
The Ordinary Religion of the Law School Classroom

Roger C. Crampton
Dean, Cornell Law School

Editor's Note:

This is an abstract of Dean Crampton's article which appeared in the *Journal of Legal Education*, Vol. 79 No. 3, p. 247.

Crampton's paper is a preliminary look at part of the intellectual framework of law and the legal profession in the United States: the unarticulated (and usually unexamined) value system of legal education which is the underlying force of what he calls the "ordinary religion of the law school classroom." A clear understanding of the value system which permeates the educational enterprise is a prerequisite to its change and improvement.

According to Crampton, "The essential ingredients of the 'ordinary religion' of the American law school are: a skeptical attitude toward generalizations, an instrumental approach to law and lawyering, a 'tough-minded' and analytical attitude toward legal tasks and professional roles, and a faith that man, by the application of his reason and the use of democratic processes, can make the world a better place."

The foremost task of legal education is to inculcate a skeptical attitude towards generalizations, principles, concepts and rules. Lawyers are taught that legal rules are but the normative declaration of particular individuals, conditioned by their own peculiar cultural milieu, and not truths revealed from on high. A lawyer learns to distinguish between the generalization that states his desires and the facts that dominate the real world.

This skepticism is taught in many ways. First, students are given a steady diet of borderline cases which show that there are no right answers, just winning

arguments. Second, students are taught to perceive an arbitrariness in categories and line-drawing which go beyond the rule of genuine reason and value. Third,

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an overemphasis is placed on the uncertainty and instability of law in order to counter-balance black letter law. Fourth, advocates are taught to take goals for granted by supposing that the proper goal of a lawyer is merely to accept the

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goals and values of his client. Fifth, the law school emphasis is on teaching lawyers to be appliers of the law rather than to be creators of the law. Sixth, teachers avoid an explicit discussion of values in order to avoid "preaching or indoctrination."

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A second basic feature of this "ordinary religion" is that the law is viewed as an instrument of achieving social goals and nothing else; it is a means to an end, and is to be appraised only in the light of the ends it achieves. The lawyers primary task is that of the craftsman or skilled technician who can work out the means by which the client or the society can achieve its goals. This instrumental view of law presents the law student with two models of professional behavior: the hired gun and the social engineer. This existence of "tough-minded" models is the third basic feature of the "ordinary religion."

The fourth feature, which comes closest to being recognized as religious tenet, is a faith in man's ability to use reason and the democratic processes to make a better world. (Ironically, this optimistic and idealistic tenet of the "ordinary religion" seems contradictory with the first feature, i.e. skepticism.)

The sources of this "religion" are: One, intellectual trends in the general culture surrounding the law schools; two, the formal law school curriculum; and three, the informal or hidden curriculum that encompasses what students learn apart from the formal curriculum. (It is this third course which has perhaps the greater effect on the development of ethical attitudes.) The example of teachers and administrators, the implication by students that matters not included in the formal curriculum are unimportant to lawyers, and the power of the student culture in affecting attitudes toward grading, examinations, competitions, status and success all contribute to the development of ethical attitudes. Ethics and values in and of themselves are never

fully discussed in the formal curriculum of a law school.

What are the moral implications of this "ordinary religion"?

For the most part Cramton sees the "ordinary religion" expressed in the law classroom as being too absorbed with the internal mechanics and consistency of the legal system, and too little concerned with its effects on people. It exalts rationality over other values, and neglects the humane aspects of personal development and the emotional aspects of the professional relationship while failing to develop the capacities of imagination, empathy, self-awareness, and sensitivity.

On the other hand it does have its good side. The law which had previously been viewed as mysterious and mystical now brings humanitarian and egalitarian aims to the center stage. There is a heightened concern for just results.

But in the end Cramton paints a bleak picture:

"Modern dogmas entangle legal education — a moral relativism tending toward nihilism, a pragmatism tending toward an amoral instrumentalism, a realism tending toward cynicism, individualism tending toward atomism, and a faith in reason and democratic processes tending toward mere credulity and idolatry. . . . Our indifference to values confines legal education to the "what is" and neglects the promise of "what might be."

This bleakness comes from the assumption that law and truth are relative. But he does state that if there is really something that can be called truth, beauty or justice — even if in man's finiteness he cannot always agree on what it is — then law school can be a place of searching and creativity that aspires to identify and accomplish justice.

He warns that if ethical relativism reigns supreme, law will become ever more complex and detailed and a law school would become no more than a trade school. Cramton concludes that "Law schools and legal educators are inevitably involved in the service of values."

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For the most part they serve as the priests of the established order and its modern dogmas. The educator has an obligation to address the values that he is serving,

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and there is room for at least a few prophets to call the legal profession and the larger society back to the covenant faith and moral commitment that it has forsaken.

Abstracted by Jill Olsen,
2nd year law student



(See the following page for Professor Stephen M. Fuller's comments on this article)