

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

Faculty Scholarship

2005

Religious Lawyering's Second Wave

Russell G. Pearce

Fordham University School of Law, rpearce@law.fordham.edu

Follow this and additional works at: https://ir.lawnet.fordham.edu/faculty_scholarship



Part of the [Law and Society Commons](#), [Legal Ethics and Professional Responsibility Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

Russell G. Pearce, *Religious Lawyering's Second Wave*, 21 J. L. & Religion 269 (2005-2006)

Available at: https://ir.lawnet.fordham.edu/faculty_scholarship/368

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

RELIGIOUS LAWYERING'S SECOND WAVE*

Russell G. Pearce[†] and Amelia J. Uelmen[‡]

The recent three-hour program on “Professional Responsibility and the Religious Traditions” at the annual meeting of the American Association of Law Schools (“AALS”), sponsored by the Section on Professional Responsibility and co-sponsored by the Section on Law and Religion,¹ represents a milestone in the history of the religious lawyering movement and offers a valuable opportunity to reflect on that history. In 1998, only eight years ago, one of us defined the religious lawyering movement as “an emerging force” in legal ethics.² In that short time, the movement has expanded dramatically and has received greater attention within the academy and the bar. It has developed the first institutional vehicles for disseminating and promoting conversations about religious lawyering, both among lawyers of the same faith and among lawyers of different faith traditions. Now the religious lawyering movement is increasingly confronting more complex and more difficult religious, legal and ethical issues; and is extending the religious lawyering conversation internationally.

As the religious lawyering movement enters what we term its “second wave” of development, this essay begins with a look back to its “first wave” of path-breaking scholarship and its gradual shift toward more institutionalized structures and programs. It argues that the predominant characteristic of first-wave religious lawyering scholarship was to claim a space within the professional conversation for lawyers to

* We adopt the phrase “second wave” from our friend and teacher Howard Lesnick. See Howard Lesnick, *Riding the Second Wave of the So-Called Religious Lawyering Movement*, 75 St. John's L. Rev. 283, 284 (2001) (characterizing “second wave” questions as “what is it that God is asking of you in your practice” and “what does it mean to be called out by the church?”).

† Russell Pearce, Edward & Marilyn Bellet Professor of Legal Ethics, Morality and Religion, Fordham University School of Law, New York, New York. Panelist, *Professional Responsibility and the Religious Traditions* (Association of American Law Schools Annual Meeting, Washington, D.C., Jan. 4, 2006). This article is based in part on the author's presentation.

‡ Amelia Uelmen, Director, Institute on Religion, Law & Lawyer's Work, Fordham University School of Law, New York, New York.

1. Assn. of Am. L. Schools, *Association of American Law Schools Annual Meeting, Wednesday, January 4, 2006 Program, Section on Professional Responsibility*, <http://www.aals.org/am2006/program/wednesday.html> (accessed June 11, 2006).

2. Russell G. Pearce, *Foreword: The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 Fordham L. Rev. 1075 (1998).

bring religious values to bear on their work. The essay then predicts that in the second wave, religious lawyering conversations and scholarship will increasingly move beyond the question of *whether* lawyers should bring religious values to bear on their work, toward the difficult issues of *how* this should be done. It concludes with a glance toward the ways in which international horizons might bring new and refreshing challenges to the religious lawyering movement.

I. MOVING TOWARD INSTITUTIONAL IMPACT

Before religious lawyering could be characterized as “a movement,” commentators paid occasional attention to the intersection between religion and lawyer’s work, and some lawyers organized groups around religious identity. Catholic Lawyers Guilds, Jewish Lawyers Guilds, and similar groups offered community to co-religionists and shared religious observance.³ With the prominent exception of the Christian Legal Society, founded amidst controversy in the 1960s, these groups of lawyers did not focus explicitly on the role of religious obligation in their legal work.⁴ Some well-known authors, such as Bishop James A. Pike⁵ and the theologian William Stringfellow,⁶ wrote on the topic, as did a few authors in a 1962 AALS book of essays on the legal profession.⁷ But none of these efforts coalesced into a movement “consist[ing] of texts [and institutions] responding to each other and progressively developing the complexity of the problems addressed and solutions proposed.”⁸

3. Russell G. Pearce & Amelia J. Uelmen, *Religious Lawyering in a Liberal Democracy: A Challenge and an Invitation*, 55 Case W. Res. L. Rev. 127, 138 (2004).

4. *Id.*

5. James A. Pike, *Beyond the Law: The Religious and Ethical Meaning of the Lawyer’s Vocation* (Doubleday 1963).

6. See William Stringfellow, *The Christian Lawyer as a Churchman* 10 Vand. L. Rev. 939, 939 (1957) (“Worship is not isolated from the rest of the Christian life; it is the integration of the whole of the Christian life in history. Worship is not peripheral, but decisive in the relationships of Christian faith and secular law.”). See also Russell G. Pearce, *Learning from the Unpleasant Truths of Interfaith Conversation: William Stringfellow’s Lessons for the Jewish Lawyer*, 38 Cath. L. 255 (1998) (building on Stringfellow’s work to contrast the religious concept of vocation with professionalism); Andrew W. McThenia, Jr., *Introduction: How This Celebration Began, in Radical Christian and Exemplary Lawyer: Honoring William Stringfellow* 1, 5 (Andrew W. McThenia, Jr. ed., William B. Eerdmans Publ. 1995) (collecting essays honoring William Stringfellow by a number of lawyers influenced by his work). For a bibliography of the literature from a Christian perspective published by 1957, see *A Bibliography of Christian Faith and the Law*, 10 Vand. L. Rev. 967 (1957).

7. Assn. of Am. L. Schools, *Selected Readings on the Legal Profession* (West 1962). See also Pearce, *supra* n. 2, at 1075.

8. Pearce, *supra* n. 2, at 1075.

The genesis of the modern religious lawyer movement was the path-breaking scholarship of Thomas Shaffer, who in the late 1970s began addressing the questions of "being a Christian and a lawyer."⁹ His scholarship was soon followed by Joseph Allegretti's work in the 1990s which analyzed how to live out one's Christian vocation in the context of legal practice.¹⁰ While some Jewish authors began to address issues related to Judaism and legal ethics in the 1980s,¹¹ Sanford Levinson's 1993 *Identifying the Jewish Lawyer*,¹² with responses by Jerome Hornblass¹³ and Russell Pearce,¹⁴ were the first mainstream law review articles to focus on a Jewish response to Shaffer's general concerns and texts. When Thomas E. Baker and Timothy Floyd created the 1996 Faith and Law Symposium for the Texas Tech Law Review, they included Bahā'ī, Buddhist, Hindu, Muslim, and several other faith traditions, extending the religious lawyering conversation beyond Christian and Jewish traditions.¹⁵

Building on an interfaith series for judges and lawyers in New York that had begun in 1996, Fordham followed with the first two national interfaith conferences in 1997 and 1998. They resulted in publications of law review volumes on *The Relevance of Religion to a Lawyer's Work*¹⁶ and *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent*.¹⁷

9. *Id.* at 1076; Pearce & Uelmen, *supra* n. 3, at 129. See e.g. Thomas L. Shaffer, *On Being a Christian and a Lawyer: Law for the Innocent* (BYU Press 1981); Thomas L. Shaffer & Robert S. Redmount, *Lawyers, Law Students and People* (Shepard's 1977); Thomas W. Porter, Jr., *The Editorial Board of the Journal of Law and Religion Presents this Award to Thomas L. Shaffer*, 10 J. L. & Relig. 277 (1993-94) (symposium).

10. Pearce, *supra* n. 2, at 1076; Pearce & Uelmen, *supra* n. 3 at 130. See Joseph G. Allegretti, *Christ and the Code: The Dilemma of the Christian Attorney*, 34 Cath. L. 131 (1991). A few years later, Allegretti further fleshed out the argument in his book, Joseph G. Allegretti, *The Lawyer's Calling: Christian Faith and Legal Practice* (Paulist Press 1996) [hereinafter Allegretti, *Calling*].

11. Pearce, *supra* n. 2, at 1076.

12. Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 Cardozo L. Rev. 1577 (1993).

13. Jerome Hornblass, *The Jewish Lawyer*, 14 Cardozo L. Rev. 1639, 1647 (1993) (tracing images and examples of Jewish lawyers throughout history, and lamenting the failure of some who rose to prominence to draw on their Jewish legal heritage).

14. Russell G. Pearce, *Jewish Lawyering in a Multicultural Society: A Midrash on Levinson*, 14 Cardozo L. Rev. 1613 (1993).

15. Thomas E. Baker & Timothy W. Floyd, *A Symposium Précis*, 27 Tex. Tech L. Rev. 911, 911 (1996) (inviting close to fifty lawyers, judges and law professors to reflect on "how they have reconciled their professional life with their faith life.").

16. See Pearce, *supra* n. 2.

17. See John D. Feerick, Russell G. Pearce & Ismar Schorsch, *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent: Welcome and Introductory Remarks*, 26 Fordham Urb. L.J. 821, 823 (1999). See also Nadine Brozan, *At Legal Conclave, Clinton's Pastor Reflects on Morality*, N.Y. Times B7 (Dec. 8, 1998) (discussing issues presented at

In religious lawyering's first wave, scholarship and organizational attention tended to be path-breaking or sporadic. During the second wave, the tendency has been to create institutional structures and more consistent forums through which questions at the intersection of religion and legal practice might be addressed. During this time, two law schools opened institutes specifically dedicated to fostering ongoing religious lawyering scholarship and programs. The Fordham University School of Law Institute on Religion, Law & Lawyer's Work opened its doors in January 2001, with the goal of helping practicing lawyers and law students in their efforts to live integrated lives of faith in the context of the challenges of today's legal practice.¹⁸ Pepperdine University School of Law followed shortly thereafter, when its Institute on Law, Religion and Ethics opened in Fall 2003.¹⁹

Other law schools, especially those which are religiously affiliated, have begun to explore religious lawyering. Both the established religiously affiliated law schools and the new schools that have been created during the past ten years have devoted significant attention to religious lawyering in the context of more general institutional efforts to engage religious teaching or to mentor young lawyers. Some schools like Ave Maria, the University of St. Thomas, and Regent seek to include faith in all aspects of the curriculum,²⁰ while others, like

Fordham conference). See generally Pearce & Uelmen, *supra* n. 3 at 131-134.

18. Pearce & Uelmen, *supra* n. 3 at 137; Amelia J. Uelmen, *An Explicit Connection Between Faith and Justice in Catholic Legal Education: Why Rock the Boat?*, 81 U. Det. Mercy L. Rev. 921, 937-938 (2004); Patricia Lefevere, *Lawyers Seek "Spirituality for the Long Haul,"* Natl. Cath. Rptr. (Kansas City, Mo.) 4a (Oct. 28, 2005); Rose Kent, *What's Faith Got to Do With It?*, Fordham Law 10 (Summer 2001).

19. Pepperdine University, *Pepperdine University School of Law, The Institute of Law, Religion, and Ethics, The Past*, <http://law.pepperdine.edu/ilre/past.htm> (accessed Mar. 15, 2006). See also Pearce & Uelmen, *supra* n. 3, at 141 n. 55 (distinguishing religious lawyering programs from previously established inter-disciplinary programs in law and religion).

20. See e.g. Patricia Lefevere, *Catholicism and Teaching Law: Catholic Law Schools Grapple with Faith's Influence*, Natl. Cath. Rptr. (Kansas City, Mo.) 1a, 5a (Oct. 28, 2005) (special insert on colleges and universities) (quoting Thomas Mengler, Dean of the University of St. Thomas School of Law in Minneapolis: "We're integrating faith and reason throughout the curriculum"); *id.* (quoting Bernard Dobranski, Dean of Ave Maria School of Law: "You don't come to Ave Maria unless you want to see the whole range of how Catholic moral and intellectual tradition affects the law."); Barbara Bradley Hagerty, *Religious Schools Train Lawyers for Culture Wars, Web Extra Q&A: Exploring the Rise of Religious Universities*, <http://www.npr.org/templates/story/story.php?storyId=4632072> (May 6, 2005) (interviewing Naomi Schaefer Riley about a "missionary generation" that defines itself by religious more than political identity); *id.* at *At A Glance: Conservative Christian Law Schools* (with links to Regent University School of Law, Liberty University School of Law, and Ave Maria School of Law); Adam Liptak, *Giving the Law a Religious Perspective*, N.Y. Times A16 (Nov. 22, 2004), (new religiously affiliated law schools "share an opposition to what they see as the moral relativism of the standard law school education and the moral peril of much law practice."); Neil Hamilton & Lisa Montpetit Brabbit, *Fostering Professionalism Through Mentoring* 35-36 & n. 160b, U. St.

Villanova and Loyola Los Angeles have offered lecture series and conferences.²¹ Even law schools that are not religiously affiliated have sponsored endowed lectures on religious lawyering.²²

The second wave has also seen the development of bar activities extending beyond the initial New York City model.²³ In Atlanta, the *Faithful Lawyers*, led by Tom Cox, holds bi-monthly breakfasts, but also more formal periodic talks and conferences.²⁴ For the past two years the Ohio State Bar Association has co-sponsored with a group of lawyers and clergy in Columbus, Ohio, a full-day Continuing Legal Education Program on religious lawyering.²⁵ Fordham has added annual same-faith programs for Catholic and Jewish lawyers to its interfaith series and has coordinated these efforts with the Catholic Lawyers Guild and the American Association of Jewish Lawyers & Jurists respectively.²⁶ Religious lawyering continues to be a staple for national and local Christian Legal Society gatherings.²⁷

Thomas Legal Studies Research Paper No. 06-17, (available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=899405) (accessed June 11, 2006) (identifying faith as a topic in mentoring program).

21. See e.g. Loyola Law School, *Loyola Law School Alumni Events, Religious Lawyering: A Challenge and A Responsibility*, <http://alumni.lls.edu/events/060215-ReligiousLawyering.htm> (accessed May 22, 2006); Villanova University School of Law, *Villanova Journal of Catholic Social Thought: Symposium: Catholic Social Thought and the Law*, <http://heritage.villanova.edu/LAW/CST&LAW.htm> (accessed May 22, 2006); Mark A. Sargent, *What's Law Got to Do With It? Introduction to the Symposium on Catholic Social Thought and the Law*, 1 J. Cath. Soc. Thought 201 (2004). See generally Villanova University, J. Cath. Soc. Thought, <http://www3.villanova.edu/mission/journal> (last modified Jan. 19, 2006).

22. University of Houston Law Center, *Yale L. Rosenberg Memorial Lecture: The Prosecutor's Duty to "Do Justice": A Jewish Law Perspective*, <http://www.law.uh.edu/alumni/ebriefcase/04january/Rosenberg.pdf> (accessed May 22, 2006); Case Western Reserve University, *Case School of Law, William A. Brahms Lecture on Law & Religion*, "Religious Lawyering in a Liberal Democracy: A Challenge and an Invitation," http://law.case.edu/lectures/index.asp?lec_id=46 (accessed May 22, 2006).

23. See Pearce & Uelmen, *supra* n. 3 at 134; Marie Failing et al., *Panel Discussion: Models of Successful "Religion and Lawyering" Programs*, 26 *Fordham Urb. L.J.* 917, 935-940 (1999) (Robert Reber's remarks describing topics discussed and reactions to the program developed through the collaboration of Fordham, Auburn Theological Seminary and the Finkelstein Institute at Jewish Theological Seminary that brings together Catholic, Protestant, Jewish and Muslim lawyers for a religious lawyering speaker series, which meets three-times per year).

24. Pearce & Uelmen, *supra* n. 3, at 134.

25. Forum for Faith in the Workplace, *Faith and the Law Program*, <http://www.faithintheworkplace.org/9569.cfm> (collaborative effort of the Forum, the Ohio State Bar Association, The Methodist Theological School in Ohio, the Trinity Lutheran Seminary and the Columbus Jewish Federation to offer each fall a seminar on the relationship between religion, personal faith and the practice of law). See e.g. *Faith and the Law* (Nov. 2004); *Faith and the Law: The Ten Commandments as a Conversation Starter for Interfaith Dialogue on Religion and the Law* (Nov. 2005) (materials on file with the authors).

26. Uelmen, *supra* n. 18, at 937 (describing Fordham's two "tracks" for programming, inter-faith and faith-specific).

27. See e.g. Christian Legal Society 2005 National Conference and Workshop Schedule,

When lawyers seek to organize around religious lawyering, they frequently struggle with the question of how many dimensions of the conversation to take in at the same time. Specifically, the question arises whether their conversations will focus primarily among lawyers of the same faith tradition, or whether they will include a multi-faith component. An advantage of conversations among lawyers of the same faith is that they may facilitate deeper probing of common texts and traditions and more complex exploration of how these texts and traditions might inform approaches to the practice of law. The challenge, however, is how to find common ground with other faith traditions and “translate” these values for work in a pluralistic society. Multi-faith efforts offer an opportunity to both find common ground and to discuss how to translate the values of one’s faith tradition in order to engage conversation across the membership of the bar. Conversations which successfully bring together lawyers of different faith traditions may also help to alleviate the concern that it is inherently divisive to bring religious values into one’s professional life. The challenge of multi-faith efforts is that many in our society are at the very beginning of developing tools for an approach to interfaith dialogue that are both open and genuinely respectful of the deep differences among religious traditions.

II. FROM “WHETHER OR NOT” TO “HOW”

This first wave of religious lawyering conversation and scholarship might be best characterized as addressing the question of whether or not lawyers should bring religious values to bear on their professional work. From a religious perspective, it addressed the extent to which lawyers’ religious obligations extended to their conduct as lawyers. From a professional perspective, it explored the extent to which such obligations might clash with other legal and ethical norms.

Some commentators responded cautiously, identifying both religious and professional considerations that would limit or exclude the influence of religion in the professional domain. One of the most prominent arguments against integrating religious values into the professional sphere was, in the words of Sanford Levinson, that professionalism requires lawyers to “bleach out” all personal aspects of

<http://www.clsnet.org/mmPages/events/natConfs/2005/Workshops.php> (workshops include themes such as *What Would Jesus Say: Conversations with Jesus and His Clients*; *Christian Lawyering With Excellence: Use and Presentation of Evidence at Trial*; *Family Law and the Christian Lawyer*; *Estate Planning and Drafting for the Faithful*).

their identity, including religion.²⁸

A number of commentators expressly rejected the “bleaching out” analysis as a normative matter. Some, like Tom Shaffer, emphasized the conflict between faith and professional values.²⁹ Others, like ourselves, Tim Floyd and Joseph Allegritti acknowledged the conflict but sought to minimize it by emphasizing religious values that generally coincided with professional values, such as obligations to promote justice and help the poor, and by explaining that legal ethics afforded lawyers discretion to bring their religion into their work.³⁰

Another set of commentators rejected Levinson’s “bleaching out” analysis as a descriptive matter. Some, like Jack Sammons, asserted that religious lawyering and professionalism were mutually reinforcing.³¹ Others, as Bruce Green writes in this symposium, argue that many conceptions of religious lawyering fit within the discretion afforded lawyers under professionalism.³²

These first-wave concerns and arguments continue to occupy a significant place in the religious lawyering discourse, especially where commentators are entering the conversation or where, as for some in this symposium, they are providing an introduction to the field. But the second wave of scholarship tends to assume that there should be space for lawyers to bring their religious values into their professional work, and thus focuses on more concrete and complex explorations of *how* to work as a religious lawyer.

28. Levinson, *supra* n. 12, at 1578 (professionalism posits that the lawyer’s role requires lawyers to “bleach[] out” the “merely contingent aspects of the self, including the residue of particularistic socialization that we refer to as our ‘conscience.’”). See also Richard A. Matasar, *The Pain of Moral Lawyering*, 75 Iowa L. Rev. 975, 981 (1990) (concluding that a lawyer faced with the conflict between ignoring the client’s needs or the lawyer’s own need to salve his or her conscience should concede to the wisdom of the profession: “Do what the profession demands. That is the price of being a lawyer and that is the end of the story.”).

29. Thomas L. Shaffer, *Faith Tends to Subvert Legal Order*, 66 Fordham L. Rev. 1089 (1998).

30. See e.g. Timothy W. Floyd, *The Practice of Law as a Vocation or Calling*, 66 Fordham L. Rev. 1405 (1998); Allegritti, *Calling*, *supra* n. 10, at 24-36; Pearce & Uelmen, *supra* n. 3, at 151. The 2004 Inaugural Conference of Pepperdine’s Institute on Law, Religion & Ethics was dedicated to this topic. See Robert F. Cochran, Jr., *Introduction: Can the Ordinary Practice of Law be a Religious Calling?*, 32 Pepp. L. Rev. 373 (2005); Lee Hardy, *A Larger Calling Still*, 32 Pepp. L. Rev. 383 (2005); Joseph Allegritti, *Clients, Courts and Calling: Rethinking the Practice of Law*, 32 Pepp. L. Rev. 395 (2005); Samuel J. Levine, *Reflections on the Practice of Law as a Religious Calling, From a Perspective of Jewish Law and Ethics*, 32 Pepp. L. Rev. 411 (2005).

31. See e.g. Phylis Bamberger et al., *Panel Discussion: Does Professionalism Leave Room for Religious Commitment?*, 26 Fordham Urb. L.J. 875, 880-881 (comments of Professor Jack Sammons).

32. Bruce A. Green, *The Religious Lawyering Critique*, 21 J. L. & Relig. 283-297 (2005-06).

For example, when considering the place of religious conviction and conversation in the lawyer-client relationship, first-wave commentators emphasized how much room codes of professional responsibility left for discussion of “non-legal” considerations. For example, Model Rule 2.1 provides that “[i]n 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.”³³ This text, however, does not answer difficult questions. For example, many lawyers find it difficult to discuss moral issues of any kind with their clients. This problem is even more complex when references to religion may be disrespectful or unfair to a client, either because the client is in a particularly vulnerable circumstance, or because of marked differences in the religious beliefs of the lawyer and the client. Second-wave scholarship increasingly probes the hard questions at the intersection of the tension between a lawyer’s religious duty to follow one’s conscience, and professional duty to serve the public, and especially to serve clients in a way that respects their integrity, autonomy, and perhaps distinct religious identity.³⁴

At some points, this second wave of scholarship intersects with the broader discourse on the proper place of religion in the public square. Is religious lawyering dangerous for democracy? Does it in effect pose a risk to people of minority religions and people who do not identify with a particular faith tradition?³⁵ Second-wave scholarship takes seriously the claim that religion has caused and continues to cause division, and that religion has fueled and continues to fuel a painful culture war.

Indeed, one of the most significant obstacles impeding the religious lawyering movement is the widespread belief that sharing one’s identity and values, whether religious or not, inevitably leads to sharpening divisions in our profession and in our society.³⁶ Recognizing the cultural

33. Model R. Prof. Conduct 2.1 (ABA 2005). See e.g. Amelia J. Uelmen, *Can a Religious Person Be a Big Firm Litigator?*, 26 Fordham Urb. L.J. 1069, 1080-1083 (1999) (discussing how application of Model Rule 2.1 leaves room for lawyers to bring religious values to bear in advising clients).

34. We offer an introduction to some of these issues at Pearce & Uelmen, *supra* n. 3 at 153-156. See also Robert K. Vischer, *Heretics in the Temple of Law: The Promise and Peril of the Religious Lawyering Movement*, 19 J. L. & Relig. 427 (2003-04) (exploring how the communal and religious dimensions of the religious lawyering movement are in tension with the liberal project).

35. We begin to wrestle with some of these questions at Pearce & Uelmen, *supra* n. 3 at 156-159.

36. See Levinson, *supra* n. 12 at 1578-1579 (describing the “triumph” of the “standard version of the professional project” as “the creation, by virtue of professional education, of almost purely fungible members of the respective professional community. Such apparent aspects of the

and religious differences that permeate work environments and our culture as a whole, how can one affirm one's own identity and the truth about one's own religion, and still be in open and sincere conversation with others who hold a different set of beliefs? In other words, the second wave of scholarship holds the promise of plenty of material for profound reflection and discussion.

III. RELIGIOUS LAWYERING IN A GLOBALIZING WORLD

If lawyers discover how to engage in respectful dialogue across religious differences between themselves and with their clients, they might serve as a model for other areas of society as well. One of the great challenges facing society today is how to replace ideologies that seek to avoid discussion of difference by either excluding it from the public square or employing rhetoric that demonizes those whose politics or identity are different.

We believe that the second wave of religious lawyering will include the process of building conversations across the boundaries of culture in a variety of ways. For example, Fordham's most recent project was to co-sponsor an international conference, *Relationships in Law: Is There a Place for Fraternity?* The initial seed for the conference emerged from the spiritual and intellectual approach of the Focolare Movement, one of the relatively new movements within the Catholic Church, which is characterized by a spirituality of communion and known throughout the world for its work in ecumenical and inter-faith dialogue.³⁷

The idea for a broader discussion emerged as a group of lawyers, judges and scholars from different countries began to reflect on their own efforts to build relationships of love and mutual respect in the context of their work in various areas of legal practice and administration.³⁸ They found that their efforts could in some sense be

self as one's race, gender, religion, or ethnic background would become irrelevant to defining one's capacities as a lawyer." See also Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 *Fordham L. Rev.* 2081 (2005) (arguing that the profession would be better served by openly acknowledged and managed racial identity).

37. More information about the Focolare Movement's origins and diffusion can also be found on the international website: www.focolare.org. See also Amelia J. Uelmen, *Chiara Lubich: A Life for Unity*, 8 *Logos* 52 (Winter 2005) (discussing work in inter-religious dialogue).

38. Focolare Movement, "*Relationships in Law: Is There a Place for Fraternity?*", <http://www.focolare.org/en/sif/2005/en20051112a.html> (accessed Nov. 12, 2005) (conference press release); Focolare Movement, "*Relationships in Law: Is There a Place for Fraternity?*", *Report on the Conference*, <http://www.focolare.org/eN/sif/2005/en20051129b.html> (accessed Nov. 21, 2005). See generally Amy Uelmen, *Relationships in Law*, *Living City* 14 (Mar. 2006) (report on the conference in the Focolare's North American monthly magazine). Portions of this

translated into the triptych of the French Revolution, “liberty, equality, and fraternity.” While reflections on liberty and equality could be found at the heart of Western legal and political theory, often in tension with each other, fraternity seemed to have dropped out of the picture.³⁹ Might building relationships of “fraternity”—understood as love and mutual respect—hold the key to resolving the most difficult problems of the most varied legal systems?⁴⁰

The international event, held in Castelgandolfo, Italy, in November 2005, drew seven hundred people from thirty-five countries and a variety of religious traditions. Translating the various reflections into ten languages was just one aspect of the effort to communicate among often vastly different ways of thinking about law and legal systems. And a three day conference could not provide nearly enough time to delve into the richness of the mechanisms for dispute resolution in Asia and Africa, or to appreciate the drama of countries still working to develop functioning legal systems and to protect basic human rights.

To gather lawyers from vastly different systems into a common conversation was no small feat. Yet as they reached across their differences, not only during the presentations but also during the less

discussion were previously published in this article and are included with permission.

39. See Chiara Lubich, *Liberty, Equality... What Happened to Fraternity?*, ¶ 9, <http://www.focolare.org.uk/ArcLiberty.htm> (accessed May 23, 2006).

Liberty and equality have become juridical principles and are applied every day as real and true political categories.

But if only liberty is emphasised [sic], as we know well, it can become the privilege of the strongest. If only equality then, as history confirms, it can result in a mass collectivism. In reality, many peoples still do not benefit from the true meaning of liberty and equality

How can these be acquired and brought to fruition? How can the history of our countries and all humankind continue the journey towards its true destiny? We believe that the key lies in universal fraternity, in giving this its proper place among fundamental political categories.

40. Interestingly, some aspects of the work of John Rawls might help to form a foundation for fraternity as a juridical category. In *A Theory of Justice* he aimed to set out an overarching theory of justice which hinges not on utilitarian principles, but on deeper notions of justice as fairness. For example, in contrast to the classical utilitarian theory of “the greatest happiness for the greatest number” he proposes a “difference principle,” in which, as he puts it, “the social order is not to establish and secure the more attractive prospects of those better off unless doing so is to the advantage of those less fortunate.” John Rawls, *A Theory of Justice* 65 (rev. ed., Harv. U. Press 1999). Acknowledging fraternity’s “lesser place” in democratic theory thus far, he suggests that such might be because “fraternity is sometimes thought to involve ties of sentiment and feeling which it is unrealistic to expect between members of the wider society.” *Id.* at 90. But he sees the “difference principle” as one way to move beyond mere sentiment so as to give fraternity a more universal and robust place in juridical analysis and theory. As he explains: “The family, in its ideal conception and often in practice, is one place where the principle of maximizing the sum of advantages is rejected. Members of a family commonly do not wish to gain unless they can do so in ways that further the interests of the rest.” *Id.*

formal moments of exchange, it was evident that conference itself became a small laboratory in which participants could begin to build relationships of fraternity.

Many of the presenters discussed how the rigid borders of professional roles and between disciplines may be obstacles to building the kinds of relationships that can get to the roots of legal problems and help to resolve them.

For Elena Massucco, a magistrate in the criminal court of Turin, Italy, the idea of fraternity helped her to move beyond the simple administration of justice and the demands of professionalism. "Understanding that the man behind bars was my brother and suffering with him" led her to make an extra effort to work with the prisoner's family toward a solution in which they were able to shelter him until the time when he could be admitted to a drug treatment program.

Similarly, Irish attorney Mary O'Malley recounted how her work for a mentally handicapped client on an eviction case brought her beyond legal technicalities into a thicket of social, emotional and family-related problems. Collaborating with the county council, social services, doctors and a local priest, she was able to negotiate a housing arrangement in which her client found support and encouragement from her neighbors. With years of encouragement, her client was eventually able to find a job, raise her children well, and even reciprocate the love she has received. "I'll never forget the day," O'Malley recounted, "when she showed up in the office to take me out to McDonald's for my birthday!"⁴¹

Presentations also explored the potential for systematic change in legal structures. In the family law arena, ample time was given to exploring mechanisms for alternative dispute resolution. California attorney Martha Uelmen described her efforts to focus her practice on mediation rather than litigation. The approach has enabled her to be a peacemaker, even in the midst of painful divorce cases. "I work hard to remain neutral," she reflected, "to respect each party, to help them recognize that they are suffering and that sometimes the actions they take are because of this."⁴²

Other presentations illustrated how similar techniques have led to the successful resolution of disputes between Peruvian farmers and mining interests, and between the Italian citizens and their town government when essential social services and repairs had been

41. Uelmen, *supra* n. 38, at 15.

42. *Id.* at 15-16.

neglected. As Nino Gentile from Sicily observed, fraternity can become a catalyst to help “accelerate” democratic participation, and to improve the relationship between public officials and citizens.⁴³

In the criminal law discussions, restorative justice approaches such as specialized drug courts⁴⁴ and programs integrating legal and social services were presented as promising signs of hope. The executive director of the Georgia Justice Project, Doug Ammar, identified how difficult it is for former prisoners to deal with the “snowball effect” of having a criminal record. Chances of successful reintegration into the community increase dramatically when the provision of legal services is combined with “wraparound” social services such as individual and group counseling, high school degree and literacy classes, monthly support dinners, and employment with the project’s landscaping company.⁴⁵ Another moving example of restorative justice was Gerhard Resch’s account of how difficult it was to find his bearings after spending twenty-six years in prison. When he was welcomed into the Emmaus Community in Austria, he was “able to learn, step by step, how to live in freedom. I had a room, a job, a salary, and most of all, a community.”⁴⁶

Based on the experience of this conference and the ongoing conversations which have emerged from efforts such as these, we envision that the second wave of religious lawyering will include multiple efforts to “translate.” It will search for ways to express deep and transformative commitments to justice across a variety of potential divides: between people of different religions, among people whose convictions are not grounded in a particular faith, and between people of different cultures and legal systems.

If lawyers were to develop methods for engaging in constructive conversation that acknowledges differences while seeking to build on those values that are shared and respect those that are not, all in the

43. *Id.* at 16.

44. See Gerald F. Uelmen, *Treating Drug Offenders: Measuring Success One Life at a Time*, Living City 18 (Mar. 2006) (“Acceptance of ‘defendants’ as brothers and sisters who need our love and encouragement, rather than ‘refuse’ to be dumped into our prisons with no hope of rehabilitation or redemption, can truly change lives.”); Gerald F. Uelmen, *Focus on the Individual: An Interview with Superior Court Judge David Shaheed*, Living City 19 (Apr. 2006) (“The love of neighbor is a part of all the Scriptures and the Holy Qur’an. But once you see it demonstrated, once you are involved in it, and are the recipient of it, it makes it very easy to take it and apply it to other aspects of your life.”).

45. Uelmen, *supra* n. 38, at 16-17. See also Amy Uelmen, *The Georgia Justice Project*, Living City 6 (Aug./Sept. 2004) (available at http://www.livingcitymagazine.com/livingcity/PDFs/04_08.pdf); Georgia Justice Project, *Georgia Justice Project*, <http://www.gjp.org> (accessed May 22, 2006).

46. Uelmen, *supra* n. 38, at 17.

service of a legal system that provides equal justice for all, we will have achieved a goal that will benefit society generally both through our work as lawyers and by offering a model that others can emulate.

CONCLUSION

This American Association of Law Schools symposium provides an important milestone for the religious lawyering movement and an opportunity to take stock of the movement as it enters its second wave. The past decade has brought tremendous strides forward. The future promises continued growth in the academic discourse and in institutional development in both the academy and the bar. It also offers a more ambitious goal—that that lawyers will serve as leaders in healing divisions in society both in the United States and abroad.

