

Religiously Affiliated Law Schools, Values, and Professionalism

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Many students and faculty members choose to study or work at religiously affiliated law schools because those schools provide an environment that is congenial to religious belief.¹ They want to be at a school where they can talk about religious convictions and relate them to their views of the law and the roles that lawyers play. For many religious people, being at a school where they do not have to check their religious identities at the door can be a liberating experience. The freedom of students and faculty members, including their freedoms of religion² and speech, grows if they can choose to study or work at religiously affiliated law schools.

Religion is an important part of American life. About 83 percent of Americans are affiliated with a religious group.³ Religiously affiliated institutions of higher education help serve the needs of many Americans and increase the pluralism and diversity among institutions. Michael W. McConnell has observed that religious universities contribute to the “ethical, cultural, and intellectual life of our nation.”⁴

I work at the J. Reuben Clark Law School at Brigham Young University. The law school’s mission statement reflects a religious dimension. Among other things, it provides, “The Law School strives to...provide an education that is spiritually strengthening, intellectually enlarging, and character building,

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1. See Stephen L. Carter, *The Constitution and the Religious University*, 47 DePaul L. Rev. 479, 480 (1998) (“Simply put, many...students prefer...schools that adhere to the ethics of particular religious traditions. The availability of this choice is no trivial freedom.”).
2. See Douglas Laycock & Susan E. Waelbroek, *Academic Freedom and the Free Exercise of Religion*, 66 Tex. L. Rev. 1455, 1466 (1988) (“To build and run a religious university is an exercise of religion.”).
3. The Pew Forum on Religion & Public Life, *U.S. Religious Landscape Survey* (2008), <http://religions.pewforum.org/reports> (last visited Dec. 15, 2008).
4. Michael W. McConnell, *Academic Freedom in Religious Colleges and Universities*, 53 *Law & Contemp. Probs.* 302, 312 (1990).

thus leading to lifelong learning and service.”⁵ One of the law school’s goals is to “[i]ncorporate religious, ethical, and moral values in the instruction.”⁶

To what degree do faculty members incorporate religious values and perspectives in instruction? If they do it, how do they do it? There are as many answers to these questions as there are faculty members. Some professors do not raise religious issues explicitly in their teaching. However, the professors’ religious views inevitably affect what and how they teach, how they view the world, and the influence they have on their students.

Moreover, to the extent that the professors are known to be persons of religious conviction, they provide examples to the students of the proposition that intellectual achievement and rigorous analysis are not incompatible with religious faith, and that they can complement one another. A faithful faculty member teaches her students that the integration of intellect and faith is possible, and she proves it with the example of her own life.

Other faculty members include religious perspectives from time to time, when it seems natural. For example, one professor of real estate finance taught that although a mortgage holder has the legal right to foreclose upon default, a charitable or a religious person might give the debtors some time to resolve their difficulties. Another professor taught students that the common law does not require them to disclose defects when they sell a used car. However, the professor then encouraged students to reverse the roles. If you were the buyer, would you want to know? This example reflects the golden rule: “Therefore all things whatsoever ye would that men should do to you, do ye even so to them....”⁷

In my Contracts course we learn that, under the common law, courts rarely review the adequacy of consideration. To help students remember that there is a higher law, I like to quote Mormon pioneer leader Brigham Young. He said, “There are Elders in this Church who would take the widow’s last cow, for five dollars, and then kneel down and thank God for the fine bargain they had made.”⁸ In a society that increasingly defines its relationships in terms of legal standards, it is beneficial to point out that legal duties and moral responsibilities do not necessarily coincide.

Explicit references to religious perspectives in the classroom generally appear only intermittently, when they seem appropriate. The study of law is

5. Mission and Goals of the J. Reuben Clark Law School, BYU Law School, http://www.law2.byu.edu/mission_goals_learning_outcomes/missionandgoals.php (last visited Dec. 15, 2008) (quoting *The Aims of a BYU Education* (1995), www.law2.byu.edu/law_school/foundingdocumentsnew/pdf%20documents/aimsofbyueducation.pdf) (last visited April 28, 2009).
6. Mission and Goals of the J. Reuben Clark Law School, BYU Law School, http://www.law2.byu.edu/mission_goals_learning_outcomes/missionandgoals.php (last visited Dec. 15, 2008).
7. Matthew 7:12 (King James).
8. Brigham Young, 17 *Journal of Discourses* 41 (1967).

largely the study of secular systems. James E. Faust, who was a lawyer and then a leader of the Church of Jesus Christ of Latter-day Saints, advised our students:

Do not expect your professor...to concentrate his lessons out of the scriptures, although occasionally he may wish to do so. His obligation is to teach you the secular rules of civil and criminal law and matters that relate to them, such as procedures. Your obligation is to learn the rules of law and related matters. The whisperings of the Holy Spirit will no doubt help you, but you must learn the rules of law, using Churchill's phrase, by "blood, sweat, and tears."...Just having a good heart does not get the job done.⁹

Religiously affiliated law schools can use their religious affiliation in the teaching of professional values. The MacCrate Report said that law schools should teach students the values of the profession.¹⁰ It identified the values of competent representation; striving to promote justice, fairness, and morality; striving to improve the profession; and professional self-development.¹¹ The report urged lawyers to embrace "those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility that have, throughout the centuries, been compendiously described as 'moral character.'"¹² One of the principal values that religiously affiliated law schools can teach is the importance of service. For example, in my own religious tradition, Brigham Young taught, "Our education should be such as to improve our minds and fit us for increased usefulness; to make us of greater service to the human family."¹³

All law schools teach professional values.¹⁴ At the same time, religiously affiliated law schools can connect the professional values to the students' religious beliefs. Christopher L. Eisgruber has observed that, to communicate

9. James E. Faust, *The Study and Practice of the Laws of Men in Light of the Laws of God*, Clark Memorandum 16, 18-19 (Fall 1988).
10. ABA Legal Education and Professional Development - An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap 135 (1992), *available at* <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html>.
11. *Id.* at 140-41.
12. *Id.* at 213-14 (quoting *Schwartz v. Bd. of Bar Examiners*, 353 U.S. 232, 247 (1957) (Frankfurter, J., concurring)).
13. Brigham Young, 14 *Journal of Discourses* 83 (1967).
14. See ABA Standing Committee on Professionalism, *Report on a Survey of Law School Professionalism Programs* (2006) (describing professionalism programs in law schools); ABA Commission on Professionalism, "... In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism 16-21 (1986) (discussing teaching professionalism in law school); ABA Section on Legal Education and Admissions to the Bar, Professionalism Committee, *Teaching and Learning Professionalism* 13-25 (1996) (surveying ideas and recommendations to enhance professionalism among law students); Roy Stuckey et al., *Best Practices for Legal Education* 59-67 (Clinical Legal Education Association, Columbia, South Carolina, 2007); William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* 126-61 (Jossey-Bass, San Francisco, California, 2007).

a value, a teacher must invoke something that the student already knows.¹⁵ Students can build on their religious foundations as they learn the specific ethical principles that apply to the practice of law. James P. White, a former consultant on legal education to the American Bar Association, wrote, "I suggest that those schools with a religious affiliation have a special opportunity to instill a sense of ethics by utilizing their religious foundations."¹⁶

To help teach professional values at Brigham Young University Law School, we have a first-year, one-half-credit course called Professional Seminar. It is an elective, but about three-quarters of our students take it. Each section is limited to about thirty students. Professional Seminar integrates religious and moral values into a model of legal professionalism, and discusses legal education, the legal system, law practice, and the role of lawyers in society.

The readings for the course vary depending on the individual faculty member. In my sections we address, among other topics, the law school experience, including the Socratic Method, uncertainty, ambiguity, and some of the values that permeate legal education.¹⁷ We discuss how to deal with feelings of competition and stress in law school, and how to try to keep things in perspective. We also address the concept of professionalism and the characteristics of a profession.

We read an article¹⁸ by Dallin H. Oaks, a former law professor at the University of Chicago, which discusses the book, *The Bridge over the River Kwai*.¹⁹ In this well-known fictional story, Colonel Nicholson was a prisoner of war in Southeast Asia during World War II. His captors had him design and build a railway bridge over the River Kwai. It was a challenging task, but he accomplished it, and he was very proud of it. Then, British commandos arrived to destroy the bridge. Colonel Nicholson was shocked, and he alerted the guards in order to stop the destruction. He became so focused on his own professional work that he forgot the big picture: his goal was to help win the war, not to accomplish a feat of engineering. The book illustrates how sometimes professionals can become so focused on their technical work that they forget the larger picture.

15. Christopher L. Eisgruber, Can Law Schools Teach Values?, 36 U.S.F. L. Rev. 603, 605 (2002).
16. James P. White, Religiously Affiliated Law Schools: Their Role in American Legal Education, 78 Marq. L. Rev. 371, 372-73 (1995).
17. See, e.g., Roger C. Cramton, The Ordinary Religion of the Law School Classroom, 29 J. Legal Educ. 247 (1978).
18. Dallin H. Oaks, Bridges, Clark Memorandum 10 (Fall 1988).
19. Pierre Boulle, *The Bridge over the River Kwai* (Vanguard Press, New York, 1954).

We also read a book chapter by Oaks that discusses religious perspectives about litigation.²⁰ He describes some religious principles that he believes apply to litigation. They are:

1. Forgive
2. Pursue private settlement
3. Eliminate revenge
4. Act to protect others
5. Consider the effect of civil action upon those who are sued, and
6. Think of rights ahead of responsibilities

These principles can help lawyers as they counsel clients about when litigation may be appropriate and how best to pursue it. Referring to moral principles in counseling clients is consistent with the American Bar Association's guidelines. Model Rule of Professional Conduct 2.1 states: "In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation."²¹ Comment 2 explains:

Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.²²

I believe that many clients hire lawyers not only for their technical expertise, but also for their judgment.

In Professional Seminar we also discuss the importance of honesty in the practice of law. I tell the story of a young lawyer whose life unraveled because he engaged in insider trading in violation of the federal securities laws. He was convicted, sentenced to prison, and disbarred. His dishonesty affected other people, including his clients' shareholders, his law partners, and his family. In Professional Seminar we also address the concept of civility, which is receiving increased attention in the legal profession. We conclude the course with a discussion about priorities and balance in our lives.

Professional Seminar addresses one of the most challenging professional questions that some law students will encounter: how can I perform and even excel in my profession and at the same time be true to my moral and religious

20. Dallin H. Oaks, *The Lord's Way* 153-88 (Shadow Mountain Publishing, Salt Lake City, Utah, 1991).

21. Model Rules of Prof'l Conduct R. 2.1 (2008).

22. *Id.* at Comment 2.

beliefs? In the course we consider some ancient wisdom: “For what shall it profit a man, if he shall gain the whole world, and lose his own soul?”²³

The following comments from my students in Professional Seminar last year indicate that this effort to integrate religious principles and professional values has merit:

[T]his class taught me just how possible it is to practice law while maintaining my religious and personal convictions. Before law school, this was a big concern for me...I look forward to the day when I can hopefully embody the lessons of this class while practicing law.

A broad perspective of the profession has helped me realize that being a good person and being a good lawyer are not mutually exclusive. I choose what kind of lawyer I want to be. I can be civil and courteous to adversaries, and still serve the needs of my client. I can be gracious to the opposing counsel in setting discovery schedules and answering complaints without sacrificing my client’s substantive rights.

I have enjoyed this class and feel like I have learned about the importance of incorporating our religious and moral ideals into our practice of law and how to more effectively accomplish this goal.

[M]ost importantly I’ve discovered that this course has provided me with valuable perspectives on the type of lawyer I want to be.

There is always a question regarding how religious a religiously affiliated law school should be. Each law school must decide for itself, together with its constituencies.²⁴ I believe that to whatever degree a law school chooses to be religious, it should do so without apology, with the knowledge that it will make a contribution to legal education that is both legitimate and important.

A survey of religiously affiliated law schools conducted by Rex E. Lee showed that only a few of the schools responding to the survey had explicitly considered whether the curriculum should draw on religious values.²⁵ Most

23. Mark 8:36 (King James).

24. James P. White wrote:

Perhaps the best policy is to leave it to each law school to define itself and the role of its religious affiliation. Clearly, in my view, law schools with a religious affiliation must determine their own destiny. An accrediting agency should not attempt to dictate the extent to which their religious affiliation should guide their institutional direction. A law school must provide a sound legal education to enable persons to successfully enter the practice of law. That is our primary concern as an accrediting agency, and only if the religious affiliation of the school impedes or distorts that basic mission, should the accrediting agency have concerns about the school’s programmatic mission.

White, *supra* note 16, at 372.

25. Rex E. Lee, *The Role of the Religious Law School*, 30 *Vill. L. Rev.* 1175, 1177-78 (1985).

schools seemed to leave religious issues to individual faculty members.²⁶ However, most left “some room in the curriculum for reflection on religious teachings and the moral foundations of law,”²⁷ especially in courses such as ethics, jurisprudence, and family law, which “lend themselves quite naturally to the consideration and expression of religious values.”²⁸ Most deans thought that “their religious affiliation had a positive effect on the human relationships among the students and faculty.”²⁹

The survey asked whether in the deans’ views the schools were “drawing too much, too little, or just about right from their religious backgrounds.”³⁰ Different answers were given, but “the dominant answer was that these schools can and should draw more on their religious roots than they do now, especially by instilling greater commitment to ethical principles in the lawyers they turn out.”³¹ Most felt that “allowing greater vent to religious teachings would enhance the quality of the law school educational experience.”³² One dean wrote, “The world is a more interesting place...when people have beliefs, convictions, and a song to sing.”³³

I believe that pluralism in legal education is enhanced by religiously affiliated law schools. Students, faculty, and society benefit when people have the freedom to choose institutions of higher education that are supportive of their faith traditions. Religiously affiliated law schools are a venerable part of legal education in America, and their freedom to have a religious dimension to their mission is an important freedom.³⁴

26. *Id.* at 1178.

27. *Id.*

28. *Id.*

29. *Id.* at 1179.

30. *Id.* at 1180.

31. *Id.*

32. *Id.*

33. *Id.* (quoting Dean Frederick Davis of the University of Dayton School of Law).

34. Portions of this article are based on James D. Gordon III, *The Importance of Religiously Affiliated Law Schools*, 37 *Cath. Law* 183 (1996).