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RESPONSE TO RODES AND SHAFFER'S "A CHRISTIAN THEOLOGY FOR ROMAN CATHOLIC LAW SCHOOLS"

*Father James L. Heft, S.M.**

I wish first of all to thank Professors Rodes and Shaffer for a paper that forced me to think about basic questions, such as why educate lawyers, what does Catholic Christianity contribute to the education of lawyers, and what type of graduate from our school is the one in whom we take the greatest pride—is it the one who advocates for the poor, who has served as a public defender not for a year but for 25 years? Or the one who works as a senior partner in a corporate law firm, one who is most likely to repeat Auden's fine line, "trudging on time to a tidy fortune"?

The thesis of their paper strikes me as radical and their tone prophetic. Indeed, those whose thoughts the authors explicitly footnote are champions of the poor—Gutierrez, Dom Helder Camara, and William Stringfellow—or individuals who have read the gospel in a radical, even passivist way, such as John Howard Yoder. As I read through the paper, several times I felt like the traditional Catholic who, confronted by an intelligent Christian pacifist, stumbles about trying to defend the value of the just war theory, and in the very process feels a loss of innocence. At different points in the paper I found myself longing for greater "realism," but at the same time wondering if my desire for greater "realism" merely signaled an inability on my part to hear a prophetic word. It is on account of such personal reactions that I first thank both of you for a provocative paper.

I do have a few observations and questions, and then a concluding remark. I once heard Edward Schillebeeckx, the great Dutch Catholic theologian, remark that there is no such thing as "political theology"; rather, there are theological reflections on politics. In the same vein, I would suggest that it would be better to speak not of a "Christian theology for Roman Catholic law schools," but perhaps more accurately, of Christian theological reflections for Roman Catholic law schools. Strictly speaking, theology is a systematic and synthetic vision of the fundamental truths of the Christian faith; this paper, it seems to me, is rather a series of provocative reflections on the purpose of education in

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a law school sponsored by a Catholic university.

Also, it would help if you were clearer about what is meant when you say that a law school such as this one, is "present as the Church." I know what it means to say that the committed Catholics who graduate from our law school constitute a presence of the Church in their professional activity. I have also a clearer idea of what is meant when someone says that the Church is present in a seminary, in a catechetical center, a department of Catholic theology. I think it can be seen how a law school is not the same as a parish, where we would say that the Church is present locally. Perhaps the law school's presence as the Church can be clarified further, especially in light of the fact that a number of professors and students in our law school are not Catholics, and some are not Christians. In this light too, I would be interested in some follow-up on the remark—with which I agree—that "the theological discussion cannot be carried out well without the participation of Jews and non-Catholic Christians." Why do you say this? I would be interested to hear what reasons you give for this statement.

Your emphasis on service rather than power is, I think, well taken. Would it be more helpful, however, not to distinguish the two so sharply, at least in all instances? It seems to me that much of the effectiveness of Martin Luther King, Jr. or Mahatma Ghandi was rooted in the moral *authority* they both embodied and the moral *force* they both organized. Properly acted out, nonviolence is an effective exercise of power that can bring about change. Therefore, can we not also see a great service rendered in the judicious and fair use of power? Would not the fair exercise of such power be a worthy goal for Christians and others as well?

I would be very interested in hearing more about what a law school should, in your opinions, teach. I appreciate the way you cast legal questions in specifically ethical terms; for example: How does our real estate law affect people who need places to live? How does our law on corporate mergers affect working people and their families? How does our criminal justice system affect the ability of the urban poor to walk on their own streets? I do not imagine, nor do I believe that you do, that such questions can be sufficiently dealt with in one course on legal ethics, especially if such a course is taught from a perspective of legal positivism. Probably one of the most serious questions facing us immediately is the training of law professors who are capable of dealing and willing to deal not only with the legal question, but also with the ethical dimensions of the legal question. Even more challenging than shaping the character of students, it seems to me, is the need to form and shape the character of faculty so that they will come to explore legal issues with a deep sense of the Catholic tradition, particu-

larly as it affects the legal profession.

It seems to me that one of the characteristics of Catholicism is its willingness to value both nature and grace, both Scripture and tradition, both the priestly and the prophetic, and both the legal and the ethical. Your paper, in my opinion, stresses effectively one side of the dialectic—that of the prophetic, that of the lawyer as the advocate for the poor. But concerning this matter of prophecy, we should recall that the New Testament teaches that no one produces prophecy on his or her own; it is a gift for the community from the spirit. It is not a degree program granted by the academy. The best a degree program can do is train people to recognize and heed true prophets.

By way of a concluding remark, I would like to emphasize what was not stressed in your paper, but what I presume you will certainly agree with; namely, that besides teaching a greater sensitivity to the fundamental ethical issues, we need also to teach the skills and techniques of being a competent lawyer. As one legal educator said, "Compassion without technique is a mess; and technique without compassion is a menace." We need to find ways to combine both technique and compassion in our teaching. Howard Lesnick has said that most teachers use people to teach things, although true teaching uses things to teach people. Spelling out the implications of this position, he says:

If we set about to teach people, rather than things (for example, Torts or Professional Responsibility), what is it that we would teach them? To say that we would teach people Torts does not capture the point: Besides making the whole thing a play on words, it seems to teach a subject, rather than use a subject, a thing to teach—what? Years after being led to reflect on this question, my answer is that I want to teach people to be people, to *become* people, to *become more fully* human. And what that means to me is to lead students to ask themselves: Who am I? What am I doing in the world? What do I want to do in the world?¹

It is such sensitivity to teaching people and not just things that characterizes Professors Rodes and Shaffer's paper. Even more, our speakers have challenged us to think about fundamental questions not just from a legal or even an ethical standpoint, but also from a theological perspective. They have, in effect, described how decades ago in educating lawyers we preserved an ethical tradition without explicating it, and how recently we seem neither to preserve nor to explicate an ethi-

1. H. Lesnick, Remarks on Teaching Alternative Dispute Resolution, Harvard Law School, Oct. 9, 1982 (unpublished manuscript), at 1-2 as cited in Cramton, *Beyond the Ordinary Reli-*
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cal tradition. They have called us to think anew as to how we might draw upon the Catholic tradition to revitalize the ethics and form the character of future lawyers. This is indeed a worthy but difficult goal.