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## Legal Education and Social Responsibility

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## ARTICLES

### LEGAL EDUCATION AND SOCIAL RESPONSIBILITY

SANDRA DAY O'CONNOR\*

I am very pleased to be present here today, October 24, 1984, for the dedication of Fordham Law School's expanded facility. I think I should acknowledge and thank in part for my invitation Fordham's Rector in 1918. That year the faculty faced the issue of women's rights. The minutes of a May 1918 faculty meeting note that shortly before the close of the meeting, the Rector "asked for a discussion of the advisability of matriculating women in the Law School. After listening to the opinion of the various faculty members he announced that he would take the 'matter under advisement' and notify the faculty of his decision."<sup>1</sup> A postscript to the minutes adds: "In a letter from the Rev. Rector . . . under the date of July 6, 1918, he writes, 'it has been decided that, owing to objections raised against it, women will not be admitted to classes of the Law School this Fall.'"<sup>2</sup> The minutes, however, contain a terse unexplained amendment: "In September, 1918 the Rev. Rector authorized the matriculation of women and ordered the insertion of this fact to be put in the newspapers."<sup>3</sup>

I like to think that your former Rector not only helped advance the cause of women in the law, but that he would have been pleased that a woman was invited to give remarks today.

Your new law school building is most impressive and attractive. Before moving to its present site in 1961, the Law School had a rather nomadic existence in quarters that were far from luxurious. The new building will provide a comfortable and stimulating environment for legal education and scholarship. Fordham Law School has come a long way from the building at 302 Broadway, which Dean Mulligan once described as better suited for the housing of opium dens or massage parlors than educational ventures.

It is traditional at the dedication of a new law school building for the speaker to say something to the effect that bricks and mortar do not a great law school make. The usual observation is that a great law school evolves from the interaction between a gifted faculty and a talented student body. This interaction teaches students how to think and act like

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\* Associate Justice, United States Supreme Court; A.B. 1950, L.L.B. 1952, Stanford University. This Article was delivered for the dedication of the new wing of Fordham University School of Law, October 24, 1984. The text remains substantially as it was delivered.

1. Fordham University School of Law, 75 Years 1905-1980, at 7 (1980).
2. *Id.*
3. *Id.* at 8.

lawyers and also provides an understanding of the legal process and substantive law.

Certainly, all of that is true. But today I want to make a different observation. Just as bricks and mortar do not a great law school make, so too the traditional teaching of only substantive and procedural courses do not a good lawyer make. This is because such instruction does not ensure that a lawyer will have an awareness of the social and moral responsibilities of the profession. These responsibilities transcend the purely legal and procedural aspects of any particular subject of legal study or practice.

To be sure, the first obligation of a law school is to teach students the substantive law and how to analyze and incorporate sufficient practical training to equip the graduate with the essential skills required for the practice of law.

But law schools must do even more than that. They need to instill a consciousness of the moral and social responsibilities to the lawyer's clients, to the courts in which the lawyer appears, to the attorneys and clients on the other side of an issue, and to others who are affected by the lawyer's conduct.

On the occasion of Fordham Law School's fiftieth anniversary, Father McGinley made the following statement:

Five decades of great teachers and great deans have inculcated in generations of students that to be a good lawyer a man must be more than [an expert technician]. That he must learn to observe keenly, think logically, and express himself articulately. That law is a social profession, a way of living and not just a livelihood. That a man lives ethically when he lives by a reasoned code of values which includes himself, his neighbor and his destiny in the God Who made them all.<sup>4</sup>

I agree with Father McGinley's comments, and I want to expand on his suggestion that one of the functions of a law school is to teach lawyers to be always mindful of the moral and social aspects of their powers and their position as officers of the court.

It is my belief that the dialogue appropriate to teaching ethics, morality and the law would far transcend a discussion limited to the code of professional responsibility. To a large extent, the code merely focuses on what a lawyer should not do as a practitioner. Such guidelines are no doubt necessary, but they do not address the broader aspects of what a good lawyer should do to live up to the ideals of the legal profession.

Traditional legal education often suggests that law and morality are separated by a wall similar to the one between church and state. Certainly, the reluctance of law schools to enter the field of moral debate is understandable. Even determining whether a particular legal problem implicates moral or ethical issues is often difficult. For example, understanding the tax code is itself a painful exercise in statutory interpreta-

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4. McGinley, *A Message from the President*, 24 Fordham L. Rev. ix, ix-x (1955).

tion. But that difficulty should not blind one to the fact that the statutory details rest on particular moral and ethical views. Not only are the moral implications of legal issues often obscure, but lawyers, legal scholars, and even judges cannot always presume to have answers to recognized moral and ethical problems. Not surprisingly, legal education often tends to rest on the comparatively solid ground of logical analysis of statutes and cases, and thus avoids what to many seems the quagmire of moral inquiry.

My purpose is not to advocate the teaching of any supposedly right answers to moral questions, but rather to encourage attention to the moral responsibilities of a lawyer. Too many lawyers are insensitive to their greater ethical and social responsibilities, not because such responsibilities do not exist or have not been long recognized, but because their neglect in legal education has nurtured inattention to them in subsequent practice. I like to think that if there were a consistent and diligent focus in the law schools generally on the lawyer's high moral and social responsibilities, then there would be more concern with such concepts by emerging practitioners.

Let me provide some practical examples of the moral role of the lawyer. For most of this country's history, it has been accepted that lawyers will devote a portion of their time to representing people who need legal assistance even though they cannot afford to pay for it. The gap between the need for legal assistance and the ability to pay for it seems to be widening. Various factors explain this development. As our society has become more regulated and more transient, we have become more litigious. Costs of legal services have escalated beyond the means of many people to afford them. Legal services offices and high volume, low cost clinics fill some of the demand for legal assistance. But my impression is that the gap should be narrowed further by lawyers volunteering to help where help is needed without regard to the lawyer's compensation. The American Bar Association is sponsoring various programs to assist in developing pro bono work. Some are calling for mandatory pro bono services. Implicit in all such activities is the concept that lawyers have moral and social responsibilities in such instances and that those responsibilities need to be discharged by the Bar, willingly, and some would say, even unwillingly.

Law schools can help to develop a sense of civic and professional responsibility that recognizes that lawyers must assure the availability of legal assistance. Classes in clinical practice, coupled with opportunities to provide supervised services to people who are unable to pay for them, can be enjoyable and interesting, indeed, at times, inspirational for students. Such a program can lead new lawyers to develop a habit of pro bono service.

The lawyer's responsibility to his paying clients is another example and a separate area of great concern. From 1977 to 1981, there was a seventy-two percent increase in instances of public discipline of lawyers

by state courts.<sup>5</sup> In the same period, there was a sixty-two percent increase in public discipline by federal courts.<sup>6</sup> These figures suggest a troubling increase in the substandard representation of clients, and the conduct of those disciplined often reflects a lack of moral or ethical judgment rather than a lack of legal skills. Law schools must respond to this problem by strengthening their emphasis on the lawyer's moral and ethical obligations. The golden opportunity to teach such concepts is in law school.

Certainly, we can agree that not all problems faced by lawyers raise merely legal issues requiring solutions arrived at by applying purely legal theory. As James Pike observed, "the fact is . . . that virtually every lawyer wants to feel that he is not only a good lawyer (in the sense of technical proficiency), but that he is a lawyer of impeccable integrity."<sup>7</sup> Although we must continue to train law students to "think like lawyers" by teaching legal theory and methods, we must not forget that questions of professional responsibility cannot be resolved with the same framework of analysis. After all, we as lawyers and judges hold in our possession the keys to justice under a rule of law. We hold those keys in trust for those seeking to obtain justice within our legal system. Lawyers who are sensitive to their role in society will surely view their responsibility to the public as transcending the purely technical skills of their profession.

The vision of the proper role of the lawyer was aptly described by Chief Justice of New Jersey Arthur Vanderbilt. Chief Justice Vanderbilt believed that a good lawyer has five functions that include being a wise counselor, a skilled advocate, a contributor to the improvement of the legal system, an unselfish and courageous leader of public opinion, and a professional willing to answer the call for public service.<sup>8</sup>

Fordham is a law school which has long been involved in trying to achieve with its programs precisely the kind of personal values and integrity that Chief Justice Vanderbilt advocated. This is not an institution whose curricula and programs require revamping to meet the challenge. But, like all individuals and institutions who strive to achieve high standards, it helps to be encouraged. It helps to be told you are on the right track. Fordham Law School has produced many fine lawyers and many fine judges. It stands high in the ranks of law schools trying to instill and encourage high personal and professional standards.

You have a magnificent new house within which to continue to improve the law as well as the lawyers. I wish you every success.

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5. Standing Comm. on Prof. Discipline & The Nat'l Center for Prof. Responsibility of the ABA, Statistical Report Re: Public Discipline of Lawyers by Disciplinary Agencies, 1977-81, at 32 chart IV (July 1982).

6. *Id.* at 33 chart IV.

7. J. Pike, *Beyond the Law: The Religious and Ethical Meaning of the Lawyer's Vocation* 91 (1963).

8. Vanderbilt, *The Five Functions of the Lawyer: Service to Clients and the Public*, 40 A.B.A. J. 31, 31-32 (1954).