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Doing Justice: A Challenge for Catholic Law Schools Essay.

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ESSAY

DOING JUSTICE: A CHALLENGE FOR CATHOLIC LAW SCHOOLS

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I. INTRODUCTION

The numerous allegations of misconduct against high-ranking United States political figures and the attorneys associated with them is disheartening, but even more disconcerting is the general public's acquiescence to these ethical deviations. The outrage of the Nixon era has been reduced to an apathetic "everybody does it; it's no big deal." Similarly, the common assumption that "all lawyers are crooks" fails to outrage anyone. Unethical practices are so commonplace that even the media has become desensitized. The fact that most, if not all, of recent ethical violators attended law schools and began their political careers as lawyers prompts a questioning of the legal education process. Perhaps, in an attempt to educate law students, the essence of law—justice—is overlooked. Through my position as campus minister at St. Mary's University School of Law, I have come to believe that a true understanding of justice is crucial to its successful implementation. Understanding

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what justice encompasses may begin in books and the classroom, but justice in legal practice requires far more.

In this Essay, I reflect on what I call lawyers "doing justice"—justice in the active tense. While this goal stems from my religious belief, the aspiration of lawyers doing justice is central to practicing law and crucial to the secular and sectarian alike.¹ Changing not only the general public's negative perception of lawyers, but the way law is practiced, requires an affirmative attempt by lawyers, law professors, and law schools to implement justice. It is my position that this implementation of justice begins with understanding justice, not as a utopian theory, but rather as an attainable goal. My vision of lawyers doing justice begins with an understanding of the biblical notion of justice. Part II of this Essay shows that biblical justice involves both the sense of community taught in the Old Testament and the New Testament message of Jesus. This form of justice is then contrasted with the current system of justice in the United States which focuses on individual rights and liberties. This comparison illustrates the hurdles faced by law schools in teaching lawyers to do justice. In Part III, I explain the role of the Catholic law school in the implementation of biblical justice.

II. BIBLICAL JUSTICE

Old Testament justice is frequently and erroneously portrayed as "an eye for an eye and a tooth for a tooth."² Taken out of context, this mere description of the limits of punishment has been interpreted to make these words appear as if Old Testament justice demanded punishment. From this misinterpretation, the common belief that Old Testament justice is synonymous with vengeance arises.³ While difficult to define,⁴ biblical justice may more accu-

1. See ROBERT KY SAR, CALLED TO CARE 61–63 (1991) (stating that God works through human agents to bring justice to those who suffer). Kysar advocates an alliance between the Church and non-Christian, secular, and humanistic agencies in social ministry. *Id.* at 63. According to Kysar, "God's concern for political, social, and economic well-being is expressed through those who stand outside of the community of the people of God." *Id.*

2. *Exodus* 21:24.

3. See John R. Donahue, S.J., *Biblical Perspective on Justice* (finding that no text in Old Testament supports position that Yahweh's justice is equated with vengeance on sinners), in *THE FAITH THAT DOES JUSTICE* 68, 72 (John C. Haughey, ed., 1977). Instead, punishment of the sinner is a key part in restoration and Yahweh's saving justice. *Id.*

4. See John R. Donahue, S.J., *Biblical Perspective on Justice* (attributing difficulty in defining justice to "[t]he centrality as well as richness of the biblical statements on jus-

rately be described as “fidelity to the demands of a relationship.”⁵ The Old Testament emphasis on relationships began as the Jewish people, during their exodus, experienced their God as the God of the covenant.⁶ Through this covenant, God bound Himself to the people and called them to be His agents of justice.⁷ The people, then, were to imitate the way of God and to be guided by “*hesed*, ‘loving-kindness’, *mishpat*, ‘judgement’, and *zedakah*, ‘righteousness.’”⁸ Following this pattern, Hebrew laws concerning the relationships of the people were “just . . . because they create[d] harmony within the community,”⁹ and injustice consisted of actions which destroyed communal life.¹⁰ The notion of community in this relationship constituted the social context which was integral to the practice of justice in the Old Testament.

Implicit in this emphasis on community was concern for the marginalized groups of society. In the scripture of the Old Testament, God’s special concern for the poor, the needy, widows, and

tion”), in *THE FAITH THAT DOES JUSTICE* 68, 68 (John C. Haughey, ed., 1977). Donahue describes the term “justice” from a biblical perspective as “protean.” *Id.* But see CHRISTOPHER J.H. WRIGHT, *LIVING AS THE PEOPLE OF GOD: THE RELEVANCE OF OLD TESTAMENT ETHICS* 133–34 (1983) (explaining meaning of justice as used in Old Testament). Wright explains that

[t]he language of justice in the Old Testament has two major ‘notes’ with several ‘harmonics.’ The two primary words, *righteousness* and *justice*, come from two Hebrew words that are worth knowing.

The first root is *tsdq*, which is found in two common forms, *tsedeq* and *tsdāqāh*, usually translated ‘righteous.’ The root meaning is probably ‘straight’: something which is fixed and fully what it should be and matches a ‘norm’.

. . . .

The second is the root *špt*, which has to do with judicial activity at every level.

Id.

5. John R. Donahue, S.J., *Biblical Perspective on Justice*, in *THE FAITH THAT DOES JUSTICE* 68, 69 (John C. Haughey, ed., 1977).

6. See *id.* at 70 (summarizing characteristics of just individual as revealed in biblical books of Job, Proverbs, and Psalms).

7. See ROBERT KYSAR, *CALLED TO CARE* 61 (1991) (describing Old Testament covenant as making its people agents of divine care and justice).

8. MOSES MAIMONIDES, *THE GUIDE FOR THE PERPLEXED* 397 (trans. M. Friedländer, 2d ed. 1956) (1904).

9. John R. Donahue, S.J., *Biblical Perspective on Justice*, in *THE FAITH THAT DOES JUSTICE* 68, 69 (John C. Haughey, ed., 1977).

10. See *id.* at 69 (delineating fraud and violence as destructive to communal life). Donahue contrasts this perspective with that of modern individualism and finds that in the Israelite world “to live” means to be united with others in a family or through a covenant relationship. *Id.*

orphans was revealed.¹¹ In His concern for these groups, however, God neither overlooked the sins of the poor nor glorified poverty. Instead, the poor were recognized as members of the community who lacked social status, were treated unjustly, and were at the mercy of those who exploited them for gain.¹² Through the covenant relationship, God restored harmony, intervened for the needy, and liberated the oppressed.¹³ Accordingly, when the wealthy broke their covenant and failed to be concerned for the least among them, God's prophets became the messengers against injustice.¹⁴ This was not accomplished by "sheer divine fiat," but through the Israelites themselves who were called to be God's agents¹⁵ and imitate His justice with righteousness. This commission entailed living in harmony with their neighbors, following the precepts of the law, and demonstrating concern for "those most vulnerable to abuse—the poor and needy."¹⁶ The essence of Old Testament justice, therefore, lies not in God's demand for vengeance, but rather a relationship instituted and directed by God which emphasizes community and care.

The Old Testament background, which closely joined God's rule and justice,¹⁷ was inherited by Jesus. Jesus, however, used the word "kingdom" rather than "justice" to describe

the active exercise . . . of God's sovereignty. . . .

Jesus as the eschatological proclaimer of God's kingdom and God's justice shows that this Kingdom is to have effect in everyday

11. See ROBERT KYSAR, CALLED TO CARE 22 (1991) (referring to Jeremiah's denunciation of injustice and specifically citing orphans, aliens, and widows); John R. Donahue, S.J., *Biblical Perspective on Justice* (announcing that concern for widows, aliens, and the poor was characteristic of Hebrew thought), in *THE FAITH THAT DOES JUSTICE* 68, 69 (John C. Haughey, ed., 1977).

12. See CHRISTOPHER J.H. WRIGHT, *LIVING AS THE PEOPLE OF GOD: THE RELEVANCE OF OLD TESTAMENT ETHICS* 147 (1983) (explaining that marginalized members of society "receive God's special attention" because of wrongs they suffer).

13. See ROBERT KYSAR, CALLED TO CARE 24 (1991) (acknowledging that Psalms present God's primary image as liberator of oppressed).

14. See *id.* at 21 (describing how God uses voice of prophet to denounce exploitation of poor).

15. See *id.* at 60 (explaining how God uses human agency to administer justice).

16. See *id.* at 20.

17. See John R. Donahue, S.J., *Biblical Perspective on Justice* (stating that "Yahweh's rule and the establishment of justice are closely joined" in Old Testament), in *THE FAITH THAT DOES JUSTICE* 68, 86-87 (John C. Haughey, ed., 1977).

events of life. The Kingdom is the power of God's activ[ity] in the world, transforming it and confronting the powers of the world.¹⁸

Jesus revealed that the kingdom of God is a kingdom of justice in which the oppressed are liberated, and humankind lives in a loving relationship with God and others.

It was through His close association and fellowship with sinners and outcasts that Jesus manifested the meaning of God's justice.¹⁹ Even to those whom the social structures had classified as beyond the scope of God's loving concern, Jesus presented the love and saving mercy of God.²⁰ For instance, in the numerous scriptural accounts of His interaction with women, Jesus, contrary to custom, acknowledged women as models of faith.²¹ Undaunted by social considerations, Jesus similarly demonstrated his friendship with sinners and tax collectors²² and showed compassion to the outcasts of society.²³ Similarly, the lepers, who were considered unclean, forbidden of the company of others and of the experience of human touch, suffered from isolation and rejection. Jesus's power not only physically healed them but restored the lepers to the community where they, once again, could experience human relationships. Through His ministry as a healer, Jesus also reversed

18. *See id.* at 86–87.

19. *See id.* at 87 (concluding that “the Kingdom and therefore the justice of God—[H]is fidelity and call to fidelity—are to be manifest in history no less than the proclaimer of the Kingdom, Jesus, was incarnate in history”).

20. *See id.* (calling Jesus “the parable of God's justice”).

21. *See* Doug Watson, S.C.J., *Jesus in Scripture*, Lecture at St. Mary's University (1995) (citing scriptural accounts of Jesus's interaction with various women) (author's notes on file with the *St. Mary's Law Journal*). Watson found that contrary to the Old Testament belief that women were considered the property of men, Jesus restored their dignity by treating them with equality. *Id.* Martha and Mary were friends of Jesus. *See Luke* 10:38 (describing Jesus's visit to home of Martha and Mary). Jesus healed a woman whom others considered unclean. *See Mark* 5:25–34 (portraying Jesus as healer of person outcast by others). Jesus permitted a sinful woman to anoint him. *See Luke* 7:36–50 (detailing Jesus's feelings toward sinful woman who washed his feet with perfume). He showed mercy to the woman caught in adultery. *See John* 8:1–11 (responding that person who has not sinned should cast first stone to punish adulterous woman).

22. *See* Doug Watson, S.C.J., *Jesus in Scripture*, Lecture at St. Mary's University (1995) (providing illustrations from New Testament) (author's notes on file with the *St. Mary's Law Journal*). Jesus was a friend of tax collectors and dined at Zacchaeus's home. *See Luke* 19:5–10 (describing Jesus's stay with chief tax collector despite criticism from community).

23. *See* John R. Donahue, S.J., *Biblical Perspective on Justice* (acknowledging Jesus's mercy to outcasts), in *THE FAITH THAT DOES JUSTICE* 68, 88 (John C. Haughey, ed., 1977).

paralysis and exorcised demonic possession; He opposed the power of death and unleashed life.²⁴

The concern Jesus demonstrated for others, regardless of their station in life, illustrates not only divine justice, but also sets the aspirational standard of human justice. As the heirs to His message, Jesus gave the disciples the authority "to preach, heal and confront the problems of evil."²⁵ Contrary to the justice of the scribes and pharisees, the followers of Jesus were instructed to be more concerned with relationships of justice than mere adherence to abstract norms.²⁶ Jesus directed his followers to involve themselves with Him in the care of the needy.²⁷ It is through His association with marginalized groups that Jesus is representative of God's justice. Through Jesus, justice became the restoration of a partnership from the former relationships of domination. Biblical justice, then, encompasses not only the equality, mercy, compassion, and forgiveness taught by Jesus, but also includes the basis of Old Testament justice—relationships based on righteousness and kindness.

While the biblical notion of justice is fundamental to the reign of God, the use of the word "justice" in the United States today has a variety of associations.²⁸ Although most would agree that justice is that virtue which assigns to everyone his or her due,²⁹ what is

24. See Doug Watson, S.C.J., *Jesus in Scripture*, Lecture at St. Mary's University (1995) (offering biblical examples) (author's notes on file with the *St. Mary's Law Journal*).

25. John R. Donahue, S.J., *Biblical Perspective on Justice*, in *THE FAITH THAT DOES JUSTICE* 68, 88 (John C. Haughey, ed., 1977).

26. See John C. Haughey, *Jesus As the Justice of God* (relating how Jesus challenged followers to act justly), in *THE FAITH THAT DOES JUSTICE* 264, 279 (John C. Haughey, ed., 1977).

27. Cf. *Matthew* 25:40 (instructing that administering to needy person is same as serving Jesus).

28. See KAREN LEBACQZ, *SIX THEORIES OF JUSTICE* 9-10 (1986) (positing that there is no universally acceptable definition of justice). Lebacqz traces the evolutionary theories of justice from six schools of thought including John Stuart Mill, John Rawls, Robert Nozick, the Catholic Bishops, Reinhold Niebuhr, and Jose Porfirio Miranda. See *id.* at 15-32 (discussing utilitarian theories by Mill); *id.* at 33-50 (tracing development of John Rawls's social contract); *id.* at 51-65 (presenting alternative views of Nozick); *id.* at 66-82 (focusing on catholic church's approach to social justice); *id.* at 83-99 (distinguishing Niebuhr's version of justice as Protestant alternative to Catholic view); *id.* at 100-15 (characterizing Miranda's view of justice as liberation theology).

29. St. Augustine, *CITY OF GOD*, Book XIX, Chapter 21, 882 (Henry Betenson trans., 1972) (reprinted 1984) (1467). Augustine cites Aristotle for this proposition, but nonetheless takes the position that human ignorance makes justice impossible. *Id.*

“due” differs according to each theorist’s definition.³⁰ In Western cultures, justice is associated with impartiality, private property, and an individualistic definition of rights.³¹ However, biblical justice rejects this standard and, instead, is biased in favor of the poor, with “property” and “rights” defined in terms of social solidarity.³² This is not to suggest that in the biblical scheme the individual is discounted, but rather that the individual is considered in the context of the community, not above it.

As one theorist suggests, justice is best viewed as a “prism” with “liberty, equality, community, and wisdom” linked together.³³ And, although related, each concept is “a particularization of the generic definition of justice as phrased in the Justinian code—the constant and continuous intention to give everyone one’s due—*suum cuique*.”³⁴ “What is due,” then, is not a fractured isolation of individual rights and liberties above the common good. Individual rights and liberties are derived from justice, and, in conjunction with community, equality, and wisdom, comprise the necessary whole of one’s due.

30. See KAREN LEBACQZ, *SIX THEORIES OF JUSTICE* 118 (1986) (concluding that each theorist’s formula for justice is radically different). Lebacqz summarizes six schools of thought:

- Mill*: to each according to those tendencies of actions that maximize overall utility;
- Rawls*: to each according to a basic structure that benefits the least advantaged (within limits set by equal political rights, equal opportunity, and just savings for future generations);
- Nozick*: to each according to the choices that have given them entitlements;
- Bishops*: to each according to their dignity as creatures made in the image of God (with duties and rights consonant with that image, and spelled out in a threefold notion of justice);
- Niebuhr*: to each according to principles of freedom, and especially equality, tempered by love or equity;
- Miranda*: to each according to God’s interventions in history to liberate the poor and oppressed.

Id. In her description of the competing theories, Lebacqz also notes the absence of traditional notions of justice, specifically Aristotle’s merit-based justice. *Id.*

31. See DANIEL C. MAGUIRE, *THE MORAL CORE OF JUDAISM AND CHRISTIANITY: RECLAIMING THE REVOLUTION* 131 (1993) (noting that Western conception of justice emphasizes impartiality).

32. See *id.* (admitting that biblical justice is biased and suggesting that all systems of justice, regardless of claims to the contrary, are biased).

33. See DOUGLAS STURM, *COMMUNITY AND ALIENATION: ESSAYS ON PROCESS THOUGHT AND PUBLIC LIFE* 96, 108 (1988) (expounding on meaning of justice).

34. *Id.* at 96. See David Hollenbach, *Modern Catholic Teachings Concerning Justice* (explaining meaning of “what is due”), in *THE FAITH THAT DOES JUSTICE* 207, 207–08 (John C. Haughey, ed., 1977).

The Catholic position on social justice,³⁵ which is rooted in Augustinian and Thomistic thought, similarly, is “relational and mutual.”³⁶

Though justice demands respect for human rights as the imperious claims of individual dignity and worth, these rights are always “relative.” More precisely, they can[not] . . . be . . . understood apart from the web of social interdependence which entails mutual obligation and duty.³⁷

Catholic justice is based on the conviction that one cannot specify the meaning of *suum cuique* without first examining the social patterns of mutuality and the structures of interdependence which bind human beings together in community. Individual rights and liberties are not discounted through this emphasis on community; instead, the rights and liberties are viewed from an alternate perspective of community. Thus, it is through this understanding of justice that lawyers may come to realize the proper relationship between the rights of the individual and the active practice of justice.

III. DOING JUSTICE

*[I]f anything is special about Catholic law schools, it should be that they view the advancement of the reign of God as their principal business—as the ultimate rationale for all that they do.*³⁸

In advancing this goal, Catholic law schools can nurture and influence students in their commitment to justice by preparing future lawyers to have a Christian attitude of service, both in the community and in the practice of law. While many students come to law school with a sensitivity to the needs of the poor and are willing to take time to engage in service projects, many have never been introduced to the idea of social commitment. An important dimension of a law school should be introducing and supporting clinical

35. This position was formulated during the 1971 Synod of Bishops of the Roman Catholic Church. See David Hollenbach, *Modern Catholic Teachings Concerning Justice* (discussing Synod's philosophy in context of social justice), in *THE FAITH THAT DOES JUSTICE* 207, 209 (John C. Haughey, ed., 1977).

36. David Hollenbach, *Modern Catholic Teachings Concerning Justice*, in *THE FAITH THAT DOES JUSTICE* 207, 210 (1977).

37. *Id.* at 210.

38. Barbara Bader Aldave, *The Reality of a Catholic Law School*, 78 *MARQUETTE L. REV.* 291, 295 (1995).

programs that are designed to make the law more responsive to the needs of the poor.³⁹ Working with battered women in shelters, building homes for the poor, volunteering to work for legal aid groups or mentoring high school students are all ways to provide law students with a hands-on introduction to the biblical perspective of justice. Involvement with these activities allows students to incorporate a community version of biblical justice into their lives.

The communal aspect of justice also extends into law practice through the lawyer's interaction with clients and opponents. Although "[a] commitment to rights is the hallmark of an adversary system of justice[,]"⁴⁰ lawyers need to consider their commitments "in a web of other relationships."⁴¹ With the client's rights viewed as a component of justice, rights are balanced with a concern for preserving relationships and minimizing harm.⁴² As one theorist suggests,

[l]awyers in general see justice as mostly a matter of *procedures*, of due process, of impartial rules impersonally applied [T]hey do not concern themselves with the consequences of their actions or whether the result is objectively "true" or "fair." . . .

The Christian lawyer . . . knows that justice entails a concern for *both* procedures and outcomes.⁴³

Lawyers should be taught concern, not only for their own clients, but also for moral outcomes for everyone involved in a particular case. Moral outcomes are what true justice is all about.

If we focus on biblical justice as the goal of Catholic legal education, we can realize that justice is not about giving each person his or her due, but rather the restoration of right relationships. This restoration of right relationships means the transformation of legal or violent domination of individual groups over another. Such restoration results from relationships which are honest, forgiving, compassionate and inclusive. The basic premise in such relationships is the respect and dignity of all—not as we think they should be, or how they fit into our plans—but as they are.

39. *See id.* at 294 (stressing importance of clinical programs in legal education for advancement of justice).

40. JOSEPH G. ALLEGRETTI, *THE LAWYER'S CALLING: CHRISTIAN FAITH AND LEGAL PRACTICE* 102 (1996).

41. *Id.*

42. *Id.* at 107.

43. *Id.* at 105.

During this time when the legal profession is under attack for the unethical practices of its members, lawyers, law professors and law schools alike are called to become responsible to our system of justice. Catholic law schools can make an important contribution by embracing Jesus's mission of extending the Kingdom of God by doing justice. This goal, however, requires more than law schools teaching, and lawyers complying with, ethical norms. The real challenge is changing the law profession into a profession that deserves admiration for its service to the community. The role of the Catholic law school, therefore, is to link the profession of justice with the practice of justice.