



CONSCIENCE,

PEACEBUILDING,

AND FAITH-BASED

LAW SCHOOLS

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ILLUSTRATIONS BY
GÉRARD DUBOIS

My remarks tonight reflect a conversation Professor Rob Daines and I had with one of our Stanford colleagues years ago regarding our roles as law professors who also claim to be faculty of faith. According to our colleague, Rob and I were wasting our positions as professors of law.

Our colleague, who is a self-proclaimed agnostic, insisted that if we were true followers of Christ, we would drop everything, including our appointments as law professors, to do whatever we could to ensure that he would be converted and would not suffer an eternity in hell. Rob and I both responded (correctly, I think) that God calls each of us to fulfill particular roles in His plan and within His kingdom. Our lives are to serve as witnesses of God's glory, power, and love. But without God's omniscience, we cannot always know precisely how our efforts and our work advance His plan and His kingdom.

BY G. MARCUS COLE

Dean of Notre Dame Law School

Still, our colleague made me think: What makes me different as a law professor of faith from any other law professor? What exactly do my faith and the values that stem from it do for my students, my colleagues, my university, and the world?

Today I want to talk about conscience, peacebuilding, and faith-based law schools. I want to address the future and the role of faith-based law schools in shaping it.

I believe that we are at a critical inflection point in our society and in our world, and this moment calls for leadership. I also believe that faith-based law schools, in particular Notre Dame and BYU, must be the source of that leadership. Furthermore, I believe that the future of our country and our world depends upon our leadership, and

the future will look very different depending upon whether we step up to meet this challenge and responsibility.

I am going to do the following three things:

First, I want to remind us all of what is happening throughout our country in higher education, specifically in law schools, with respect to freedom of speech and academic freedom. Most of the developments are not good, and the elite institutions to which we all might once have looked for leadership have abandoned that role and have abdicated their authority. This is particularly and sadly true in the context of law schools, where engaging with opposing ideas is at the core of what we are supposed to be training students to do.

Second, I want to describe what is happening at faith-based law schools in general

and what we are doing at Notre Dame. We are witnessing and nurturing a type of revival among young people who are demanding more and better from law school communities. Students want meaningful law practices, not just lucrative ones. We are witnessing a resurgence of confidence from alumni and donors who had lost faith in the ability of higher educational institutions to meet the challenges of our society and its culture. And we are seeing a movement from others around the world who are seeking leadership to fill the void in higher education and, indeed, in the broader American culture.

Third and finally, I want to suggest some possibilities of what the future might hold if faith-based law schools step up to the challenges before us.



What is happening in higher education and legal education today?

We have all read the headlines and the horror stories.

We have all witnessed near-riots and actual riots break out on college campuses across the nation when speakers have been invited by student groups or educators. Some of these riots have resulted in both bodily injury and property damage. The sad truth is that they have become commonplace and too numerous to count.

These incidents have become so commonplace, in fact, that we have developed a name for them: “cancel culture.” Cancel culture has run amok on our college campuses, turning places that were once bastions of spirited and respectful debate and the exchange of opposing concepts in the marketplace of ideas into repressive gulags, where only groupthink and conformity are deemed acceptable. Cancel culture has turned even the most elite colleges and universities in the United States into little more than credential mills, where students hope to escape with a diploma if they are able to keep their thoughts to themselves.

What is perhaps most disturbing, I think, is that what was once dismissible as the rude and uncivil behavior of poorly raised children has spilled over into graduate and professional schools—and especially law schools. We have seen speakers at some of our nation’s most elite law schools shouted down before they could begin speaking or before their audiences had an opportunity to hear what they had to say. We have seen invitations withdrawn before events could take place, and we have seen disrespectful and even violent protests break out before a controversial word could be uttered.

We saw law students at one of the nation’s most prestigious law schools protest a law professor for representing convicted sex offender Harvey Weinstein. Although the professor was able to retain his faculty position, the university in question removed him from a residential staff appointment in an effort to placate the protesting students.

In 2019, at another elite law school, we saw the acting director of the US Department of Homeland Security, who was scheduled to give a keynote address on immigration law, shouted down by student protestors before he could even begin his speech. His speech had to be canceled.

And earlier in 2022, we saw student-edited law journals force the withdrawal of invited articles by professors whose conclusions they deemed to be unacceptable. To their credit,

*This address
was delivered at
BYU Law School's
Founders Day on
August 24, 2022.*



What do faith-based law schools contribute to our society and culture?

Well, I am happy to report that the robust exchange of opposing viewpoints has continued at Notre Dame Law School, and it is my sincere hope that this will always be the case. It could be that there is something fundamentally different about the students who choose Notre Dame for law school. I would like to think that there is something fundamentally different about Notre Dame Law School that causes our students to want to study law at Notre Dame.

It is not that maintaining this free dialogue was a foregone conclusion at Notre Dame. Upon my arrival at Notre Dame from Stanford in the fall of 2019, I quickly learned that we had two high-profile events scheduled. The first was a panel on “Bipartisanship in Washington,” with Senators Chris Coons of Delaware, Jeff Flake of Arizona, and Joe Donnelly of Indiana. I began receiving hate mail regarding this event protesting, “How could you provide a platform to the enemies of our president?” and “Since when has Notre Dame Law School become a campaign stump for the Democrats?”

Exactly two weeks later, I got even more hate mail on the eve of a speech to be given by the attorney general of the United States, William Barr. The hate mail and protests became so profuse that I decided to issue a statement articulating our policy on free speech. It read:

The attorney general of the United States will be speaking here at Notre Dame Law School this Friday, October 11, and there appears to be a need to clarify the policy regarding speakers at the Law School.

From time to time, speakers will be invited by the Law School, faculty, student groups, or organizations affiliated with the University of Notre Dame to speak at the Law School. Sometimes those speakers are government officials responsible for controversial policies. Sometimes they are people who are known to espouse controversial points of view. As long as they are here at Notre Dame Law School, they are free to say whatever is on their mind within the bounds of law.

many legal academics across the country and across the political and ideological spectrum decried this outrageous attack on academic freedom. Many of these academics voluntarily withdrew their articles from the law review in question in solidarity with the professors whose articles were deemed unacceptable.

We also saw the suspension of an academic program administrator for tweeting an unpopular opinion about the then-undetermined potential nominee for the seat of retiring US Supreme Court Justice Stephen Breyer. When students at the school learned of the tweet, they erupted in a firestorm of protest, resulting in a four-month suspension and investigation of the offending administrator. While the suspension was lifted and the administrator was cleared after classes ended, the message to students was clear: You have the power to silence those with whom you disagree, and you can suppress disagreeable ideas with force.

More recently, the dean of another top-10 law school asked his university to impose a major sanction on a senior, tenured law professor for expressing “intentional and incessant racist, sexist, xenophobic, and homophobic” views.

Just last month, US Supreme Court Justice Clarence Thomas announced that he will not be teaching students at George Washington University Law School after students at the school protested his longstanding engagement there.

To be clear, I am not defending any particular views, especially racist, sexist, and homophobic views or any other expressions of hate. As an African American man, how could I? But that is not what is at issue. What is at issue is that those with legitimate but unpopular thoughts or ideas are being targeted and silenced.

To me, what is most shocking about these incidents is that they are taking place in *law schools*, of all places. If there are any places where we ought to be training students to challenge opposing ideas with other, better ideas, it is in law schools. Students are supposed to be learning how to argue, not just on behalf of the causes and clients that they believe in but also on behalf of those that they do not. In fact, we all do this in our moot court programs by having students argue cases “on brief” and “off brief.” How else can students and lawyers learn the strengths and weaknesses on both sides of any issue?



**THE MESSAGE
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Freedom of speech matters. As Frederick Douglass once said, “To suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker.”

Just as speakers are free to speak, protesters are free to protest. They must do so in a place and manner that respects the rights of speakers to speak and listeners to listen and that is consistent with the educational mission of the Law School. Student groups and other organizations which hold contrary points of view have every right to schedule their own programs with their own speakers, and these speakers’ rights will be protected in just the same way.

Notre Dame Law School will neither endorse nor condemn invited speakers. An institution of higher education must be a place where controversial ideas and points of view are expressed, heard, and discussed.

Notre Dame Law School is just such a place.

I am happy to report that after that statement, we held the event. Attorney General Barr gave his speech without incident.

We have since had other controversial speakers, including four visits by justices of the Supreme Court of the United States. And while we have many on our campus who vehemently disagree with some of the speakers who appear, they nevertheless show them dignity and respect.

If you ask me why we are able to maintain some level of civility and discourse at Notre Dame Law School when it seems impossible on other campuses, I can only tell you what I believe. I don’t have scientific evidence that I am right, but I believe that we are able to do what others cannot because we are a faith-based institution with a community bound together by a core set of values.

TO STUDENTS
HAVE THE
SILENCE THOSE
DISAGREE.

Don't misunderstand me; we are not all Catholic. In fact, we are one of the most religiously diverse communities in higher education. Our students come from all faiths, and many from none at all. They come from all across the United States and from around the world. They come from rural and urban environments and from rich and poor communities and families. What they all have in common is their choice to study law in a place committed to the Catholic mission—*catholic* with a big and a small *c*. We have Orthodox Jews alongside Muslims and atheists mixed in with Catholics and other Christians of all kinds. They chose us and we chose them.

On the first day of school each fall, I give a welcome address to the incoming students. Each year, I tell them what it means to be a Notre Dame lawyer, what we at Notre Dame call “a different kind of lawyer.” I give them

examples of Notre Dame Law School graduates from the past and how they dedicated their lives to make a difference for others.

I then tell them what I think makes a Notre Dame lawyer “a different kind of lawyer.” I tell them that whatever we do, whether it is public interest law or corporate law, transactional work or trial work, for large organizations or for individuals, all Notre Dame lawyers have one thing in common: they are dedicated to serving others in a way that lets others experience the loving, creative power of God in their lives.

I also tell them that this education is not for them. This education is for those individuals and communities that they are going out into the world to serve. And accordingly, the people that they are going out into the world to serve do not care if they happen to be offended by something someone here—a classmate, an instructor, or an invited speaker—says. Their future clients have real problems. Discrimination. Racism. Job losses. Plant closings. Bankruptcies. They cannot care about whether something offends you.

Furthermore, because your future clients have real problems, you cannot wait until you are out in the world to confront what they must confront, including racist ideas, discrimination, crimes, and vulgarities of every type. There are no “trigger warnings” in law school. You must face the ugly things of this world because those whom you are called to serve will face them. And I tell students that ideas—including offensive and unpleasant ones—are what we deal with as lawyers. A law student who is afraid of ideas is like a medical student who is afraid of the sight of blood.

Furthermore, the hallmark of a Notre Dame lawyer is to treat others with dignity and respect, even if we disagree vehemently with or are offended by what they have to say. Our law students must remember that they are no longer undergraduates. They are not even in graduate school. They are in professional school, and it is here where they begin to shape their own professional reputation. I tell them that their classmates will remember them and will be an important and essential part of their professional networks long after law school. They will also remember how you treat them. If you are to be a Notre Dame lawyer, you are to treat your classmates with dignity and respect, even if you disagree with them. You are to treat them as if each one of them is made in the image and likeness of God. Because guess what? They are.

Ultimately, how we treat others is not about them; it is about us, who we are, and the purpose for our lives. If we claim to be disciples of Jesus Christ, we must treat others as Christ would want us to treat them. How do we know what that is? Jesus Himself told us in Matthew 25:35–36:

For I was hungry and you gave me food, I was thirsty and you gave me drink, [an immigrant] and you welcomed me, naked and you clothed me, ill and you cared for me, in prison and you visited me. [New American Bible (Revised Edition)]

Jesus commended such actions in verse 23: “Well done, my good and faithful servant. . . . Come, share your master’s joy.”

As I say to students at Notre Dame Law School, we are striving every day to be a Matthew 25 law school. That’s what it means to be a Notre Dame lawyer, “a different kind of lawyer.”

Could I have said all of this to students when I was on the faculty at Stanford Law School? I often wonder whether I could have. At Notre Dame, I know that I can. And it has an effect. It helps to provide a structured environment where students are free to be themselves without fear of mistreatment or ostracism. It builds cooperation across huge divides and creates strange bedfellows. Our Black Law Students Association, for example, formed a Black legal history reading group with the Notre Dame Law School Federalist Society. One student society composed of Catholic law students put on events with our LGBT Law Forum. Don’t get me wrong; yes, they disagree, but they don’t cancel each other. They treat each other as though they were created in the image and likeness of God.

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How can we fulfill our mission to shape a better future for our country and the world we are called to serve?

Well, that brings me to the point of my remarks, namely, the future and faith-based law schools. I think that what we have created at Notre Dame is special not because I am special or because our faculty or students are special but because at our faith-based institution, we can all be called upon to see what is special in each other. And we act like it.

If there is anything this world needs right now, it is more Notre Dames and BYUs. And I am not the only one who sees that. The fact that someone saw the need for the creation of Ave Maria School of Law and the University of St. Thomas School of Law—not one but two distinctively Catholic law schools—suggests that the founders of Ave Maria and St. Thomas saw something going on in our society. Ave Maria and St. Thomas are not the products of crazy entrepreneurial zeal run amok. Like Hillsdale College for undergraduate education, they are the result of a clear yet sobering look at what is happening to “the university” in our culture.



**“TO SUPPRESS
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The very idea of “the university” is collapsing all around us.

Two years ago, Yale philosophy professor Nicholas Wolterstorff published a monograph, *Religion in the University*, with a devastating critique of the ways in which faith has become illegitimate in the modern university. Wolterstorff suggests that faith and religious experience are as legitimate a source of inquiry as ethnicity, gender, or other widely accepted identities.

I would go further. I would suggest that what Ave Maria, St. Thomas, Notre Dame, and BYU law schools all recognize is that a true university must be faithful to a core set of values. It must be bound together by more than, say, “excellence,” because if it is not, then one set of hidden beliefs becomes a secret code by which all competing ideas are silenced.

Brigham Young University’s J. Reuben Clark Law School and Notre Dame Law School are in a unique position of being able to host true, important dialogues that simply cannot happen on most other campuses, including most other “Catholic” campuses. The mob scenes at Middlebury College, Yale Law School, Harvard Law School, University of Pennsylvania Carey Law School, and

Georgetown Law present more than just cause for alarm. They are a window into what could be our future.

But that future has yet to be determined. We can change it. By we, I mean faith-based law schools like BYU and Notre Dame.

What exactly is the threat, and what should we do about it?

The biggest threat to American society right now is the use of law to impose contested views upon each of us. The most vulnerable people are people of faith and the poor who rely upon us for care and services. That is why I founded Notre Dame Law School’s Religious Liberty Initiative and why I am passionate about partnering with those who share the same concerns about the threats to religious freedom.

Let me give you an example of the threats to Americans of all faiths and to those who do not affiliate with any faith. As we all know, Title IX of the Civil Rights Act prohibits discrimination on the basis of sex in any federally funded program or institution. Title IX has been an important cornerstone of American antidiscrimination law for 50 years and is to be credited with many advancements for American women and with the levels of excellence that they, in turn, have pushed the rest of American society to achieve.

In June 2022, the US Department of Education released proposed new regulations with regard to the enforcement of Title IX on college and university campuses across the nation. One of the provisions buried deep in the regulations categorizes a failure to use appropriate pronouns as discrimination on the basis of sex. This means that if a member of a campus community articulates preferred pronouns, others must use them or potentially be found in violation of Title IX.

Now, as a Christian, as a Catholic, and as the dean of Notre Dame Law School, I have made it clear to everyone and anyone who knows me that I will not countenance mistreatment of or discrimination against the LGBTQ members of our community. As I said earlier, each gay, lesbian, or transgender member of our community is created in the image and likeness of God. I will not stay silent in the face of bigotry against them.

But I hold my freedom of speech as one of the most precious gifts of God and as one of the cornerstones of our democracy. The words I use are my own, as a matter of my conscience. The pronouns I use for you are my own. You can ask me to use your preferred pronouns, and in an effort to show you dignity and respect, I will try to honor your request. But you cannot force me to extend you that courtesy. And I would expect that you would respect my right of free speech as much as you want me to honor your choice of pronouns.


To use law to punish me for the free exercise of my own speech is a violation of my right to free speech. And my refusal to relinquish my right to freedom of speech does not make me a bigot.

Furthermore, it is not enough for the courts or for the US Department of Education to assert that, as a religious institution, Notre Dame or BYU can claim a religious exemption from this new requirement. The violation is not one of my religious freedom (although it may be that too). No. The violation is of my constitutional freedom of speech. The use of a religious exemption to protect freedom of speech is unthinkable. It is the abdication of leadership.

I will not give up my right to free speech, and I will not use my right to religious freedom to claim a right to freedom of speech that belongs to all.

Conclusion

As faith-based law schools, we have a special responsibility to lead the fight against encroachments of all human rights. The truth is, we are in a privileged position to do so since we know that other law schools are not going to risk bucking the culture of the day. We also have the advantage of communities committed to the same shared values. And we can point to our faith and those same shared values in ways that secular institutions cannot.

At the end of the day, it is the secular institutions, including the most elite institutions in our society, that will be looking to us to lead the way to a future of freedom of speech, academic freedom, religious freedom, the pursuit of truth, and human flourishing. 

FREE SPEECH

IT VIOLATES THE

HEARER AS

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