other stakeholders. Deans need to make this part of the story we tell ... over and over. Scholarship matters in particular ways because we are religiously affiliated.

Faculty scholarship is also directly relevant to relationship-based professional formation. I will not rehearse the familiar arguments about the connection between engaged scholarship and effective classroom teaching but will instead focus on the formative potential of inviting students to be active participants in a law school's scholarly culture. Especially for religiously affiliated law schools, I believe that building a meaningful scholarly community that includes students must be a priority.

If students regularly encounter faculty scholarship in law school—whether as students in class or as research assistants, participants in faculty colloquia, organizers of scholarly symposia or lectures, members of law journals, or advocates for research-driven legal reform—they are unlikely to develop a self-conception as a practitioner of a settled, fixed trade. Instead, they are likely to see themselves as a change agent, as a member of a profession engaged in the development and improvement of laws and legal institutions. Our faith traditions help us imagine and articulate what the world could be, not simply what it is. Religiously affiliated law schools carry out this function by producing scholarship aimed at bringing a more just world into view. A scholarly community is also more likely to foster intellectual curiosity, a key impetus for lifelong learning. The dynamic process by which a scholarly community builds and sustains itself over time—collaborative research, dialogue, debate, reflection—is itself conducive to a broader and deeper formation than is possible in a law school focused solely on classroom teaching.

If faculty scholarship is going to be part of the story religiously affiliated law schools tell the world, we need to tell the story through specific examples of how faculty scholarship impacts the student experience and the broader society. Rankings and awards are helpful,¹⁵ but standing alone, they can convey a message that scholarship matters primarily as a means of institutional aggrandizement, rather than scholarship as essential to student formation and community impact. Other suggestions for deans who aim to cultivate a scholarly culture that is oriented toward building long-term value for students include:

- Identify and support new avenues for conveying scholarship's relevance to students, advisory boards, alumni, and employers. For example, I've invited small groups of faculty to meetings of the Law School Board of Governors to take five minutes each explaining, "what I'm working on and why it matters." Other legal academics are an important audience for our scholarship, but they should not be the only audience.
- Communicate the value of faculty scholarship to students by clearly conveying that students are key participants in the scholarly community. For example, when I meet with prospective students, I talk about faculty research in their areas of interest and invite them to connect with those faculty members. We also include students in our faculty colloquia, and our conferences rely heavily on student planning and support.
- Incentivize and celebrate faculty-student collaboration. Student research assistants often require as much time from faculty as they save, but deans need to demonstrate that the investment of time is worthwhile. For example, I speak with faculty about their collaboration with students during our annual review meetings.
- Create curricular outlets for faculty scholarship that enhance the student experience beyond traditional seminars. For example, look for opportunities to have doctrinal faculty teach a clinic or practicum course based on their area of scholarship.
- Encourage faculty to explore new areas of scholarship, especially areas in which faculty expertise could leverage emerging student interest and enhance employment opportunities. For example, St. Thomas has faculty expertise in ethics, and that expertise can be brought to bear on the rapidly growing field of compliance.
- Do not equate success with prestige. Scholarly impact is enhanced by publication in high-visibility venues, but prestige should not be the exclusive measure of excellence. As a community, create opportunities to celebrate faculty and students for scholarship that advances legal reform efforts or brings other real-world impact. At St. Thomas, for example, we have an annual mission awards ceremony that does just that. In addition, make sure that such scholarship is recognized and accorded appropriate weight in faculty evaluations.

15. Greg Sisk et al., *Scholarly Impact of Law School Faculties in 2015: Updating the Leiter Score Ranking for the Top Third*, 12 U. ST. THOMAS L.J. 100 (2015).

To be clear, scholarship is intrinsically valuable to the academic endeavor. But in an era of strained resources and high student debt, we must maximize scholarship's instrumental value to the student experience in order to maintain the resources necessary to support its intrinsic value. At religiously affiliated law schools especially, we need to creatively and intentionally facilitate multiple paths by which faculty scholarship matters to the formation of our students.

V. TELLING THE STORY

Teaching and scholarship are not the extent of faculty contributions to the story of a religiously affiliated law school. When I began my teaching career, a colleague pointed out the wonders of a job for which we merely had to show up for class, serve on a committee or two, and produce scholarship, with no other questions asked or demands made. One challenge faced by deans is to help faculty understand why expectations on their time have broadened. A commitment to student formation will often mean that responsibilities for that formation will be shared by faculty, even outside the classroom. Particular staff may function as point persons for student counseling, employment, and recruiting, but faculty will increasingly be involved. This development may result in the first instance from tighter budgets and loftier student expectations, but there is a deeper value represented. *If* faculty are going to play a lead role in relationship-centered formation, their teaching cannot be confined to their courses. Prospective students expecting to enter an authentic community dedicated to their well-being will not be surprised to find that their relationships with faculty extend on the front side to the admissions process and on the back side to the job search. When it comes to facilitating a quality student experience and optimal student outcomes, faculty are stepping into leadership roles beyond the classroom.

Inspiring, motivating, and coordinating these whole-building efforts are primary tasks of today's law school deans. As law schools animated by a faith tradition, our faculties never should have functioned as a group of independent contractors; to the extent that this mindset ever took root at some schools, it is the dean's task to instill a shared sense of mission and purpose.

The university's reflexive response to the market downturn in legal education may be to increase teaching loads dramatically in order to conserve resources. Though some adjustments may be warranted by fiscal realities, doing away with time for scholarship may prove to be counterproductive. For religiously affiliated law schools, low teaching loads should not be defended simply as a job perk. Rather, they should reflect an institutional commitment that derives from the school's mission of formation. If faculty only have time to lecture in class, there is a cost. Deans should help faculty recognize their roles as facilitators of student formation, not just through their classroom teaching, but as leaders of the scholarly community and ongoing guides for students navigating the challenges of their emerging professional identities and career aspirations.

Deans must recognize how important it is to explain to our stakeholders the significance of the contributions that each member of our community makes to a broader story. As deans of religiously affiliated law schools in a difficult market,

our curricular innovations, renewed focus on student outcomes, and budget discipline must be centered on a strengthened commitment to the ongoing formation of our students while advancing the common good. Our missions position us to prepare students to thrive in the relationships that will distinguish the lawyers who achieve professional success in an increasingly commodified and routinized market for legal services.¹⁶ Our graduates should be able to utilize their unique gifts and strengths to authentically acknowledge and effectively respond to the human person at the center of the lawyer's work. When they do so, they will not perceive themselves as stepping out of their professional role; they will see themselves as fulfilling it.

It should be relatively easy for religiously affiliated law schools to recognize the wisdom of embracing a student formation mission premised on the centrality of relationships as both the means and ends of legal education. After all, we know that we were created for, and reflect God's love through, relationships. We have a story to tell, and our ability and commitment to doing so are important resources in affirming the value proposition of legal education. Our faith is not a distraction or tangential to our work—it is the foundation that gives rise to our story.

16. See, e.g., Robert K. Vischer, *Big Law and the Marginalization of Trust*, 25 *GEO. J. LEGAL ETHICS* 165 (2012).