


1996

Law School as a Culture of Conversation: Re-Imagining Legal Education as a Process of Conversion to the Demands of Authentic Conversation

Gregory A. Kalscheur S.J.

Jesuit Scholastic, Political Science Dept., Loyola College in Maryland

Follow this and additional works at: <http://lawcommons.luc.edu/lucj>

 Part of the [Legal Education Commons](#), and the [Legal Ethics and Professional Responsibility Commons](#)

Recommended Citation

Gregory A. Kalscheur S.J., *Law School as a Culture of Conversation: Re-Imagining Legal Education as a Process of Conversion to the Demands of Authentic Conversation*, 28 Loy. U. Chi. L. J. 333 (1996).

Available at: <http://lawcommons.luc.edu/lucj/vol28/iss2/7>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola University Chicago Law Journal by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

Law School as a Culture of Conversation: Re-imagining Legal Education as a Process of Conversion to the Demands of Authentic Conversation

Gregory A. Kalscheur, S.J.*

The hardest job of the first year is . . . to knock your ethics into temporary anesthesia. Your view of social policy, your sense of justice—to knock these out of you along with woozy thinking, along with ideas all fuzzed along their edges. You are to acquire ability to think precisely, to analyze coldly, . . . to see, and see only, and manipulate, the machinery of the law. It is not easy thus to turn human beings into lawyers. . . . None the less, it is an almost impossible process to achieve the technique without sacrificing some humanity first.¹

Karl Llewellyn once observed that technique without values is wickedness, but values without technique is foolishness. The aim is to become an accomplished technician without losing sight of the values of justice and love which the vocation is all about.²

I. INTRODUCTION

Conventional wisdom holds that the principal task of a law school is to teach law students to “think like lawyers.” What does this task entail? Articulated relatively neutrally, this component of a law school’s work emphasizes “training students to define the issues carefully and to marshal all the arguments and counterarguments on either side.”³ Attaining this sharpness of mind, however, often is experienced as coming with a significant cost; it has (not entirely

* Gregory Kalscheur is a Jesuit scholastic currently teaching in the Political Science Department and working at the Center for Values and Service at Loyola College in Maryland. B.A., 1985, Georgetown University; J.D., 1988, University of Michigan Law School.

1. KARL N. LLEWELLYN, *THE BRAMBLE BUSH* 116 (1991).

2. Christopher F. Mooney, *Law: A Vocation to Justice and Love*, in *THE PROFESSIONS IN ETHICAL CONTEXT: VOCATIONS TO JUSTICE AND LOVE* 83-84 (Francis A. Eigo ed., 1986).

3. *Id.* at 76 (quoting Derek Bok, *A Flawed System*, *HARV. MAG.*, May-June 1983, at 45).

cynically) been said that "law makes [one's] mind sharper by narrowing it."⁴

My pastoral work as a Jesuit scholastic from 1994-96 at the Loyola University Chicago School of Law, as well as my own experiences as a law student at the University of Michigan from 1985-88 and as a practicing attorney from 1988-92, have taught me that there is some basis for the fear that legal education and practice can lead to a disturbing narrowing of mind and perspective. Indeed, I contend that this short-sighted narrowing of mind is symptomatic of a crisis of meaning and value⁵ in the law and legal education. This narrowness of perspective in the study and practice of the law stems from a tendency to see the law simply as a set of instrumental rules to be manipulated, and the lawyer simply as a technician skilled in the manipulation of those rules. A crisis in meaning and value results when law students arrive at law school and experience themselves being formed to play the restricted role of skilled technician, a role disconnected from larger questions of human aspiration. Instead of being introduced to the law as a deeply human activity that itself involves a search for meaning and value, law students can experience law school as an alienating trade school. In short, law school can be experienced as a form of narrow training that diminishes something central to the human person: the fundamental human drive to question and to follow those questions wherever they lead.

This Article will explore the ways in which the thought of two scholars, Bernard Lonergan and White, can usefully inform our understanding of this crisis of meaning and value within the context of a conception of the law as a social and cultural activity. More specifically, this Article will illustrate the manner in which the work of Bernard Lonergan establishes a framework for fruitful reflection about the objectives and the process of legal education, and about the character of the contemporary law school as a community which fosters the development of a culture of argument and conversation.

4. Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593, 600 n.30 (1994).

5. See DAVID GRANFIELD, *THE INNER EXPERIENCE OF LAW: A JURISPRUDENCE OF SUBJECTIVITY* (1988). This notion of a crisis of "meaning and value" was suggested to me by my reading of Granfield's book. *Id.* at 1. The purpose of the book is "to examine the possibility of an inner experience of law." *Id.* The book is a response to the frustration and the sense of absurdity that many feel in their quest for an intellectual and ethical ground for law. *Id.* at 273-75. The experiences of alienation and disintegration on the part of law students that I describe in Part II, below, are, I think, components of the frustration and sense of absurdity that prompt Granfield's search for meaning and value in the experience of law.

Such a culture serves as an essential corrective to the narrowness of perspective that leads to the experience of alienation among law students. This narrowness of perspective and the crisis of meaning and value to which it gives rise are manifestations of the breakdown in the process of common sense knowing that Lonergan characterizes as “general bias.”⁶

Moreover, drawing on the legal scholarship of J.B. White, this Article will contend that the law usefully can be understood as a conversational process of meaning-making that constitutively shapes the character of the community and of the lawyer. Accordingly, legal education might best be understood as a process that serves to bring the law student into this culture of constitutive conversation. *In fact, the law school itself can be imagined as a culture of conversation that seeks the conversion—or “re-horizoning”⁷—of law students.* Further, within this culture of conversation and argument, both the law as an activity and the law school can be understood as components of “cosmopolis”: the cultural context Lonergan proposes as a vehicle for the reversal of the long cycle of decline that is the consequence of the general bias of common sense.⁸

First, this Article describes the distortions in legal education caused by the narrowing of mind and perspective that coincides with an understanding of the role of the lawyer as a technician manipulating the rules. Then, this Article outlines Lonergan’s understanding of the constitutive function of acts of meaning and White’s analogous understanding of law as a meaning-making activity that is constitutive of character and community. Next, this Article illustrates that the law can be understood as a form of what Lonergan calls practical common sense. As a form of common sense knowing, the law is subject to the problems associated with general bias. Accordingly, this Article explores the manner in which the problem of general bias in the law might be addressed within an understanding of the law—and especially the law school—as a culture of argument and authentic conversation that promotes conversion, detachment from bias, and heightened fidelity to the unrestricted desire to know through a process of dialectic and “continuous and ever more exacting application of the

6. BERNARD J.F. LONERGAN, *INSIGHT: A STUDY OF HUMAN UNDERSTANDING* 225-42 (rev. stud. ed. 1958) [hereinafter LONERGAN, *INSIGHT*].

7. See Frank P. Braio, *Towards the Re-Horizoning of Subjects: Re-Structuring Classical-Modern Educational Perspectives*, in 13 *METHOD: J. OF LONERGAN STUD.* 99-109 (1995) (reviewing Bernard Lonergan, *Topics in Education*, in 10 *COLLECTED WORKS OF BERNARD LONERGAN* (Robert Doran & Frederick E. Crowe eds., 1993)).

8. See *infra* Part V.

transcendental precepts. Be attentive, Be intelligent, Be reasonable, Be responsible.”⁹ Finally, this Article suggests that the commitments and traditions of the Society of Jesus give a law school which operates within the context of a Jesuit university unique motivations and opportunities to establish an environment that truly is a culture of authentic conversation that promotes conversion.

In short, the vision of legal education set forth in this Article—my understanding of the process of teaching the student to “learn to think like a lawyer”—can be seen as a “re-horizoning”: a sort of conversion to a new horizon that is more and more open to the central demand of authentic conversation, the demand to give oneself wholly to the unrestricted desire to know by letting one’s questions take over, and by following those questions wherever they lead.¹⁰

II. THE CRISIS OF MEANING AND VALUE IN LEGAL EDUCATION

While studying philosophy and theology at Loyola University Chicago from the fall of 1994 through the spring of 1996, I spent a few hours each week assisting the chaplain at Loyola’s Law School. Through my contact with the students in that pastoral work, I became aware of their very real hunger for substantive conversation to connect the narrow, technical, analytical rigor of their academic work with the larger context of their lives. Given my own experience as a law student, I know first-hand that the rigor and demands of the law school curriculum can cause students to feel as though their lives are being consumed by activities that require a high level of focus and intensity, but which often seem far removed from the desires and concerns that led them to law school in the first place and which continue to lie at the center of who they are as people.

As a result, I hoped through my pastoral presence to facilitate conversation about significant issues in peoples’ lives: issues of life and faith, God and relationships, things that give us hope and joy, things we are grateful for, things we find difficult or frustrating. Through making myself available for conversation, by facilitating annual Days of Retreat and Recollection, by promoting and participating in Advent and Lenten Busy Student Retreats, by trying to get people involved in a book discussion group that would raise issues of discernment and life choice, and by endeavoring to build more of a sense of community and legal vocation by coordinating a series of

9. BERNARD J.F. LONERGAN, *METHOD IN THEOLOGY* 231 (1994) [hereinafter LONERGAN, *METHOD IN THEOLOGY*].

10. See DAVID TRACY, *PLURALITY AND AMBIGUITY: HERMENEUTICS, RELIGION, HOPE* 19-25 (1987). See *infra* Part V.C for a discussion of this book.

Sunday liturgies for law students, I wanted to see if law students could be encouraged to view their lives and their desires to be lawyers as part of a call from God, rather than seeing the law simply as a job or a role that was somehow separate from the rest of their lives. I hoped, in short, to raise questions and facilitate reflection and conversation that might bring a greater degree of wholeness and perspective to lives I knew to be frustratingly harried and fragmented.

My limited presence in the law school made it difficult for me to engage large numbers of students in the sorts of pastoral activities I had in mind.¹¹ Still, the sustained and significant contact that I eventually had with a relatively small but stable group of students definitely confirmed my belief that there is a very real desire among law students for an experience of law school which speaks to them as whole persons; a desire that is frustrated by their experience of law school and the practice of law as activities which are disconnected from the rest of their lives. A second-year student clearly articulated this sort of desire in a letter to the editor of the Law School student newspaper:

Coming into my first year at Loyola, . . . I was hoping that I had found an environment in which individuals would be involved in analyzing issues and discussing matters of importance in our society on a regular basis. . . . Instead, what I have found is . . . an environment in which important issues are either ignored, hastily dismissed with shallow analysis, or avoided under a veil of sarcastic humor. . . . Our failures to engage in honest and open discussions which analyze world issues, community concerns, and classroom queries create in us *myopic thought patterns that restrict our reasoning ability, and as a consequence, our ability for legal analysis. In our failure to open our minds and face important issues with sincerity, we handicap ourselves in our very purpose for being here.*¹²

Interestingly, M.H. Hoeflich, Dean of Syracuse University's College of Law, suggests that this myopic narrowing of perspective and inability to engage in more open-ended questioning is

11. During the spring, 1996 semester, Loyola's Law School had a total of 802 students (571 in the day division, 168 in the evening division, and 63 in the Institute of Health Law) See Spring 1996 Enrollment Report, prepared by Loyola University Chicago Office of Institutional Research, January 29, 1996. In light of the size of the institution, the busy schedules of the students (many of whom work in the legal community during the day), and my own limited time commitment (8-10 hours per week), I found it difficult to establish myself as a significant pastoral presence in the law school community.

12. Aneel L. Chablani, *2L Attempts to Promote Discussion*, BLACKACRE, Sept. 27, 1995, at 5 (emphasis added).

characteristic of contemporary American legal education. Dean Hoeflich asserts that most modern legal education

is competent. It turns out competent young lawyers. It does not, generally, produce thoughtful, humanistic jurists. It produces young men and women who solve problems but *who do not pause to ask why problems arise or whether formal legal processes are the best means of solving all problems*. The modern law school is, in many ways, a citadel, resisting change and resisting exposing itself to the type of self-examination that true scholarship and the best teaching demand, for self-examination requires a *broadening of perspective and a willingness to alter one's goals*.¹³

Dean Hoeflich's call for a broadening of perspective is consonant with aspects of my own experience of legal practice. Before entering the Society of Jesus, I spent three years as a litigation associate in a large law firm. I saw that developing and maintaining a broad perspective in one's approach to the practice of law can be very difficult. In large-firm practice, an associate is often swiftly directed to settle in a particular practice area, where it becomes quite easy to see oneself as a technician working long hours in a very narrow corner of the law. I observed first-hand the difficulty young attorneys can have in maintaining a broad and humanly integrated perspective on the law while being engaged in the sort of large-firm practice that is attractive to many of the newly minted lawyers emerging from the nation's law schools.

The narrowness of perspective that Dean Hoeflich observes—the failure of modern legal education to produce humanistic lawyers who are open to more broadly based questions about the role of law and the legal process in society—may be rooted in the fact that contemporary legal education can inculcate in students the notion that the law is nothing more than a system of rules and principles to be manipulated for any given ends. Christopher Mooney, S.J., notes that “[l]egal education . . . has been almost exclusively concerned with principles and logical analysis and generally avoids what appears to be the quagmire of moral inquiry.”¹⁴ As a result, legal education “inevitably tend[s] to distort the reality of the world of law by interpreting the legal process as simply a set of rules.”¹⁵

13. M.H. Hoeflich, *Law, Culture and the University: An Inaugural Discourse*, 40 SYRACUSE L. REV. 789, 796 (1989) (emphasis added).

14. Mooney, *supra* note 2, at 84.

15. *Id.*

Law school then becomes an institution whose primary focus is the development of a high level of analytical rigor and technical competence with respect to these rules. Technical competence and analytical rigor are, of course, of great importance and are not problematic in themselves. The separation of technique from concern for human values, however, is a problem. The inculcation of a technical legal rationality that occupies the great bulk of the student's time and life in law school can cause the ability and desire to ask questions falling outside that model of legal rationality to atrophy.¹⁶ As Mooney explains, "[t]he risk is . . . that the meaning of law will be reduced to technique, thereby restricting legal education to training in technique and understanding legal practice as the use of technique to manipulate human behavior."¹⁷

This understanding of the law as a set of rules to be manipulated and law school as the process of attaining mastery in the application of a set of technical skills stems in large part from the presuppositions underlying the development of the "case method" of legal study by Harvard Law School Dean Christopher Columbus Langdell in the latter part of the nineteenth century.¹⁸ Langdell's dream was to make the law a respectable discipline within the university setting by demonstrating that law was best understood as a "science"—a system of rules that was self-sufficient, that operated with deductive certainty, and that was not subject to change.¹⁹

Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes the true lawyer; and hence to acquire that mastery should be the business of every earnest student of law. . . . [M]uch of the shortest and best, if not the only way of mastering doctrine effectively is by studying the cases in which it is embodied.²⁰

Langdell's highly formalistic understanding of "legal science" has not survived the twentieth-century critique launched by the Legal Realists of the 1930s and '40s and carried on by today's Critical Legal Studies movement.²¹ With their emphasis on exposing the degree to

16. *Id.* at 83-84.

17. *Id.* at 83.

18. *Id.* at 71-73.

19. *Id.* at 73.

20. *Id.* at 72 (quoting CHRISTOPHER COLUMBUS LANGDELL, *CASES ON THE LAW OF CONTRACTS* viii (1879)).

21. See, e.g., Anthony Kronman, *Jurisprudential Responses to Legal Realism*, 73 *CORNELL L. REV.* 335 (1988); Mark Spiegel, *Theory and Practice in Legal Education: An*

which the law allows for a wide range of significant judicial choice in legal decision making, the Realists and their CLS successors effectively demolished the Langdellian idea that the law possesses an internal, almost geometric logic, that compels particular decisions in particular cases.²²

Still, Langdell's conception of the identity of the lawyer as one who has mastered the technical skills of deploying, manipulating, and applying legal rules (now understood non-formalistically) in particular situations of human conduct has, to a great extent, survived. Moreover, this conception of the identity of the lawyer continues to permeate the law school experience. For example, Mooney explains that the largely unacknowledged process of professional socialization that goes on in legal education can lead law students to assume an identity that has been shaped

by the ability to analyze, the capacity to be precise, logical, and objective. Law students are trained not to make statements which cannot be defended by objective criteria, and so they develop an ability to elaborate legal arguments unconnected with personally-held beliefs. Such legal argument becomes, as a result, an intellectually narrowing process, with the obvious risk that what is held to be irrelevant to the main argument will gradually in one's thinking become irrelevant altogether. Technical analysis that continually excludes human feeling and concern leads to a sense that these qualities are somehow antithetical to a thoroughly rational inquiry.²³

By educating students to perform such a narrowly defined professional role, law school can limit "the ability [of the law student] to perceive and appreciate the human concerns and values that underlie law and lawyering."²⁴ Law students then quite naturally experience law school as alienating and dehumanizing. This experience of separation, of a disjunction between their professional training and their desire that their professional role somehow make sense in their lives, can accurately be described as a crisis of meaning and value: Does what I am working toward with great intensity make any sense to me, and do I experience what I am doing as part of a fulfilling human life?

Essay on Clinical Education, 34 UCLA L. REV. 577, 581-89 (1987).

22. See Mooney, *supra* note 2, at 72.

23. *Id.* at 74. See also E. DVORKIN ET AL., BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM 1 (1981). "We believe that a subtle process of professionalization occurs during law school without being addressed or even acknowledged." *Id.*

24. See *id.*

This crisis of meaning and value in the law is described by legal scholar David Granfield in terms of this question: Can members of the legal profession “afford to practice law as a fascinating technique for earning a living, if it remains separate from what they believe are the most vital and fundamental concerns of life?”²⁵ Granfield concludes his study of the contemporary crisis—a crisis stemming from lawyers’ inability to integrate law into the whole of their lives—by explaining that

[j]udges, lawyers, professors, and even law students develop a characteristic mentality. Law transforms them for better or worse. If it remains merely a job, a prestigious way of making a living, a sophisticated, dialectical skill, or a springboard to a position of power and influence, it splits their life into uncoordinated personal and professional compartments. The result is that one may become worldly wise without being truly wise; for true wisdom keeps asking relevant questions and keeps trying to verify and unify insights and to integrate all of life’s experiences.²⁶

Yale Law School Dean Anthony Kronman sees a similarly grave crisis in the contemporary American legal profession. Dean Kronman points to a “spiritual crisis” rooted in a growing doubt on the part of lawyers that, in spite of increasing material well-being, the practice of law can play a significant role in their fulfillment as human beings.²⁷ Like Granfield, Dean Kronman locates the source of this crisis in a restrictive overemphasis on the role of the lawyer as technician:

This crisis has been brought about by the demise of an older set of values At the very center of these values was the belief that the outstanding lawyer—the one who serves as a model for the rest—is not simply an accomplished technician but a person of prudence or practical wisdom as well. . . . [E]arlier generations of American lawyers conceived their highest goal to be the attainment of a wisdom that lies beyond technique—a wisdom about human beings and their tangled affairs that anyone who wishes to provide real deliberative counsel must possess. . . . To those who shared this view it seemed obvious that a lawyer’s life could be deeply fulfilling. For the character-virtue of practical wisdom is a central human excellence that has an intrinsic value of its own.²⁸

25. GRANFIELD, *supra* note 5, at 7.

26. *Id.* at 274.

27. ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION 2* (1993).

28. *Id.* at 2-3.

The emphasis on technical mastery and analytic rigor that characterizes the contemporary law school, of course, should not be discarded. Still, the separation of technical skill from human aspirations and values—its disjunction from the fundamentally human search for purpose and meaning in life—narrows the vision of the law student in a way experienced as humanly diminished. Moreover, education that generates this myopia promotes an impoverished understanding of the law, the legal process, and what it is to be a lawyer. Such an impoverished understanding of the law makes it more difficult for us to see the law as something we create, as an activity that constitutes us and our communities, and as a process of questioning through which we can criticize the law and seek to move the communities it constitutes in new directions.

In order to avert this crisis, “[w]hat is needed is a way of bringing together mastery with aspiration, intellect with experience, rigor with value, pragmatism with idealism, competence and skill with caring and a sense of meaning.”²⁹ The work of Bernard Lonergan and White allows us to bridge these dichotomies in a way that can ground a re-humanized vision of the law and of legal education by helping us to understand the law as an activity of “common sense knowing” that unfolds within the context of a “culture of argument,”³⁰ and by leading us to acknowledge the narrowness of vision I describe as a destructive form of “general bias.”³¹

III. LAW AS A MEANING-MAKING ACTIVITY CONSTITUTIVE OF CHARACTER AND COMMUNITY

The potential for a fruitful exploration of the law in a Lonerganian framework is evident in the relationship between Lonergan’s discussion of the constitutive function of acts of meaning and White’s understanding of the law as a form of “constitutive rhetoric.”³² Lonergan contends that human reality—the real world in which we live—is “in large measure *constituted* through acts of meaning.”³³ The world of immediacy, that which is experienced simply through sense and consciousness, is tiny.³⁴ Thus, the real world is one we encounter

29. DVORKIN, *supra* note 23, at 3.

30. *See infra* Part V.

31. *See infra* Part IV.

32. *See* JAMES BOYD WHITE, HERACLES’ BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW 28 (1985) [hereinafter WHITE, HERACLES’ BOW].

33. Bernard Lonergan, *Dimensions of Meaning*, in COLLECTION 252 (F.E. Crowe, S.J. ed., 1967) (emphasis added) [hereinafter Lonergan, *Dimensions of Meaning*].

34. *Id.*

only through the mediation of meaning; indeed, it is a world that is *constructed* by means of acts of meaning.³⁵ “Beyond the world we know about, there is the further world we make,” and “what we make, we first intend.”³⁶

Thus, cultural achievements like language, religion, and art, as well as social institutions like the state, the law, and the economy are all constituted—made real—by intentional human acts of meaning.³⁷ Moreover, not only do our intentional acts of meaning transform our natural, social, and cultural environments, but through our intentional acts of meaning we also constitute and transform ourselves.³⁸ Our intentional acts of meaning shape the characters we come to possess.³⁹ Accordingly, in this vast field where meaning is constitutive, human responsibility is greatest and human freedom reaches its highest point.⁴⁰ In the field of constitutive meaning,

[t]here occurs the emergence of the existential subject, finding out for himself that he has to decide for himself what he is to make of himself. It is there that individuals become alienated from community, that communities split into factions, that cultures flower and decline, that historical causality exerts its sway.⁴¹

Because the constitutive function of meaning forces us to confront, in our lives as individuals and communities, this “moment of existential crisis” when we recognize that we make ourselves through the choices and decisions inherent in our intentional acts of meaning,⁴² “reflection on meaning and the consequent control of meaning” is crucial.⁴³ There is, Lonergan stresses, nothing fixed or immutable about the reality we construct through our acts of meaning.⁴⁴ We change social and cultural entities like the law—indeed, we change ourselves—through changes in meaning. As Lonergan explains, the state, the law, and the economy “are not fixed and immutable entities. They adapt to changing circumstances; they can be reconceived in the light of new ideas; they can be subjected to revolutionary change. But all such

35. *Id.* at 253.

36. *Id.*

37. LONERGAN, *METHOD IN THEOLOGY*, *supra* note 9, at 78.

38. Lonergan, *Dimensions of Meaning*, *supra* note 33, at 254.

39. *Id.*

40. *Id.* at 255.

41. *Id.*

42. *Id.* at 264.

43. *Id.* at 255.

44. *Id.*

change involves change of meaning”⁴⁵ Thus, for example, a state is made real through its constitution. The state can be changed by adopting a new constitution or rewriting the old one. Or, the state can be changed through a shift in the meaning of the existing constitutional text. “More subtly but *no less effectively* [the state] can be changed by reinterpreting the constitution”⁴⁶

Because these sorts of social and cultural changes are fundamentally changes in meaning, Lonergan sees an urgent need for us to be more reflective and responsible with respect to the changes in meaning that go on around us and within us.⁴⁷ He diagnoses a crisis of culture: We understand the great degree to which our world is mediated by meaning (modern culture interprets, thematizes, and analyzes everything), but this “vast modern effort to understand meaning in all its manifestations has not been matched by a comparable effort in judging meaning.”⁴⁸ The necessity of this effort is clear: The human person *must* judge and decide, if the person is to exist as authentically human.⁴⁹ We must subject to critical reflection the acts of meaning that shape us and our society—including legal acts of meaning—if there is to be progress rather than decline.

In a similar fashion, White elaborates a conception of the law as an activity “by which meaning and community are established.”⁵⁰ He contends that the law usefully can be viewed as a meaning-making activity concerned with the art of constituting character, community, and culture in language.⁵¹ The life of the law is therefore “a life of art, the art of making meaning in language with others.”⁵² This conception of the law is driven by White’s hope that it can serve as a ground upon which *criticism* of particular laws and the legal culture can rest,⁵³ and additionally can help us understand what lawyers and judges at their best might do.⁵⁴

White describes legal language in a fashion that closely corresponds to Lonergan’s discussion of the constitutive function of meaning:

45. LONERGAN, *METHOD IN THEOLOGY*, *supra* note 9, at 78.

46. *Id.* (emphasis added).

47. Lonergan, *Dimensions of Meaning*, *supra* note 33, at 255-56.

48. *Id.* at 266.

49. *Id.* at 264.

50. WHITE, *HERACLES’ BOW*, *supra* note 32, at xiii.

51. *Id.* at xi-xiii.

52. *Id.* at xii.

53. *Id.* at xiii, xv.

54. *Id.* at xv.

The language that the lawyer uses and remakes is a language of meaning in the fullest sense. It is a language in which our perceptions of the natural universe are constructed and related, in which our values and motives are defined, in which our methods of reasoning are elaborated and enacted; and it gives us our terms for constructing a social universe by defining roles and actors and by establishing expectations as to the propriety of speech and conduct.⁵⁵

Moreover, in language that strikingly evokes the Lonerganian transcendental precepts "Be attentive, Be intelligent, Be reasonable, Be responsible,"⁵⁶ White describes the law as "a set of attitudes and questions, *a way of giving attention to experience*, a kind of intellectual activity worked out in performance":⁵⁷

[E]very time we act as lawyers we create and claim a set of meanings: about the events, about the institutions of which we are part, about the very language which we speak; and for the meanings that we make *we are deeply responsible*.⁵⁸

For White, the law is not simply a body of rules to be managed and applied; rather, it is an activity involving a set of resources for thought and argument.⁵⁹ It is a language that our culture makes available for speech and argument on those occasions that the culture deems as legal.⁶⁰ Thus, it is all of the technical and nontechnical resources—rules, constitutions, statutes, judicial opinions, maxims, general understandings, conventional wisdom—"that a lawyer might use in defining his or her position and urging another to accept it."⁶¹ And while the law is an activity that works through this inherited language, as given by an established culture in an existing community, White's central claim is that in using these materials, the activity that is the law *transforms* them.⁶²

According to White, the study of the law is an inquiry into the ways in which "we constitute ourselves as individuals, as communities, and as cultures, whenever we speak" as lawyers and judges.⁶³ The identity, meaning, and authority of the legal resources at hand is always arguable; the materials are always being creatively reformulated

55. *Id.* at 36.

56. LONERGAN, *METHOD IN THEOLOGY*, *supra* note 9, at 20.

57. WHITE, *HERACLES' BOW*, *supra* note 32, at ix (emphasis added).

58. *Id.* at xii (emphasis added).

59. *Id.* at xi-xii.

60. *Id.* at 33.

61. *Id.* at 33.

62. *See, e.g., id.* at xi.

63. *Id.* at 35.

or remade through their use in the process of argument. Every use of legal language is a claim that such language is being used authoritatively and appropriately: "The language I am speaking is the proper language of justice in our country."⁶⁴ Moreover, every time one speaks as a lawyer or judge, one constitutes an *ethos* or character for oneself, for one's audience, as well as for the community and the legal culture.⁶⁵

Consider the following example: The same textual resource—the words of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution ("No State shall . . . deny to any person within its jurisdiction the equal protection of the laws")—supported both the regime of "separate but equal" segregation and the Supreme Court's decision in *Brown v. Board of Education*,⁶⁶ which initiated the era of desegregation in schools and society.⁶⁷ But the ways lawyers found to speak about that text, and the change in meaning ultimately "grasped and accepted"⁶⁸ by the Supreme Court, played a significant role in *reconstituting* the character of our legal culture and our civil community. It gave certain speakers new roles, placed certain arguments out of bounds, and made new ways of acting possible.

This example highlights the conceptual power in White's view of the law:

To look at law in this way is to direct one's attention . . . to the way in which we create new meanings, new possibilities for meaning, in what we say; to the way our [legal] literature can be regarded as a literature of value and motive and sentiment; to the way in which our enterprise is a radically ethical one, by which self and community are perpetually reconstituted; and to the limits that our nature or our culture, our circumstances and our imagination, place on our powers to remake our languages and communities in new forms.⁶⁹

Moreover, the example reveals the powerful insight underlying Lonergan's emphasis on the importance of the constitutive function of meaning: "[I]f social and cultural changes are, at root, changes in the meanings that are grasped and accepted, changes in the control of meaning mark off the great epochs in human history."⁷⁰

64. *Id.* at 34.

65. *Id.*

66. 347 U.S. 483 (1954).

67. *Id.* at 493.

68. See *infra* text accompanying note 70.

69. WHITE, HERACLES' BOW, *supra* note 32, at 41.

70. Lonergan, *Dimensions of Meaning*, *supra* note 33, at 255-56.

If changes in the control of meaning can have such important consequences, it would be wise for lawyers to recognize, explicitly and responsibly, that the use of legal language is *always* a constitutive response to questions like these: What kind of community should we who are talking the language of the law establish with each other, with our clients, and with the rest of the world? What kind of conversation should the law constitute, and what sort of conversation should constitute the law, ourselves, and our community?⁷¹ Accordingly, understanding the law in this way helps us, in our activity within the legal process, to “make[] our choice of language conscious rather than habitual [so as to] create[] a moment at which controlled change of language and culture becomes possible.”⁷²

IV. LAW AS A FORM OF COMMON SENSE KNOWING SUBJECT TO GENERAL BIAS

White’s conception of the law can also be brought into fruitful dialogue with Lonergan’s analysis of practical common sense. In this realm of common sense, intelligent inquiry generates spontaneous questions about what to do, and about how things relate to us, rather than to one another.⁷³ These questions give rise to an accumulation of insights about practical, everyday issues, and then to spontaneous collaboration among people in testing and improving those insights. Common sense both “aim[s] at mastering the concrete and the particular,” and achieves that aim “in a concrete and particular manner.”⁷⁴ It does this by bringing to bear in any particular context “an habitual but incomplete set of insights that [is] completed with appropriate variations in each concrete set of circumstances that call[s] for speech or action.”⁷⁵ Thus, common sense “consists in a set of insights that remains incomplete, until there is added at least one further insight into the situation in hand.”⁷⁶

The activity of the law can be understood as a particular form of this sort of practical common sense. The resources of the legal culture, such as the Constitution, statutes, and judicial opinions, are, in a sense, an accumulation of past insights. This set of accumulated

71. See WHITE, HERACLES’ BOW, *supra* note 32, at 34.

72. JAMES BOYD WHITE, WHEN WORDS LOSE THEIR MEANING: CONSTITUTIONS AND RECONSTITUTIONS OF LANGUAGE, CHARACTER, AND COMMUNITY 273 (1984) [hereinafter WHITE, WHEN WORDS LOSE THEIR MEANING].

73. See LONERGAN, INSIGHT, *supra* note 6, at 174.

74. *Id.* at 180.

75. *Id.*

76. *Id.* at 175.

insights remains incomplete until it is brought to bear in an individual case. Within the context of that case, those accumulated insights are tested, evaluated, and improved in the creative search for the new insight which will guide action and govern decision in that case.⁷⁷ Thus, for example, White describes the law as an activity in which people interact with a body of authoritative legal material (in Lonerganian terms, the accumulation of past insights) and the circumstances and events of the actual world in a given instance.⁷⁸ Moreover, as with Lonergan's description of common sense, the law is a process of intellectual development that is always incomplete, "that is ever to be completed differently in each concrete situation":⁷⁹ "[O]ne's knowledge of the law, [like one's knowledge of a language,] is never complete. . . . The speaker of ordinary competence constantly invents new ways to use the language."⁸⁰

The incompleteness of the collaborative process of accumulating and applying legal insights is reflected in White's characterization of the judicial opinion as part of a "continuing and collective process of conversation and judgment."⁸¹ In the ongoing process of conversation that is the law, "authoritative conclusions are reached after explicit argument. These decisions in their turn become the material of future arguments leading to future decisions, and so on in a continuing process of opening and closure, argument and judgment, of which no one can claim to foresee the end."⁸²

In addition, the activity of the legal process in the context of a concrete piece of litigation can be seen as a testing of past insights and as a conversational and argumentative search for the additional insight that will provide the foundation for judgment in the case at hand. Like the new practical situations that are the context for the intellectual development of common sense, a legal case always brings

77. Cf. GRANFIELD, *supra* note 5, at 130-31.

78. WHITE, HERACLES' BOW, *supra* note 32, at 52.

79. LONERGAN, INSIGHT, *supra* note 6, at 211.

80. WHITE, HERACLES' BOW, *supra* note 32, at 53.

81. WHITE, WHEN WORDS LOSE THEIR MEANING, *supra* note 72, at 264.

82. *Id.* at 264. See also Kenneth F. Ripple, *Process of Constitutional Decision Making*, 25 VAL. U. L. REV. 331, 334-35 (1991). Ripple explains that judicial opinions are "important intellectual fodder in the constitutional dialogue"; and that even [i]f a judge has failed to convince his or her colleagues that they ought to follow a particular course, the judge[, through concurring and dissenting opinions,] still has the opportunity to convince the judges of the other circuits. That dialogue can indeed be a most fertile opportunity for the exposition of all facets of a problem.

Id.

to the surface hitherto unseen tensions and contradictions in our social life and culture. The legal case is . . . a way of testing the presuppositions of the culture, forcing to the bright center of the mind difficulties we wish to push back into the twilight. This means that the case is always an invitation to the reconstitution of the language in the light of new circumstances and new intractabilities.⁸³

White's recognition that each case is an invitation for the language of the law to develop in some new way parallels Lonergan's analysis of the way in which emergent probability operates in the realm of common sense. Emergent probability is Lonergan's term for the dynamic nature of change and development in the world; it refers to the dynamic structure that underlies the field of human events and relationships. New opportunities for action and for the creation of social and cultural institutions are constantly emerging out of the accumulation of past human actions. These new opportunities provide the setting for conscious human choice. Thus, the institutions and social systems that guide human affairs do not arise or function in an *inevitable* fashion.⁸⁴

Because the creation of new systems and the emergence of new orders is not inevitable, great importance attaches to the unrestricted operation of the spirit of inquiry that leads to insight and ultimately to choice of action. The human person does not have to wait passively for his environment to shape him. Instead, conscious human choice can direct the course of history towards either progress or decline:

[C]ommonly accessible insights, disseminated by communication and persuasion, modify and adjust mentalities to determine the course of history out of the alternatives offered by emergent probability.⁸⁵

[I]nsight is an anticipation of possible [systems, orders, and institutions], and decision brings about the concrete conditions of their functioning instead of merely waiting for such conditions to happen.⁸⁶

Accordingly, a proper understanding of the operation of common sense allows human choice to exercise *control* over the unfolding of emergent probability:

[M]an can discover emergent probability; he can work out the manner in which prior insights and decisions determine the

83. WHITE, WHEN WORDS LOSE THEIR MEANING, *supra* note 72, at 265.

84. LONERGAN, INSIGHT, *supra* note 6, at 209.

85. *Id.* at 211.

86. *Id.* at 227.

possibilities and probabilities of later insights and decisions; he can guide his present decisions in the light of their influence on future insights and decisions; finally, this control of emergent probability of the future can be exercised not only by the individual in choosing his career and in forming his character, not only by adults in educating the younger generation, but also by mankind in its consciousness of its responsibility to the future of mankind.⁸⁷

So too, explicitly understanding the law as an activity of meaning-making that is constitutive of character and community should “lead to richer and more accurate teaching and practice of law and to a *greater sense of control over what we do*”⁸⁸ and who we become.

If, then, this opportunity for control is to manifest itself in progress rather than decline in a given field of practical common sense knowing—including the field of the law—it is important that there be an unhindered pursuit of the sort of intelligent questioning which gives rise to insights into prospective courses of action and which allows full evaluation and critique of those courses of action. Yet, it is clearly a part of lived human experience that such unhindered questioning is *not* an automatic occurrence. Lonergan analyzes the reality of blocks to this sort of unhindered questioning using the idea of bias.

Biases impede the proper operation of practical common sense by preventing or distorting the further question that is inherent in intelligence itself. The reflective moment in the human cognitional process can only move to judgment and affirm an insight as true or false, good or bad, to be done or not to be done, when the knower can affirm that there are no further pertinent questions to be asked.⁸⁹ Bias, however, cuts off this process of questioning too soon.

Lonergan identifies several types of question-distorting biases. Individual bias, for example, is a refusal to ask all the relevant questions as a result of a distorted egoism. It involves a refusal to move to “the self-abnegation involved in allowing complete free play to intelligent inquiry.” Thus, a person operating out of individual bias will give free rein to the “Eros of the mind, the desire and drive to understand,” where his own interests are concerned, but he will fail to

87. *Id.* See also Cynthia S.W. Crysdale, *Revisioning Natural Law: From the Classicist Paradigm to Emergent Probability*, 56 THEOLOGICAL STUD. 464, 476 (1995). Through the exercise of conscious choice, human persons “have a unique role in affecting probabilities. Human persons can and do foresee possibilities and pursue them in an effort to create systems, to create conditions for the emergence of new orders or devise mechanisms to offset the demise of current orders.” *Id.*

88. WHITE, HERACLES’ BOW, *supra* note 32, at 40 (emphasis added).

89. LONERGAN, INSIGHT, *supra* note 6, at 284.

give serious consideration to the further relevant questions prompted by that desire to understand when those questions diverge from his own interests.⁹⁰ Group bias operates in a similar fashion with respect to a group or a class.

General bias, in contrast, is a bias of practical common sense itself; it is refusal on the part of common sense to recognize and appreciate the important further pertinent questions that are raised by other fields, by other realms of inquiry. As Lonergan explains, common sense is incapable of analyzing itself, incapable of making the discovery that it too is a specialized development of human knowledge, incapable of coming to grasp that its peculiar danger is to extend its legitimate concern for the concrete and the immediately practical into disregard for larger issues and indifference to long-term results.⁹¹

This short-sightedness of common sense, this impatience with any kind of theoretical knowing, can lead to a long-term cycle of decline:

[T]he general bias of common sense prevents it from being effective in realizing ideas, however, appropriate and reasonable, that suppose a long view or that set up higher integrations or that involve the solution of intricate and disputed issues. The challenge of history is for man progressively to restrict the realm of chance or fate or destiny and progressively to enlarge the realm of conscious grasp and deliberate choice.⁹²

Thus, Lonergan concludes that practical common sense needs to be guided, but is incompetent to choose its own guide.

The law, too, can suffer from this general bias of short-sightedness. For example, some judges and legal practitioners increasingly seem to conclude that—at least at the nation's elite law schools—legal education has taken a turn toward esoteric theory which offers little by way of practical insight to those laboring in the trenches of the law.⁹³ This narrow focus on practical issues sets up a misleading oppositional relationship between “theoretical” and “practical” scholarship that exemplifies general bias and that fails to see the critical interaction that must exist between theory and common sense practice, between the general and the particular. As White explains,

[i]t is often the most theoretical work that will prove of surprising practical value, often the immersion in practical particularities that will stimulate the most valuable thought of a

90. *Id.* at 220-22.

91. *Id.* at 226.

92. *Id.* at 228.

93. See, e.g., Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).

general kind. Much of the life of the law in fact lies in the constant interaction it requires between the particular and the general, between the practical and the theoretical. The danger to watch out for may accordingly be the turn of mind that focuses on theory alone, dismissive of mere details, or on particulars alone, dismissive of mere generalization.⁹⁴

Both of these overreactions—a focus on theory alone or on particulars alone—are manifestations of a general bias that precludes the exploration of all further relevant questions, thereby preventing us from realizing illuminating insights.

A general bias of short sightedness is also inherent in a conception of the law as simply a system of institutionally established and managed rules. “Law is in this sense objectified and made a structure.”⁹⁵ Such a static view of the law fails to capture the way in which the law itself is transformed by its creative application in ever-new concrete situations. Similarly the law can be seen as a machine-like bureaucratic component of the structures of government:

Law then becomes reducible to two features: policy choices and techniques of their implementation. Our questions are, “What do we want?” and “How do we get it?” In this way the conception of law as a set of rules merges with the conception of law as a set of institutions and processes. The overriding metaphor is that of the machine; the overriding value is that of efficiency, conceived of as the attainment of certain ends with the smallest possible costs.⁹⁶

To the extent that a bureaucratic ends-means rationality takes over the law and excludes any consideration of how a given decision will affect the course of the law over the longer term, general bias is apparent.

Each of these misconceptions of the law—misconceptions that make the lawyer into a technician manipulating rules in particular practical contexts—are implicated in the crisis of meaning and value described in Part I of this Article. Moreover, legal education that, implicitly or explicitly, fosters these misconceptions also cuts off lines of further relevant questions which take the lawyer beyond the narrow role of amoral technician. As such, legal education is infected by, and inculcates, general bias. The question then becomes, how might we avoid this danger?

94. James Boyd White, *Law Teachers' Writing*, 91 MICH. L. REV. 1970 (1993) (reacting to Judge Edwards' article) [hereinafter White, *Law Teachers' Writing*].

95. WHITE, HERACLES' BOW, *supra* note 32, at 29.

96. *Id.* at 30-31.

V. LAW SCHOOL AS A CULTURE OF CONVERSATION

We have seen that viewing the law as a species of Lonerganian practical common sense alerts us to the danger of general bias in the law.⁹⁷ This Part suggests that White's understanding of the law as a form of constitutive rhetoric, operating within a culture of argument and conversation, is very helpful in demonstrating how that danger can be combatted.⁹⁸ White's emphasis on the importance of viewing the law as a culture of argument and a process of conversation allows his conception of the law to be placed within the framework of Lonergan's effort to describe how the longer cycle of decline rooted in general bias can be reversed: White's emphasis on the law as a culture of argument is analogous to Lonergan's invocation of culture as the vehicle for reversing general bias.

A. *The Cultural Context of Cosmopolis as a Check on Bias*

For Lonergan, the exaltation of common-sense practicality that slides into the longer cycle of decline must be countered by culture,⁹⁹ man's capacity to ask "what he himself is about. His culture is his capacity to ask, to reflect, to reach an answer that at once satisfies his intelligence and speaks to his heart."¹⁰⁰ Culture, then, acts as a counterbalance to the general bias of common sense, because it is "a representative of detached intelligence that both appreciates and criticizes, that identifies the good neither with the new nor with the old."¹⁰¹

Lonergan sometimes refers to this cultural counterbalance as *cosmopolis*.¹⁰² *Cosmopolis* is the particular conception of culture that provides the necessary context for critical reflection on common sense knowing.¹⁰³ It "is founded on the native detachment and

97. See *supra* Part IV.

98. See *infra* Part V.A-C.

99. For Lonergan, "[a] culture is simply the set of meanings and values that inform the way of life of a community." Bernard Lonergan, *Revolution in Catholic Theology*, in A SECOND COLLECTION 232 (William F.J. Ryan & Bernard J. Tyrrell eds., 1974). White similarly understands culture as "a set of ways of making sense of things and acting in the world." JAMES BOYD WHITE, *JUSTICE AS TRANSLATION: AN ESSAY IN CULTURAL AND LEGAL CRITICISM* xiii (1990).

100. See LONERGAN, *INSIGHT*, *supra* note 6, at 236.

101. *Id.* at 237.

102. See *id.* at 236-42.

103. *Id.* at 241. *Cosmopolis*

invites the vast potentials and pent-up energies of our time to contribute to [solving contemporary problems] by developing an art and a literature, a theatre and a broadcasting, a journalism and a history, a school and a university, a personal depth and a public opinion, that through appreciation

disinterestedness of every intelligence,"¹⁰⁴ and "[i]ts business is to prevent practicality from being short-sightedly practical and so destroying itself."¹⁰⁵ Cosmopolis performs this function by recognizing that we need others and their questions and insights in order to overcome bias. Cosmopolis, therefore, can be described as the intersubjective cultural community that offers to common sense "the corrections and the assurance that result from learning accurately *the tested insights of others* and from submitting one's own insights to the *criticism based on others' experience and development*."¹⁰⁶

While Lonergan sees the cultural context of cosmopolis as a check on common sense that somehow remains outside common sense, White's view of the law as a culture of argument brings the function of cosmopolis *within the activity of the law itself*. Thus, for example, the lawyer's recognition of the law as a form of constitutive rhetoric within a culture of argument "should define the lawyer's own work as far less manipulative, selfish, or goal-oriented . . . and as far more creative, communal, and intellectually challenging."¹⁰⁷ Similarly, the judicial opinion

might be far more accurately and richly understood if it were seen not as a bureaucratic expression of ends-means rationality but as a statement by an individual mind or a group of individual minds exercising their responsibility to decide a case as well as they can and to *determine what it shall mean in the language of the culture*.¹⁰⁸

Understanding the judicial opinion in this way also highlights the important role played by the judge within the legal culture of argument. Within White's conception of the law, the character of the judge seems to be a crucial check on problems that Lonergan would characterize as individual, group, and general bias. The judge serves as such a check by, in effect, reaching judgment in such a way that, in Lonerganian

and criticism give men of common sense the opportunity and help they need and desire to correct the general bias of their common sense.

Id.

104. *Id.* at 238.

105. *Id.* at 238-39.

106. *Id.* at 191 (emphasis added). See also Martin J. Matustik, *Democratic Multicultures and Cosmopolis: Beyond the Aporias of the Politics of Identity and Difference*, 12 METHOD: J. OF LONERGAN STUD. 80-85 (1994) (describing cosmopolis as the cultural community within which lies that "ongoing critical praxis" that makes possible "reversing bias and stabilizing insights"; "[I]t is the nonpolitical cultural fact of irony, satire and humor that calls our attention to the cleavages within prejudiced and hegemonic relations. This is the role of cosmopolis.").

107. WHITE, HERACLES' BOW, *supra* note 32, at 41.

108. *Id.* (emphasis added).

terms, gives us confidence that all the further pertinent questions have been considered:

The ideal judge would be a judge who put his (or her) fundamental attitudes and methods to the test of sincere engagement with arguments the other way. We could ask, does the judge see the case before him as the occasion for printing out an ideology, for displaying technical skill, or as presenting a real difficulty, calling for real thought? The ideal judge would show that he had listened to the side he voted against and that he had felt the pull of the arguments both ways. The law that was made that way would comprise two voices, those of the parties, in a work made by another, by the judge who had listened to both and had faced the conflict between them in an honest way. In this sense the judge's most important work is the definition of his own voice, the character he makes for himself as he works through a case.¹⁰⁹

*B. The Law School as a Culture of Conversation
Promoting Conversion*

If the conception of the law articulated by White truly is to include a cultural check on the problems of bias inherent in the process of practical common sense, the sort of attitude and character displayed by the ideal judge must be inculcated within the legal culture more generally. Thus, White's way of looking at the law must also affect the teaching and objectives of American law schools—the prospective lawyer's point of entry into the legal culture of argument. Indeed, White contends that seeing law as a form of constitutive rhetoric demands a different method of teaching in the law school.¹¹⁰ Under such a view of the law,

[t]he law we teach would not be regarded as a set of institutions that “we” manipulate either to achieve “our policies” as governors, nor “our interests” as lawyers, but rather as a language and a community—a world, made partly by others and partly by ourselves, in which we and others shall live, and which will be tested less by its distributive effects than by the resources of meaning it creates and the community it constitutes: who we become to ourselves and to one another when we converse. And our central question would become how to understand and to judge those things.¹¹¹

Law school, then, is not about learning the rules and how to

109. *Id.* at 47.

110. *Id.* at 43.

111. *Id.* at 43-44.

manipulate them. Rather, it is about acquiring certain habits of mind, a certain ability to question and converse with the resources available in the legal culture, with one's clients, and with one's colleagues. Moreover, through this process of questioning and conversation, the law school itself can be seen as an important component of the cosmopolis that works to reverse general bias. As White advises incoming law students,

in doing [law school work,] you will subject your own views and inclinations to the discipline of the inherited culture and the conditions of the world. You will have a chance, sometimes, not only to maintain but to improve the culture of which you become a part.¹¹²

Further, the law students' interaction with professors and legal scholarship during their time in law school helps to give the students the sort of broader, "cosmopolitan" perspective that can assist them in warding off the deleterious effects of general bias. As writers and scholars, rather than full-time practitioners, law professors have "the chance to stand back from the world of detail and of practice and to try to see something in it, to find something to say about it, of a more general nature than would likely emerge from the press of life in practice."¹¹³

Loneragan's notions of horizon and conversion are helpful tools for understanding how this "cosmopolitan" habit of mind that is open to pursuing all of the further pertinent questions is acquired. Law students may well arrive at law school with horizons—pre-existing structures of knowledge and experience—that block unfettered operation of the unrestricted desire to know. Because of one's history, education, experience, and personal development, certain questions may be blocked from one's field of vision.¹¹⁴

Law school, ideally, provides opportunities for students to experience "re-horizoning." Such a conversion to a new horizon can take place through the case analysis that is such a major component of the law school experience. Instead of studying cases simply as structures in which doctrinal rules are embodied,¹¹⁵ learning to read a judicial opinion (in many ways, the primary work of law school) should largely be a process of *learning to engage in a new form of questioning*. It can be a special kind of reading that is really a *form of*

112. *Id.* at 54.

113. *Id.* at 55.

114. See LONERAGAN, *METHOD IN THEOLOGY*, *supra* note 9, at 236-37.

115. *Cf.* notes 18-24 and accompanying text (discussing Langdell's introduction of the "case method" of legal study).

conversation with a text: “reading as a species of thought, with a *reconstructive and critical imagination*.”¹¹⁶

As a law student engages the opinion, for example, he must imaginatively put himself in the place of the lawyer representing each of the parties. What additional facts would the lawyer want to know and why?

The lawyer examines and reexamines the [client’s] story, asking questions and more questions until he (or she) is satisfied that he has “enough” to enable him to turn to his books; what he reads there will suggest new questions, to which the answers will suggest new lines of legal inquiry, and so it goes, a jostling between the facts and the law throughout the life of the case. [The law student] can at least begin this process with every case [he or she] read[s].¹¹⁷

Similarly, the student conversing with an opinion must place himself in the position of the judge who wrote the opinion:

How would you decide this case? How would you explain and defend your judgment? At this stage, the process of the law is no longer, if it ever was, a matter of argumentative skill and intellectual deftness. It is a matter of judging right and wrong, better and worse, of coming to terms with the necessity and difficulty of judgment. The simple question—“How should this case be decided?”—presents a puzzle and a challenge that can occupy a life.¹¹⁸

Learning to enter into a judicial opinion in this way is a process of giving oneself over to the questions prompted by the unrestricted desire to know. Such study requires the student to learn how to keep putting questions to the text, to the facts, to the parties involved, and to the judge, and to follow those questions wherever they may lead.¹¹⁹

Moreover, through the process of critically analyzing a series of opinions in this way, through the enterprise of responding to questions raised by the teacher, and through the experience of engaging in conversation and argument with fellow students in and out of class with respect to legal issues, the law student begins to engage in a

116. WHITE, HERACLES’ BOW, *supra* note 32, at 57 (emphasis added).

117. *Id.* at 56.

118. *Id.* at 57.

119. Cf. Vernon Gregson, *Theological Method and Theological Collaboration II*, in THE DESIRES OF THE HUMAN HEART: AN INTRODUCTION TO THE THEOLOGY OF BERNARD LONERGAN 95-96 (Vernon Gregson ed., 1988) (intellectual conversion is about knowing and using a set of basic questions: “What is the evidence for what you say?,” “Why do you understand it that way and no other?,” “On what do you base your assurance that your understanding is true?”).

process that Lonergan calls *dialectic*,¹²⁰ a process that can have a powerfully “re-horizoning” effect. This process of dialectic is a technique that brings conflicts to light and promotes conversion by making subjective differences objective. By clarifying the differences that exist within opinions and between students, this process (1) allows those differences to be questioned and examined, (2) exposes students to new and different ways of thinking and understanding, as well as to unfamiliar experiences, and (3) raises a new range of questions in the students’ minds and hearts. Through this process, the technique of Lonerganian dialectic promotes conversion to horizons open to more questions and a broader range of experience.¹²¹

The conversion that Lonergan envisions, and that law school can foster, is a process of finding out *for oneself and in oneself* what it is to be intelligent, to be reasonable, and to be responsible;¹²² in short, conversion entails ever more whole-hearted fidelity to the unrestricted desire to know. The process of dialectic involved in legal education understood as part of a culture of argument and conversation contributes to this sort of conversion “by pointing out ultimate differences, by offering the example of others that differ radically from oneself, by providing the occasion for a reflection, a self-scrutiny, that can lead to a new understanding of oneself and one’s destiny.”¹²³ This dialectic of questioning, conversation, and argument is not an “automatically efficacious”¹²⁴ path to conversion, but it does create the opportunity for potentially transformative encounters with other people and their ideas. The opportunity for such encounters is crucial, because “encounter is the one way in which self-understanding and horizon can be put to the test.”¹²⁵ Thus, the process of dialectic provides “the open-minded, the serious, the sincere with the occasion to ask themselves some basic questions, first, about others but eventually, even about themselves. It will make conversion a topic and thereby promote it.”¹²⁶

C. *Conversion and the Demands of Authentic Conversation*

Lonergan contends that the formula for achieving detachment from bias and moving to a horizon open to greater fidelity to the unrestricted

120. See LONERGAN, *METHOD IN THEOLOGY*, *supra* note 9, at 235-66.

121. *Id.* at 235, 251-53.

122. *Id.* at 253.

123. *Id.*

124. *Id.*

125. *Id.* at 247.

126. *Id.* at 253.

desire to know is “a continuous and ever more exacting application of the transcendental precepts. Be attentive. Be intelligent. Be reasonable. Be responsible.”¹²⁷ One scholar, David Tracy, has transformed those precepts into a set of rules for conversation that are an apt characterization of what the law school culture of argument and conversation should be:

[S]ay only what you mean; say it as accurately as you can; listen to and respect what the other says, however different or other; be willing to correct or defend your opinions if challenged by the conversation partner; be willing to argue if necessary, to confront if demanded, to endure necessary conflict, to change your mind if the evidence suggests it. These are merely some generic rules for questioning. As good rules, they are worth keeping in mind in case the questioning does begin to break down. In a sense they are merely variations of the transcendental imperatives elegantly articulated by Bernard Lonergan¹²⁸

Conversation conducted in accord with these rules promotes “re-horizoning” by keeping the conversation partners faithful to the demands of the unrestricted desire to know and by inviting them to explore the new possibilities for thinking and living that are encountered in an authentic conversation:

Conversation in its primary form is an exploration of possibilities in the search for truth. In following the track of any question, we must allow for difference and otherness. At the same time, as the question takes over, we notice that to attend to the other as other, the different as different, is also to understand the different *as possible*.¹²⁹

To learn to converse in this way is to learn to explore possibilities, difference, and otherness; through the encounters revealed by that exploration, conversion to a new horizon becomes conceivable as an option.

This notion of transformative conversation is richly developed by Paul Ricoeur in ways that are useful in the law school context. Ricoeur considers conversation as the decisive factor in *phronesis*—practical wisdom guiding moral judgment in specific, concrete

127. *Id.* at 231.

128. TRACY, *supra* note 10, at 19. Interestingly, Tracy’s rules for conversation—with their recognition of the need for argument, confrontation, and conflict—suggest that an understanding of the law as a process of conversation can embrace both the realm of the law school and the appellate courts (where conversation is a more obvious description of how the law operates) and the more directly adversarial aspects of our legal culture (including the trial and legislative processes). *Id.*

129. *Id.* at 20.

situations.¹³⁰ Conversation in this sense involves a sharing and refinement of convictions about possible actualizations of the human good that is marked by the reciprocity and humility demanded by a dynamic of human interaction that Ricoeur calls solicitude.¹³¹ “It is through public debate, friendly discussion, and shared convictions that moral judgment in [any] situation is formed.”¹³²

This decisive role for conversation is the third step in a descriptive analysis of practical wisdom. The first step of this analysis roots practical wisdom in a teleological “ethical intention”: “*aiming at the ‘good life’ with and for others in just institutions.*”¹³³ This good life is the end to which human actions are directed. Practical judgment in this sense becomes the ongoing process of ensuring that there is *adequation*, or a *sense of coherence and integration*, between the ethical agent’s developing conception of that good life and the particular, concrete decisions and choices by which the agent instantiates his or her ideal conception in actions.¹³⁴

Because of the human penchant for evil—the potential for human actions to be biased by self-love—practical wisdom must include a second element as well: It is necessary to test one’s judgments regarding actions aimed at the realization of the good life by passing them through the universalizing sieve of moral obligation.¹³⁵ Through a process of argumentation involving the exchange and examination of arguments whose validity is rooted in universalizable reasons, the morality of obligation is “the means of testing our illusions about ourselves and about the meaning of our inclinations that hide [and distort] the aim of the good life.”¹³⁶

Practical reasoning, however, cannot simply remain on this level of universalizable argumentation. When the ethics of argumentation is tested, not according to the criterion of universalizability, but along the path of actualization through application in concrete circumstances,

130. PAUL RICOEUR, *ONESELF AS ANOTHER* 290 (Kathleen Blamey trans., 1992).

131. *Id.* at 188; *see also infra* notes 132-37 and accompanying text.

132. RICOEUR, *supra* note 130, at 290-91.

133. *Id.* at 172 (emphasis added).

134. *Id.* at 179.

135. *See id.* at 170, 218.

136. *Id.* at 240. Ricoeur initially discusses this illusion-exposing, universalizing deontological moment in terms of two versions of the Kantian categorical imperative. First, “Act only on that maxim through which you can at the same time will that it should become a universal law.” Second, “Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.” *Id.* at 208, 222 n.33. Ricoeur identifies Habermas’s discourse ethics as the “exemplary form of the universalist thesis” today. *Id.* at 284.

conflicts can arise that demand further reflection:

The possibility of conflict arises . . . as soon as the otherness of persons, inherent in the very idea of *human* plurality, proves to be, in certain remarkable circumstances, incompatible with the universality of the rules that underlie the idea of humanity. Respect then tends to split up into respect for the law and respect for persons. Under these conditions, practical wisdom may consist in giving priority to the respect for persons in the name of solicitude that is addressed to persons in their irreplaceable singularity.¹³⁷

Solicitude is the *dialogic* component of the ethical intention; it is a notion that captures our experience of recognizing that the good life is inseparable from *life with and for others*.¹³⁸ Ricoeur's discussion of solicitude is grounded in the importance of friendship (with its characteristics of reciprocity and sharing a common life) articulated in Aristotle's examination of the good life.¹³⁹ "[S]olicitude adds essentially the dimension of *lack*, the fact that we need friends"¹⁴⁰ to the notion of self-esteem (the reflexive movement in which one recognizes and esteems oneself as a self with a desire for, and a capacity to pursue, the good life). I cannot actualize my self-esteem unless I am open to relationships with others in which solicitude is both given and received.

Thus, solicitude is a concept of mutuality and reciprocity in giving and receiving between human beings who each esteem themselves; through the operation of this intersubjective dynamic, "the self perceives itself as another among others."¹⁴¹ This perception includes recognition of a reversibility of roles, as well as the nonsubstitutability and irreplaceability of particular persons. Accordingly, while the roles of "I" and "You" are reversible, persons are not: each person in his or her singularity and uniqueness is irreplaceable in our affection and esteem. The voice of solicitude, therefore, demands that "the plurality of persons and their otherness not be obliterated by the globalizing idea of humanity" that is inherent in a universalizing morality of obligation.¹⁴² Solicitude, then, is a regard of self for the other, a unique and irreplaceable other whose appearance makes demands on, and elicits a response from, the self. Through this regard of self for

137. RICOEUR, *supra* note 130, at 262.

138. *Id.* at 187.

139. *Id.* at 188.

140. *Id.* at 192.

141. *Id.*

142. *Id.* at 227.

the other, solicitude strives to reestablish equality in relationships of dissymmetry.

In Ricoeur's view, the Golden Rule usefully articulates solicitude's impetus for reciprocity in situations of dissymmetry.¹⁴³ Ricoeur calls attention to both the negative Talmudic formulation of the Rule, "Do not do unto your neighbor what you would hate him to do to you," and the positive formulation of the Gospels: "Do unto others as you would have them do to you."¹⁴⁴ The negative formulation leaves room for the "moral invention in the order of what is permitted"¹⁴⁵ that is essential to the operation of *phronesis* (the *creative* actualization of the ethical aim in context), while the positive formulation highlights the benevolent motivation—the impetus to do something on behalf of the other—that is part of solicitude.¹⁴⁶

The Golden Rule thus enunciates a norm of reciprocity that places the other in the position of someone to whom I owe an obligation; the other is a person to whom I must be faithful. And because "fidelity consists in responding to the expectation of the other who is counting on me, I must take [that] expectation" into account whenever I apply a universal principle in a concrete situation.¹⁴⁷

The moment of conflict between the demands of universalization and the demands of solicitude that can arise when universal norms are applied in the contextual singularity of concrete situations—and the indecision that can arise in the midst of that conflictual encounter—leads Ricoeur to conversation as the third step and critical factor in *phronesis*.¹⁴⁸ Without the contextualization provided by conversation, a process of argumentation rooted in universalizable rules "loses its actual hold on reality."¹⁴⁹

The conversation envisioned by Ricoeur involves a subtle, creative tension between argumentation—the give and take of generalizable reasons—and conviction. The convictions at stake here are the conceptions that humans have of what a good and complete life would be. The confrontation involving a universal moral principle, the actor's convictions, the expectation of fidelity of the other who is relying on the actor (the expectation at the heart of solicitude), and the

143. *Id.* at 219.

144. *Id.*

145. *Id.*

146. *See id.*; *see also* Luke 6:31 (King James) ("Treat others as you would like them to treat you").

147. RICOEUR, *supra* note 130, at 268.

148. *See id.* at 287-91.

149. *Id.* at 286.

complexity of life in concrete situations can lead the actor struggling toward moral judgment to a question: Who am I? Or better, Who am I to become through my action in this situation?

Conversation, then, is a process by which these convictions—embodied in concrete forms of life—are refined through a process of questioning, argumentation, and consultation with people of wisdom, experience, and moral competence. This process of conversational winnowing raises the actor's initial conviction to a level of *considered* conviction which seals decision in the concrete. Taking into account the demands of universalization (can I universalize my reasons so as to screen out individual biases and prejudices?) and the demands of solicitude in this situation, I act out of my considered conviction as to what the good life with and for others concretely demands in this context.

The central movement at the heart of this process of conversation is the exchange of convictions, an exchange of convictions that opens deliberating actors to a new range of experiences and possible actions.¹⁵⁰ These convictions—these different views as to how the good life is embodied in the concrete—constitute the substance of the conversation that informs concrete moral decision making.¹⁵¹ The concrete forms of life rooted in the convictions of a particular other can contain inchoate universals and possible truths; in Tracy's terms, these are new possibilities for imagining other ways of thinking and living.¹⁵²

It is these inchoate universals and possible truths that we encounter and imaginatively experience in conversational exchange. As Ricoeur's characterization of narrative as the "first laboratory of moral judgment" suggests,¹⁵³ the conversation he envisions consists of an exchange of life experiences that assists the deliberating moral actor to refine, modify, and evaluate his or her convictions *by imagining how a proposed action comports with the aim of the good life*. In similar fashion, the conversations that take place in the context of legal education can be the first laboratory in which a humanly integrated legal judgment is nurtured. Such conversations allow law students to imagine how proposed actions comport with their visions of the good life in just communities.¹⁵⁴

150. See, e.g., *id.* at 165 n.31, 245, 289.

151. *Id.* at 287-90.

152. TRACY, *supra* note 10, at xx.

153. RICOEUR, *supra* note 130, at 140.

154. Cf. Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 9 (1983). Cover discusses the importance of "alterity"

Through the exchange of experiences, those engaged in conversation can explore their ethical reaction to proposed courses of conduct with *the aim of re-imagining their action*. If the aim of the good life is to be concretized in action, that aim must “be depicted in the narratives through which we try out different courses of action by playing, in the strong sense of the word, with competing possibilities.”¹⁵⁵ In this way, for Ricoeur just as for Lonergan, conversation can result in “a conversion of the manner of looking” at the possibilities for action in situation.¹⁵⁶ This sort of “playing” with competing possibilities as a way of trying out different courses of action can, and should, be an important part of the critical analysis of judicial opinions that is such a major component of the law school experience. Such “play” leads students imaginatively to consider the possible worlds of legal meaning that might be constituted through extension of a given opinion to different hypothetical situations, as well as through different interpretations of the language crafted by the judge in the opinion.

A similar understanding of conversation—as an enterprise enlarging our awareness of the range of possibilities for human living—underlies Clifford Geertz’s description of the aim of those engaged in ethnographic research: “We are seeking, in the widened sense of the term in which it encompasses very much more than talk, to converse with [those we encounter].”¹⁵⁷ Thus, “the aim of anthropology is the enlargement of the universe of human discourse.”¹⁵⁸ The objective of interpretive anthropology, therefore, is “to make available to us answers that others, guarding other sheep in other valleys, have given, and thus to include them in the consultable record of what man has said.”¹⁵⁹

Analogously, the conversation of the law student with a body of judicial opinions and with the diverging views emerging from the

—imagined alternative states of affairs—in the law:

Law may be viewed as a system of tension or a bridge linking a concept of a reality to an imagined alternative—that is, as a connective between two states of affairs, both of which can be represented in their normative significance only through the devices of narrative. . . . A nomos, as a world of law, entails the application of human will to an extant state of affairs as well as toward our visions of alternative futures. A nomos is a present world constituted by a system of tension between reality and vision.

Id.

155. RICOEUR, *supra* note 130, at 165 n.31.

156. *Id.* at 245.

157. CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* 13 (1973).

158. *Id.* at 14.

159. *Id.* at 30.

convictions and the questions of his or her classmates and professors *enlarges the student's universe of discourse* by making available to the student a whole range of possible answers to the questions (legal and otherwise) raised by the human situations that lie at the heart of legal issues. Through this enlargement of the student's universe of discourse, legal education functions as a form of Lonerganian cosmopolis: a culture that counteracts general bias by widening the vision of the deliberating actor. In the words of Dean Kronman, the case method of legal instruction, at its best, cultivates "an attitude of *moral cosmopolitanism* that is best expressed, perhaps, by the old Roman motto *nihil humanorum alienum meum est*, 'nothing human is foreign to me.'"¹⁶⁰

In addition, Ricoeur's understanding of the role that conversation plays in moral decision making by mediating the conflict between universal rules and concrete situations can usefully frame our understanding of the application of general legal rules in concrete situations. Just as ethics for Ricoeur cannot simply be a matter of applying universal rules to particular situations, so too the law cannot be reduced simply to the mechanical application of legal rules (accumulated past insights articulated in generalized form); a proper understanding of the law requires us to pay attention to the interplay between the general and the particular.

For that reason, White insists that the law requires us "to think of the particular in terms of the general, the general in terms of the particular."¹⁶¹ Indeed, in "[a] true legal education," the student must be trained "to see the ambiguities and complexities in what first looks simple."¹⁶² A legal education of this sort, which frees students to ask all the relevant questions by pursuing the unrestricted desire to know through a conversational process that brings into dialogue different visions of how we want to constitute our communal reality, can be a rich educational experience that goes a long way toward integrating the personal and professional aspects of a lawyer's life. Legal education understood in this way can have this sort of transformational effect on the character of the law student

partly because it is a training in the respect due to others; partly because it teaches us that in almost every case reasonable and decent people can take radically opposing views, and therefore that our opinions are not eternal truths; partly because it insists upon the authority of procedures and institutions, which it in

160. KRONMAN, *supra* note 27, at 159 (first emphasis added).

161. See White, *Law Teachers' Writing*, *supra* note 94, at 1974.

162. *Id.*

this way constitutes and maintains; [and] partly *because it perpetually tests and surprises the mind by exploring the limits of our discourses and imaginations.*¹⁶³

Such potentially transformative conversational encounters—if they are true to the demands of authentic conversation—must inevitably take on a humbly tentative or provisional nature. In Ricoeur's terms, there is a "fragility" and a "vulnerability" inherent in the notion of encounter through a conversational exchange of convictions.¹⁶⁴ Thus, if conversation is to be a mutual search for truth in which all parties give themselves over to the process of following questions wherever they lead, a high degree of open-mindedness is crucial. All the conversation partners must be willing and open participants in the conversational process of questioning.

If conversation with the other than self is to have the potential to change convictions, the selves involved in the process must be open to *self-effacement*; they must be able to ask themselves, in light of the new possibilities they encounter, "Who am I?," "Who am I to become?," "Who are we to become as a community?," and "Where am I to take my stand?" As Ricoeur explains, "it is still necessary that the irruption of the other, breaking through the enclosure of the same, meet with *the complicity of this movement of effacement* by which the self makes itself available to others."¹⁶⁵

Conversation partners, each of whom is other to the other, must be open to this movement of effacement, if the questioning exchange of convictions is to be truly mutual and reciprocal. This openness to self-effacement, however, is not always part of the horizon that the student brings to law school. Thus, conversational openness must be modelled by teachers of law. In other words, their Socratic examination of material in the classroom must be carried out in a manner that encourages, facilitates, and nurtures open participation in authentic questioning.

VI. THE ROLE OF THE JESUIT LAW SCHOOL

This vision of legal education does not require a radical overhaul of the law school curriculum. Indeed, as we have seen, the case method that typically dominates law school instruction can be an ideal vehicle for opening students to the practice of authentic conversation.¹⁶⁶

163. *Id.* (emphasis added).

164. RICOEUR, *supra* note 130, at 22.

165. *Id.* at 168 (emphasis added).

166. *See supra* notes 160-63 and accompanying text.

Therefore, implementation of this vision essentially demands that teachers and students approach the study of the law with a new attitude, with a conscious intentionality of striving to see their endeavor as a conversational search for meaning and value and with a commitment to establishing a classroom atmosphere in which such conversation takes place.

Such an understanding of the nature and purpose of legal education obviously places rigorous demands on both students and teachers. It is rooted in a desire to integrate the study of the law with the fundamental human drive to question and in an understanding of the law that sees law not as a set of rules to be manipulated, but as an activity through which we constitute ourselves and our communities. While this vision is certainly not uniquely Catholic or Jesuit, I believe that the commitments and traditions of the Society of Jesus may give law schools that operate within the context of Jesuit universities unique motivations and opportunities to implement this vision.

Striving to make the law school a culture of authentic conversation through which we can imagine new possibilities for constituting good lives and good communities by encountering the imaginative visions of others is consistent with the Society's recent articulation of a commitment to establishing a culture of dialogue as part of its characteristic way of proceeding. Moreover, encouraging imaginative encounters with new possibilities for living is also consistent with the Society's traditions of imaginative pedagogy rooted in the Spiritual Exercises.¹⁶⁷ The recent decrees of the Thirty-Fourth General Congregation of the Society of Jesus ("GC 34")¹⁶⁸ place great

167. The Spiritual Exercises of St. Ignatius constitute a retreat manual whose aim is to foster in the retreatant the "experience of prayer, prayerful deliberation, and cooperation with God's graces." GEORGE E. GANSS, S.J., *THE SPIRITUAL EXERCISES OF ST. IGNATIUS: A TRANSLATION AND COMMENTARY* vii (1992). The Exercises "are divided into four groups, called 'Weeks.' The First Week consists of Exercises characteristic of the purgative way, the purification of the soul which frees it to advance toward God." *Id.* at 5. "The Second Week presents Exercises proper to the illuminative way, the acquiring of virtues in imitation of Christ." *Id.* at 6. The Third and Fourth Weeks are made up of Exercises "characteristic of the unitive or perfective way: activities to establish habitual and intimate union with God, through Christ." *Id.* at 7. The Exercises provide the foundation for Jesuit life and mission, and illustrate the chief principles of Ignatian spirituality. *Id.* at 8, 14.

168. A general congregation is "the highest legislative body in the Society [of Jesus] beneath the [P]ope." GEORGE E. GANSS, S.J., *THE CONSTITUTIONS OF THE SOCIETY OF JESUS, TRANSLATED, WITH AN INTRODUCTION AND A COMMENTARY* 294 n.1 (1970). The Thirty-Fourth General Congregation met in Rome from January 5 to March 22, 1995, in order to revise the law of the Society and renew the Society's mission in light of contemporary challenges and circumstances. See *DOCUMENTS OF THE THIRTY-FOURTH GENERAL CONGREGATION OF THE SOCIETY OF JESUS* xi; D1, n.1 (John L. McCarthy S.J. ed., St. Louis Institute of Jesuit Sources 1995) (hereinafter GC 34).

emphasis on *dialogue* as a distinctive characteristic of Jesuit ministry.¹⁶⁹ For example, the Congregation explains that:

[t]he Jesuit heritage of creative response to the call of the Spirit in concrete situations of life is *an incentive to develop a culture of dialogue* in our approach to believers of other religions. *This culture of dialogue should become a distinctive characteristic of our Society*, sent into the whole world to labor for the greater glory of God and the help of human persons.¹⁷⁰

Moreover, GC 34 identifies dialogue as an “integral dimension[]” of the contemporary mission of the Society: “the service of faith and the promotion of justice.”¹⁷¹ Indeed, the faith “that does justice is . . . the faith that engages other traditions”—other ways of imagining the human good—in dialogue.¹⁷²

In addition, the dialogue called for by the General Congregation has much in common with the notion of authentic conversation developed in this paper. For example, it is a dialogue that must be conducted with respect toward, and openness to, the dialogue partners with whom we are engaged in a common search for meaning and value; dialogue partners “who look together towards a shared human and social freedom.”¹⁷³ Like Ricoeur’s conversational exchange of convictions, the dialogue envisioned by GC 34 demands an open and reciprocal sharing of fundamental experiences of the human good:

One way of serving God’s mystery of salvation is through dialogue, a spiritual conversation of equal partners, that opens human beings to the core of their identity. In such a dialogue, we come into contact with the activity of God in the lives of other men and women, and deepen our sense of this divine action: “By dialogue, we let God be present in our midst; for as we open ourselves in dialogue to one another, we also open ourselves to God.”¹⁷⁴

While the typical authentic conversation in the law school context will rarely be a dialogue that can be characterized as “spiritual conversation,” true fidelity to all of the questions that present themselves in our law school conversations, and genuine openness to the convictions of the others whom we encounter, will inevitably bring questions of God into play. The religiously and ideologically pluralistic context of the contemporary law school is not, of course, a

169. See GC 34, *supra* note 168, at D2, nn.41-49.

170. *Id.* at D5, n.154 (emphasis added).

171. *Id.* at D2, n.48.

172. *Id.* at D2, n.49.

173. *Id.* at D2, n.42.

174. *Id.* at D4, n.101.

forum for classroom catechesis. Still, we should guard against an understanding of legal conversations that would preclude us from giving ourselves wholly to the questions which might arise, and from following those questions wherever they lead.¹⁷⁵

Second, a Jesuit law school that nurtures the practice of authentic conversation is participating in a pedagogy of the imagination that is rooted in the Spiritual Exercises. I have attempted to describe the sort of authentic conversation that can be part of the law school culture as a process of questioning and an exchange of convictions through which we encounter, explore, and imagine possibilities, difference, and otherness. By introducing us to such a process of conversation, law school can teach us to engage in a new form of questioning that allows us to approach legal problems with a reconstructive and critical imagination.

This sort of school of the imagination is also central to the Spiritual Exercises. Ignatius repeatedly directs the retreatant to put himself or herself into the proper disposition for prayer through the use of imagination.¹⁷⁶ For example, the First Prelude to the Contemplation of the Kingdom of Jesus Christ is “[a] composition by imagining the place. Here it will be to see with the eyes of the imagination the synagogues, villages, and castles through which Christ our Lord passed as he preached.”¹⁷⁷ Similarly, Ignatius consistently invites the retreatant to enter imaginatively into the concrete details of the scene that is the subject of a given contemplation.

These techniques grow out of the Ignatian insight that “God uses the gospel stories to draw us imaginatively into their world in order to reveal himself to us. . . . Ignatius expects that God will fulfill the desires of the retreatant to get to know Jesus more intimately through the use of his or her imagination.”¹⁷⁸ Such techniques of imaginative prayer are so central to the Spiritual Exercises that they have been

175. See GRANFIELD, *supra* note 5, at 243.

[B]eyond [the] narrow categories [of legal positivism] there exists a richer world of meaning and value, open to the mind that questions honestly. . . . Proper inquiry, reflection, and deliberation can bring us into contact with a larger reality. Transcending the self-imposed limitations of legal positivism and radical historicism, we can ask questions with the reasonable expectation of achieving deeper understanding. This expectation, even in the field of law, raises the God question.

Id.

176. See *infra* notes 178-79 and accompanying text.

177. GANSS, *supra* note 167, at 53, 155 (footnote omitted) (noting that this sort of imaginative composition occurs 13 times in the Exercises).

178. WILLIAM A. BARRY, S.J., ALLOWING THE CREATOR TO DEAL WITH THE CREATURE: AN APPROACH TO THE SPIRITUAL EXERCISES OF IGNATIUS OF LOYOLA 65-67 (1994).

described as a form of decision-oriented mysticism rooted in the act of imagining.¹⁷⁹

The Jesuit tradition of education reflects this decision-making pedagogy of the imagination that flows from the experience of the Exercises. James P. Walsh, S.J., for example, has described Jesuit education as a matter of liberating students by inviting them out of themselves and into the concrete experiences of another; Jesuit education, at its best, forms students who are able to engage in a creative re-imagining of their experiences and the world in which they live and act:

Education is a matter of imagination, not the mastery of facts. It consists precisely of being led beyond where we would be comfortable and, as the first moment in that process, noticing and facing honestly our resistances to what is new and strange and alien. It brings us out of ourselves into the experience of the other.

. . . .

Education can be seen as the process by which we can be made aware of the ways in which we imagine the world and the ways we act out that sense of reality; it is the process by which we are invited into new worlds, the world of others in their otherness, in the concreteness of their diverse experience, and so re-imagine our own lives. It is the process by which we are freed to go out of ourselves and live with others in friendship.¹⁸⁰

Through an application of the case method that is open to the demands of authentic conversation, the law school experience can foster the development of this sort of moral imagination.¹⁸¹ Accordingly, as part of the Society's commitment to develop a culture of dialogue, and given their roots in the educational traditions of the Society, law schools operating within the context of Jesuit universities are ideally situated to begin the process of re-imagining the law school as a culture of dialogue fostering conversion to the demands of authentic conversation.

179. See ANTONIO T. DE NICOLAS, POWERS OF IMAGINING, IGNATIUS DE LOYOLA: A PHILOSOPHICAL HERMENEUTIC OF IMAGINING THROUGH THE COLLECTED WORKS OF IGNATIUS DE LOYOLA 28-29, 94 (1986).

180. James P. Walsh, S.J., *Imagining: A Way of Life*, in *JESUIT EDUCATION AND THE CULTIVATION OF VIRTUE* 27-28 (William J. O'Brien ed., 1990).

181. See also KRONMAN, *supra* note 27, at 113 (describing the case method "as a forcing ground for the moral imagination").

VII. CONCLUSION

Bernard Lonergan's analysis of the constitutive function of meaning, the operation of practical common sense, and conversion as movement toward a new horizon as a result of detachment from bias, along with White's conception of the law as an activity of constitutive rhetoric within a culture of argument and conversation, suggest that law school can be understood as a process of "re-horizoning" for greater fidelity to the unrestricted desire to know. To the extent that a law school constitutes itself as a community in which authentic conversation about the law is encouraged and in which the skills necessary for such conversation are modelled and taught, the law school can serve as a community which fosters the development of a culture of argument. Through the dialectical process and conversational questioning that are part of this culture, the law school can be an effective component of a cosmopolis of legal culture with the potential to combat the problems of general bias inherent in the law as a species of practical common sense. Finally, by striving for greater fidelity to unfettered operation of the fundamental human desire to know, the understanding of legal education I have tried to articulate might make it increasingly possible for law schools to train students to "think like lawyers" without sacrificing the students' fundamentally human desires to think and act like persons searching for meaning and value in fully integrated lives.

