Disciplinary Perspectives: Jesuit Law Schools and the Pursuit of Justice

Jeff Brand

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Jesuit Law Schools and the Pursuit of Justice: Unique Opportunities, Unique Responsibilities

Jeffrey S. Brand

"Don't expect to integrate the South in this class. Contracts makes the business world run."

The first words I heard in law school in August 1966 spoken by an unwitting (and fortunately unsuccessful) assassin of the spirit.

"The mission of a Jesuit law school is to train skilled lawyers who hunger and thirst for justice"

Father Stephen Privett, S.J., President of the University of San Francisco speaking to the law faculty on October 2, 2000.

Introduction

Those of us lucky enough to teach law at one of the fourteen Jesuit law schools in the United States are blessed with a mandate to educate for justice -- oddly, a mandate not often articulated at law schools around the country. The mandate is powerful and clear. Listen to the words of Rev. Peter-Hans Kolvenbach, S.J., Superior General of the Society of Jesus, in his keynote address at the "Commitment to Justice in Jesuit Higher Education Conference" this past October at Santa Clara University.

Such is the world in all its complexity, with great global promises and countless tragic betrayals. Such is the world in which Jesuit institutions of higher education are called to promote justice...Jesuit education seeks to educate the whole person...(which requires an) ...educated awareness of society and culture, in which to contribute socially, generously, in the real world...When the heart is touched by direct experience, the mind may be challenged to change. Personal involvement with innocent suffering, with the injustice others suffer, is the catalyst for solidarity which then gives rise to intellectual inquiry and moral reflection. Students, in the course of their formation, must let the gritty reality of this world into their lives, so they can learn to feel it, think about it critically, respond to its suffering and engage it constructively. They should learn to perceive, think, judge, choose and act for the rights of others, especially the disadvantaged and oppressed.

The charge to promote justice is particularly challenging for Jesuit law schools where professors are charged with the awesome responsibility of insuring that students understand that law has the unique ability both to insure justice and to institutionalize injustice. Guarantees of freedoms in our Constitution and in the United Nations' Universal Declaration of Human Rights hold out hope for the former. Jim Crow, Buchenwald, and Cambodia's killing fields testify to the latter. Indeed, the relationship -- or lack of it -- between law and justice situates law schools, and particularly Jesuit law schools, on the front line in efforts to bring about a more just society. As such, Jesuit legal education communities charged with promoting justice must be laser-like in their efforts to develop concrete strategies to achieve that goal.

II

The Mission As "Gift": Confessions of a Jewish Dean of a Jesuit Law School

I want to offer some thoughts about how Jesuit law schools might go about promoting justice, but not before providing some context. These observations, or biases if you will, affect my own work at the University of San Francisco School of Law (USF) and also raise general questions about how we fulfill our mission.

First, I am neither Jesuit nor Catholic nor even Christian. I am a Jew who grew up in Brooklyn, in Los

Jeffrey S. Brand is Dean and Professor of Law at the University of San Francisco School of Law, San Francisco, California.
Ana Angeles and ultimately in Berkeley during the sixties. I grew up believing, and still believe, that Julius and Ethel Rosenberg were murdered by the state, that the war in Vietnam was a tragic error for which the United States will pay a price for generations to come, that marginalized people around the world share a common bond, and that the law is a noble profession which can be used to do enormous good. I offer these facts because I think that one's own personal agenda may pose obstacles to devising an effective means of promoting justice in our law schools -- obstacles that must be addressed if we are to succeed.

Second, I consider being dean of a Jesuit law school a gift. I consider myself among the luckiest of law school deans to be charged with a mission buttressed by the overarching ideals of educational excellence and service. How many deans wake up in the morning knowing that their boss has told them that their top priority should be promoting justice? USF's Father President, Rev. Stephen Privett, did just that when he recently told our law faculty that the mission of a Jesuit law school is to "train skilled practitioners who hunger and thirst for justice." I could not agree more.

I am not an "expert" on the Jesuit mission, but I do interpret it to require faculty at Jesuit law schools to create an environment in which students gain understanding about the relationship of law and justice and to create opportunities for the law school community to engage in activities that promote justice. In sum, I believe that the law school of a Jesuit University has a special responsibility to help students develop a thirst for justice and to provide opportunities to quench that thirst.

III

Promoting Justice At Jesuit Law Schools: An Inclusive Mission for A Receptive Community

Sending A Consistent Message, Creating An Inclusive Environment, and Devising Action Plans to Promote Justice

There is no formulaic strategy Jesuit universities and law schools may use to promote justice, but several prerequisites surely exist. First, a consistent message must be sent that promoting justice is a central and valued element of the learning community. As a corollary, an environment must exist in which efforts to promote justice can thrive. Such an environment requires that efforts to promote justice not be perceived as the work of a chosen few with a particular political agenda. Different members of the law school community have different ideas about how to fulfill a mission of promoting justice. These differing ideas and modes of action must be accommodated. At the same time, we should remain united in our goal as articulated by Rev. Kolvenbach: "the promotion of justice for all, the quality of personal and family life, the protection of nature, the search for peace and political stability, a more just sharing in the world's resources and a new economic and political order that will better serve the human community."

THE LAW SCHOOL OF A JESUIT UNIVERSITY HAS A SPECIAL RESPONSIBILITY TO HELP STUDENTS DEVELOP A THIRST FOR JUSTICE AND TO PROVIDE OPPORTUNITIES TO QUENCH THAT THIRST.

That delicate balance can be maintained if we emphasize that we are engaged in a collective effort in response to a universal condition -- the plight of those who are marginalized and whose right to exist with dignity is being denied. We should promote self-examination and self-discovery so that every member of the law school community is better able to understand the problems and to choose ways to go about solving them. Our goal should be to open eyes and to create opportunities for action, understanding that there is no single path that few will seek the same way to promote justice. The metaphor is a jazz tune in which all musicians play within the same chord structure (promoting justice), but where the solo efforts of each member of the ensemble create the beauty and the tex-
ture of the work.

Initially, the responsibility for sending the message and creating an inclusive environment rests with those in positions of authority, the deans and the law faculty. Of course, the dialogue must be inclusive of all elements of the law school community and will not flourish unless it is embraced by the whole community. Nonetheless, it must be clear to everyone that those charged with running the law school are taking the mission's mandate seriously.

Second, the concept of "promoting justice" and its relationship to the Jesuit mission must be discussed and debated so that specific action agendas can develop. If we succeed in sending a consistent message and in creating an environment conducive to promoting justice, we create unlimited potential for imaginations to soar and for programs to flourish. USF's efforts provide an example. In June 1999, just before becoming dean, I wrote a memo to my faculty. At that time, after fifteen years on the faculty, I felt that we had not come to grips with the specifics of the mission and did not understand how it could benefit us and local, national and international communities. I held this belief despite the fact that many of us on the faculty grew up in the sixties and were activist in our orientation, and even though the law school offered many opportunities for our students to do good works (clinics, Street Law programs and the like.)

Since then, that conversation has gone forward. We have engaged in conversations about the role of the Jesuit mission at the law school, the meaning of Ex Corde Ecclesiae (and the concern it engendered among some), the relevance of the law school curriculum to the mission, and questions raised by the mission's mandate to promote justice. We are exploring how service learning fits into the curriculum and how we can increase service opportunities for the entire law school community. Our public statements about the mission have been sharpened. Our commitment to the mission is now emblazoned on banners outside the law school and in publications explaining what we are trying to accomplish. In addition, existing programs consistent with the mission have been celebrated and expanded, and new programs developed, including joint programming with other departments and colleges in the university and with University Ministry.

A Receptive Community Awaits A Mission of Promoting Justice

The response of the law school community to this increasing emphasis on mission has been positive, demonstrating a desire for an agenda that elevates promoting justice. This positive response, particularly the enthusiasm of students, may come as a surprise to many. It shouldn't. Today's students are getting a bad rap. They are too often perceived as selfish, uncaring, and solely concerned about making money and getting ahead. It is true that students are concerned about money. And, in fact, they should be. The average debt a student incurs at a private law school -- including Jesuit law schools -- is in the neighborhood of $80,000 to $100,000. Moreover, students are graduating at a time when meaningful employment in the public sector is often a fleeting fancy. Gone are the halcyon days of the sixties and seventies when quality education was affordable and public interest jobs were readily available and competitive with jobs in the private sector.

Nonetheless, today's students are willing and want to do good works. Ask entering law students why they chose law school and the response is predictable and often heartwarming -- many want to do good in the world and see the law as a useful tool to accomplish that goal. In fact, a large number of today's students are every bit as well motivated as were the students of my generation. I remain convinced that if you put today's students into the 1960s you would get the 1960s all over again. On the other hand, if you put the generation of the sixties in the circumstances that greet the new millennium, my hunch is that the outcome is as problematic and complicated as we are witnessing with today's law students.

Here is anecdotal evidence to support that thesis. At USF we created a service program for the law school community. Initially, some skeptics said: "There is no way this will succeed. Students don't have the time or the inclination to think about others let alone to go into the community to help others." That response seriously underestimated the inherent desire of students -- and in fact the entire law school community -- to do good works while at the same time paying attention to their own real needs. The law school's first effort to create a service event -- a modest effort to get ten students to go to San Francisco's Tenderloin to serve meals to the homeless -- eventually yielded a sign up sheet that now exceeds 130, nearly 20% of the student body.
Indeed, our biggest challenge as legal educators is to insure that students' expressed desire to do good, and to do well when they enter law school, is not extinguished during their years in law school. We must guard vigilantly against the "assassins of the spirit" whose harsh, and sometimes unintended words, snuff out the passion and excitement that brings students to law school in the first place. Those assassins can be found in any place where students' passions are not fed and where the message is communicated that the "real" world requires idealism to give way to a focus on billable hours in law firms. A vigorous dialogue about justice and the creating of opportunities to do good works are the best defenses against extinguishing that spirit. At Jesuit law schools, our mission provides the push and support to do just that.

"Side-benefits" of Educating for Justice

A laser-like focus on promoting justice also creates "side-benefits" that may not be readily apparent. The first involves the effect on the law school community itself. It turns out that many students, faculty and staff are all interested in finding ways to promote justice. Such joint efforts provide new ways for the law school community to come together and to engage in a mutually inclusive agenda. At USF, this has happened as close to home as San Francisco's Tenderloin and as far away as Phnom Penh, where the law school's Center for Law and Global Justice has been working for years. And, alums, searching for meaning in their own lives, find solace and hope that a new generation of law students and their alma mater are reaching out to the world in ways that many feel have eluded them in their own daily work.

There is yet another "side-benefit" of no small consequence. The focus on promoting justice is precisely what the legal profession needs to rid itself of the reputation lawyers have managed to acquire for themselves. Nothing would change that image more quickly than creating a profession which focuses more on justice, and that demands that all people have access to the benefits of a system that is based on a rule of law with justice and compassion. Legal educators, perhaps more than any other members of the legal community, shoulder the responsibility to emphasize these values if we ever hope to be held in esteem in the public eye -- a day which will only come when it is the common wisdom that the legal profession is serving those in need. If we pursue our mission vigorously and honestly, we offer hope that the public will finally be persuaded that lawyering is a noble profession.

IV

What Is To Be Done?: Let A Thousand Programs Bloom And Deal Honestly With the Contradictions Along The Way

Let A Thousand Programs Bloom

Of course, the rhetoric of promoting a more just society must be supplemented by an action agenda aimed at making it a reality. Because of the obvious relationship between law and justice, virtually all law schools are involved in programming that reaches into the community to help those without access to basic human necessities. Thus, almost all law schools have civil and criminal law clinics and some have clinics that address the rights of abused women, the environment and the homeless. USF is no exception, being home to vibrant civil and criminal clinics, a mediation clinic that assists unrepresented parties before the Equal Employment Opportunities Commission, and a clinic to help people resolve disputes in small claims court.

While these efforts are to be applauded, Jesuit law schools have a unique opportunity and special responsibility to be even more creative in developing programming to fulfill the mission so eloquently articulat-
ed by Rev. Kolvenbach. These programs must reach out beyond the law school in ways that traditional clinics do not, must discuss ethical issues in a much broader context than mandatory professional responsibility classes, and must pursue a global perspective beyond what most law schools are doing. Moreover, programming in pursuit of justice should focus on compassion -- not just on basic skills training and unit credit. This is a tall order. Here is a sampler of ideas based on USF's efforts. Surely, it is a work-in-progress which, it is hoped, will spark a dialogue among Jesuit law schools about other possibilities.

*Ethical Training:* Ethical training is a critical component of Jesuit education. Jesuit law schools have a unique opportunity to cooperate with other graduate and undergraduate programs within their universities to address a multitude of ethical issues. Joint chairs with the law school that reach across disciplines and creative projects that engender a discussion of ethical issues can flourish in a Jesuit University (such as we attempt to do with our Center for Applied Legal Ethics at USF).

*Street Law:* The Street Law Program provides opportunities for law students to go into local high schools to talk to students about rights promised by society and the means for their enforcement. Such programs (as have existed at USF for more than twenty years) provide law students with the opportunity to understand the plight of those without equal access and their corresponding responsibility to engage in work directed to the well-being of others.

*Service Learning and Community Service:* Service learning is a priority at USF and other Jesuit universities. The theory of service learning continues to develop, and its parameters have not been fully explored. In a sense, law schools have been engaged in service learning for years through the clinical education experience. Yet, these traditional projects only begin to develop a fertile area that can bring great rewards to students and benefits to the communities we seek to serve. For example, a recent course at USF, "The Effect of Law On Building Community," is an effort to integrate traditional legal study with service experiences that help students understand the context in which the law is developing and how it affects the lives of real people. In such a course, for example, students study about law that affects the homeless and abused women; the students also work in shelters.

Service learning is generally integrated in a formal way into the curriculum with a classroom component and course credit. Community service, on the other hand, generally involves volunteer, *pro bono* work in the community. In fact, the distinction between the two may not be so clear and the role of community service should be trumpeted at Jesuit law schools in our efforts to promote justice. To be sure, community service programs will not eliminate structural inequities that deny so many people access to basic human necessities. Nonetheless, such programs do help students to understand the important role that they can play in society and the responsibility that all of us have to engage in the human struggle. This is particularly important for law students, the majority of whom will ultimately end up in traditional legal jobs. USF's "Law In Motion" program, whose motto is "Service, Knowledge and Justice," is an example of a successful community service effort that provides opportunities for students to volunteer in both law-related and non-law-related activities in local communities. The Law In Motion program has taken students to prisons, hospitals and homeless shelters.

Programs like Law In Motion, however, are not without their limits or problems. They also may reinforce stereotypes that already exist. Such programs
may also be perceived as sanctimonious efforts by a self-righteous minority of law students. At USF, we have tried to avoid these pitfalls by engaging in honest discussion about the purpose of the programs and the structural societal issues that must be addressed if the problems are really to be solved.

*International Programming:* International Programming is an area in which Jesuit law schools are particularly well-suited to make unique contributions to promoting justice. The world-wide network of Jesuit universities is a reminder that international outreach is a critical component of our mission and that an infrastructure already exists for effective, cooperative international programming.

At USF, the Center for Law and Global Justice has been involved in international legal assistance efforts for years. The Center is funded primarily from government and foundation grants and involves itself in work in developing nations such as Cambodia, Vietnam and Indonesia. All projects seek to assist nations in ways consistent with the right to self-determination, but they take a myriad of forms, including training judges, helping to establish law schools, helping to establish mechanisms to insure accountability for massive human rights abuses, and assisting legislative drafting and dispute resolution. In addition, USF's International Human Rights Clinic sends students to Geneva to argue cases before the United Nations Commission on Human Rights. Such work helps bring meaning to the overused phrase "globalization" and demonstrates to students that global action to help others is a concrete possibility. These efforts could be even more effectively carried out in conjunction with other Jesuit universities around the globe.

Moreover, as law schools engage in the international arena, they must come to grips with the role of the University in the international context and understand that international programming is about more than just sending students to foreign countries to soak up the culture, eat the food, study and receive units. International legal education should be about creating an interactive experience in which the law school community listens, studies, learns, interacts and helps to serve people who are denied the basic dignities of human life. The worldwide network of Jesuit universities provides a unique platform for Jesuit law schools to rethink and reshape the role that the American legal community can play.
Questions, Questions and More Questions

The quest to educate for justice raises many questions. They are questions without conclusive answers, but they are also questions which, if not discussed, are sure to impede progress to promote justice. They are questions that will not and should not go away. Here are some prominent questions that have been raised in the course of our dialogue at USF:

- Whose justice are we talking about and how do we define justice?
- If my politics diverge from your politics, and my ideas of what is important for society and how to accomplish it are different from what you believe, why should the law school take one path as opposed to another?
- You may think it is important to be engaged in the community, but for me "service" means being an excellent teacher and engaging in productive scholarship. It doesn’t mean serving meals in a homeless shelter. How do we dialogue?
- Isn’t the call to engage in work in communities around the world a self-righteous and sanctimonious endeavor that puts people off? And if that is true, doesn’t it hinder rather than promote efforts to make the world a better place?
- It’s easy to talk a game of justice but the reality is that people need to make a living and that "justice" jobs don’t really exist. Therefore, does the rhetoric and push to educate for justice create unreasonable expectations on the part of students that cannot possibly be fulfilled.

- In a professional school, we are interested in training the best professionals possible. While ethics and doing good works are important, those endeavors are only a small piece of what we do. To overemphasize them will divert resources from our task at hand. In short, where are we supposed to get the resources to do what promoting justice demands?

Of course, each of these questions and objections should be a topic of extended debate. The need for a mutually inclusive agenda has been addressed, but two other themes emerge in response.

First, we should not be defensive about our pursuit of justice at the law school or at the University generally. Law schools and universities are always attempting to demonstrate to the world why they are unique. For Jesuit universities and their law schools, uniqueness exists in the mission itself - a mission that demands that the plight of those without access be addressed with vigor. It is true that basic professional skills and excellence in education are critical indicators of whether we are doing our job. But, as Fr. Kolvenbach noted at Santa Clara, promoting justice does not mean "abdication of the University’s mission of academic excellence." Simply put, training highly skilled lawyers is not inconsistent with making justice a central concern of the University and the law school.

Second, there is also cause to be concerned that our rhetoric not lead to heightened expectations that cannot be fulfilled. At USF, students are asking that we recognize the high cost of their education and accompanying financial pressures, and that we recognize as well the scarcity of jobs in the public interest. Students are reasonably demanding that law schools seek to create as many opportunities as possible for doing good works and that financial assistance -- whether it be to help students take advantage of international service opportunities or to have a viable loan forgiveness program for graduates working in the public interest -- be made available where possible.

Resources are a problem, but a logistical one. Their scarcity does not give us an excuse to ignore the mandate and mission of the Jesuit university in which we have chosen to work. In sum, educating for justice is not ancillary to what we do. The reality is that, regardless of the action agenda we choose, it cannot be
sustained absent a commitment of law school and university resources. Failure to put money and resources where our well-intentioned mouths are, will surely doom any serious effort to promote justice.

V

Modest Proposals To Promote Dialogue and Facilitate Action

There is no question in my mind that a mission of promoting justice is a magnet for our students and that it creates the possibility for individual and societal transformation. Recently, a group of us visited San Quentin Penitentiary, a maximum security facility just outside San Francisco. We attended mass and then spoke with inmates. Here is the response of one student to that visit:

The trip to San Quentin challenged my own thinking and perceptions on many levels. It provided me, as a law student, an opportunity to go beyond the books and learn from a very different point of view. It forced me, as a future lawyer, to revisit why I am on this path and where I want the path to lead. On a personal level, the chance to sit shoulder to shoulder with that same person (the convicted felon) and learn about his concerns, fears, and hopes challenged my own mental picture and preconceptions of a San Quentin inmate.

Dare we not accept the challenge to make these experiences multiply?

• To do so, we must keep the dialogue alive and create opportunities for action. Two simple suggestions:
• To promote the dialogue -- there should be regular meetings among deans of all Jesuit law schools at American Bar Association meetings and elsewhere.
• To create opportunities -- we should establish an International Jesuit Justice Project which would draw on the resources of Jesuit universities around the world to support outreach projects aimed at promoting justice and nurturing democratic institutions and economic development around the world. USF is now seeking to establish relations in El Salvador, Guatemala, Honduras and Colombia in addition to the work of our International Human Rights Clinic and our Center for Law and Global Justice. We cannot do it alone.

This, however, is not the place to hammer out the specifics of particular projects. This is the time to acknowledge our collective purpose and responsibility, to celebrate it and to commit ourselves to promoting justice in a meaningful way. We do it because it is our mission and we do it because it is the right thing to do.