

Proposed Curriculum for a Possible Law School at Franciscan University of Steubenville¹

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In drafting the proposed Franciscan University Law School curriculum below, I was trying to carry out certain objectives and keep certain factors and conditions that are present in mind. First, we want to turn out technically competent lawyers, so we need to have a solid core of basic law courses. What appears below are more courses in these areas than I believe many law schools require, including the one I graduated from. Still, of course, the whole reason for our having a law school is not to turn out *just* technically competent lawyers. Second, we have said we want a law school whose focus will be on natural law in the Catholic tradition. I have tried to shape course requirement ideas which will further that aim. While the course titles on this subject are original, they are based on some of the courses one sees in the Notre Dame Law School catalogue. Third, we should try to avoid the basic pitfall of contemporary legal education of radically separating what is learned in the classroom from anything practical (i.e., so many young lawyers complain that their law school experience really did not prepare them for practice). Sometimes this lack of sufficient practical preparation has gotten young lawyers into ethical difficulties. I recall, for example, what one of the lawyers on our faculty told me about a young lawyer in Steubenville a couple of years ago who wound up in jail for mishandling client funds; our colleague said that part of the reason was that nobody ever instructed him about how to handle his law office business. So, some coursework geared to easing law students into the practical activity of everyday lawyering is desirable. Fourth, since we want to have a very serious Christian focus which demands that we promote charity and the diminution of conflict, we should, where we can in our curriculum, seek to put our students' attention on alternative dispute resolution. Fifth, I believe that we can develop a unique dimension to the curriculum that will: show our students the connection between law and the other disciplines; build upon what we are doing in, say, the undergraduate Humanities and Catholic Culture Program in showing the influence of the Church historically on the shaping of Western culture; show the students the integral role of law in the shaping of any culture; and further the focus on Christian humanism which President Father Michael Scanlan said a few years ago should shape our curriculum in the various disciplines. Sixth, some of the “nuts-and bolts” courses below are a bit different or beyond or altered from what is found in the normal law school curriculum. This difference, I believe, is necessary in light of the kinds of students we will likely attract. For example, it is good to require a second part of a Property course focused on land use because such matters as zoning have become

important to churches, have been used in some cases to restrict religious liberty, can be used by proliferators to stop the starting of abortion clinics, and so are valuable for our students to know. Two, as opposed to the usual one, required parts of a Constitutional Law course are preferred, first, because of the kind of natural law focus and attention to fundamental questions involving the purposes of law, foundation of the legal order, and jurisprudence we want to encourage, and second, because our students will need to know this area of the law well to deal with the issues of religious liberty, religious establishment, and abortion law, that many will be interested in. This type of course should, as is not ordinary when offered in law schools, include a special focus on civil rights statutes too because our students will need to know them both to know how they are being used against churches and Christians and know how they can use them to defend the legitimate liberties of the latter. Seventh, I figured that since we will not have a large number of professors—and because, as a unique Catholic law school, we want to shape the students in so many more positive ways with our curriculum than mainstream law schools—we will not want or deem desirable a lot of electives in the curriculum. I have listed the electives we will, at minimum, probably want to offer on some kind of cycle.

Apart from the nature of the curriculum, I think it is vital that the courses, where possible, be taught in a way which, to at least some degree, furthers our proposed special mission as being a law school promoting natural law in the Catholic tradition. Explicit course descriptions which state that this should be a dimension of the courses will help here (see below). So, it is crucial to select a faculty which are all not just good, practicing orthodox Catholics, but who also have a good understanding of the Catholic tradition of learning and legal scholarship and a good foundation not just in law but in theology, philosophy, and the liberal arts generally. They also have to be eager to be associated with a law school which seeks to ask very fundamental and critical questions about our legal order and to undertake a new path, pedagogically (see below) and in other ways.

As far as striking out on new paths in other ways is concerned, we should not be hesitant to use approaches other than: 1) the so-called Socratic method in classes—I found this teaching approach to be very unsatisfactory in law school - it was seldom done well by the professors and left the students confused, cynical, and skeptical that there was any truth to be aimed at; 2) the use of the case method—this method was one of Langdell's innovations at Harvard in the late 1800s, and I'm not sure that our century's casebook-trained lawyers are any more competent or capable than the ones on the American frontier who had learned the law from Blackstone's *Commentaries*; and 3) the practice of having just a single final exam as the sole means of evaluation for a course Law professors like this because it is less work for them, but it is not always best pedagogically. Indeed, being different in things such as these pedagogical methods may, along with our unique general law school orientation, help us to make the students recognize that the law is not—and

for Christians cannot be, I think—strictly adversarial. It will also add to the élan of a law school embarking in a new direction and daring to be different to be better.

Obviously, there will be courses where the case method (to at least a degree) and the Socratic method (well done) will be appropriate, but we should use these typical law school pedagogical practices with a critical eye and perhaps look to build a law school program that seeks primarily to look to other methods.

Below is the listing of the courses for each semester and year of a student's progression through the curriculum. All courses will be 3 credits (meeting 3 hours per week). A total of 90 credits will be needed for graduation, which is roughly the norm for law school. I have particularly consulted the catalogues of Notre Dame, University of Detroit-Mercy, and Widener University (Delaware Branch) in drafting this curriculum.

First (Freshman) Year:

Fall - Contracts I	Spring - Contracts II/Commercial Law
Property I (Land Ownership)	Property II (Land Use)
Torts I	Torts II
Civil Procedure I	Civil Procedure II/Federal Courts
Law, Religion, and Culture: Ancient Times	Law, Religion, and Culture: Medieval Times

Second (Junior) Year:

Fall- Criminal Law	Spring-Criminal Procedure
Constitutional Law I	Constitutional Law II/ Civil Rights Legislation
Legal Research and Writing/ Oral Advocacy	Legal Ethics
Business Associations (Corpora- tions, Partnerships, Agency)	Natural Law Jurisprudence
Law, Religion, and Culture: Modern Times	Law, Religion, and Culture: Contemporary Times

Third (Senior) Year:

Fall -Law and the Family	Spring - Administrative Law/Legislation
Theories of Jurisprudence	Alternative Dispute Resolution
Competing with Natural Law	*Research Seminar (students will choose from among 4 or 5 seminars)
The Activity of Lawyering	2 elective courses
Anglo-American Legal History	
1 elective course	

* Students who are selected for the law review, if there is one, can meet this requirement and earn the 3 credits, if they do a lengthy research article for the review.

As preparation for this curriculum, the law school should recommend that students have taken the following undergraduate courses: a traditional Catholic college sequence of basic philosophy courses (logic, metaphysics, philosophy of the human person, general ethics), a two-semester survey course in European history (e.g., Western civilization), a two semester survey course in American history, and a basic course in American national government.

Electives courses we should offer (all 3 credits) - these definitely should be available, but others could be added:

- Evidence (this is the only other course we might consider making a requirement)
- Basic Federal Taxation
- Estates, Trusts, and Wills
- Labor Law
- Conflict of Laws
- International Law/International Human Rights
- Clinical Courses (third-year students can earn up to 3 credits for legal internship-type work in local law offices, government agencies, companies, and non-profit agencies).

Research Seminars (all 3 credits) - students should be able to choose from at least these subjects (these subject areas reflect the particular emphases of the curriculum or the areas in which there are the most required credits): constitutional law, property law, tort law, legal history and jurisprudence, and criminal law and procedure.

Preliminary Descriptions of Courses:

Contracts I & Contracts II/Commercial Law- A survey of the principles of contract law and work with the UCC. Some attention will be given to the historical development of contract law, Christian ethical approaches to contract obligations, and an assessment of some of the utilitarian notions of contract law prominent in recent years.

Property I & II - A survey of real property law, with some brief treatment of personal property. The first part focuses on ownership questions, the second part on land-use regulation. Some attention will be given to the historical development of Anglo-American property law, the natural law rationale for private property rights, and the view of Catholic social teaching about property.

Torts I & II - A typical survey of tort law, with some attention given to the historical development of tort law, jurisprudential questions apparent in this area of law such as the recent shift from restoration of justice to utilitarian objectives as the

purpose of tort law, and an ethical evaluation of recent trends in tort law such as the rise of torts like negligent infliction of emotional distress and of the notion of punitive damages.

Civil Procedure I & II - Extensive coverage of civil procedure, so that students will learn, with some practical exercises in form preparation, to handle pleadings and motions in a civil case from beginning to end. Jurisdiction, venue, the working of the rule of precedence (i.e., whether cases stand as precedents between jurisdictions and within different federal circuits), joinder, class actions, appellate review, and other basic procedural principles will be covered. The second part of the course especially explores the federal court system and abundant questions connected with handling cases in that system.

The four courses in *Law, Religion and Culture* at the different periods of history will examine, in the spirit of the work of Christopher Dawson (even though he himself did not discuss the role of law extensively), the shaping of law by religion and other aspects of culture. It will consider the extent to which law actually influences the direction of a culture and what the general relationship between the two are. The history of the interrelation of law, religion, and culture in the Western world and, to a much lesser degree, in non-Western cultures will be studied. The role of Catholicism in influencing the shaping of law will be given particular attention. Periods to be covered in each course will be: Ancient Times (B.C. to 476 A.D.), Medieval Times (476 to 1450), Modern Times (1450 to 1900), Contemporary Times (1900 to the present).

Criminal Law - This course will cover the typical basic topics in this area of law, but some special attention will be given to the nature of a Catholic Christian view of criminology and penology and to an evaluation of the moral acceptability and effectiveness of different policies in this area.

Criminal Procedure - A typical course in this area, with a heavy constitutional emphasis. Students will be given a good understanding about how the various steps in criminal prosecutions work, from arrest through trial to the appeal stage.

Constitutional Law I & II - A constitutional law survey course covering all aspects except for criminal procedure questions. Substantial consideration in the second part to major federal and select state civil rights statutes. Consideration will be given to the influence of the natural law tradition on American constitutional law.

Legal Research and Writing/Oral Advocacy - Students will research a mock case and write briefs and all necessary pleadings and papers up to the point of oral

argument in court. They will then present oral arguments to a team of professors. Both writing and oral work will be carefully reviewed.

Legal Ethics - A study of the prevailing ethical rules governing legal practice and lawyers' conduct. The prevailing statutes, codes, and canons will be evaluated against the principles of sound ethics in philosophy and the teaching of the Catholic Church. Important philosophical and Catholic writings in the area of professional ethics will be considered.

Business Associations (Corporations, Partnerships, Agency) - A typical course in these areas, including an examination of both for-profit and not-for-profit entities. Some attention will be given to provisions of both civil and canon law relating to the position of churches and religious organizations.

Natural Law Jurisprudence and Theories of Jurisprudence Competing with Natural Law - The first course is an extensive study of the character of natural law, especially in the Catholic tradition. The proper relationship of natural law and human law is considered, and the scheme of a legal order conforming to natural law discussed. Great works of natural law jurisprudence are read in whole or in part. The second course considers the modern and contemporary theories—e.g., legal positivism, sociological jurisprudence, analytical jurisprudence, Rawlsianism, critical legal studies—which have rejected or challenged natural law in one way or another. The problems of such theories are considered in light of a natural law-based jurisprudence.

Law and the Family - A family law course, but much beyond and not swept up in the spirit of the typical domestic relations course. The trends in family law—defined broadly to include marriage, marital dissolution, support, parent-child relationships and the role of the state in them (e.g., child abuse and neglect and state substitution for parental authority), life issues as they affect the family, the law's view of nonmarital relationships, the law and homosexuality—are examined, both at the state level and constitutionally. The trends are examined in light of natural law and Catholic teaching. The broader philosophical, moral, and social implications of the transformation of family law in recent decades in the U.S. are considered. The effect of various public policies respecting the family are assessed.

The Activity of Lawyering - This is a practical course, probably taught by a practitioner and including guest lectures by other practitioners and field visits to law offices and agency settings, which informs the student about how to carry out a law practice. Such topics as how to counsel clients, proper attorney-client relations, law office management, dealing with typical problems in a practice, the way

to go about approaching particular types of cases and resolving client problems, the nature of work in legal partnerships and firms, advertising, building an ethical practice, managing caseload and related topics are addressed.

Alternative Dispute Resolution - An in-depth consideration of the possibilities—typical and innovative—for resolving legal disputes without suits or other traditional adversarial approaches. Such practices as arbitration, mediation, and conciliation are examined, and an assessment of which areas of law seem most amenable to alternative dispute resolution made. There will be an evaluation of various approaches to dispute resolution in light of Christian ethics and a consideration of the Christian lawyer's responsibility to seek alternative avenues.

Anglo-American Legal History - This course studies the development of the different areas of the law and their evolution and development over time in the history of England and later America. It will look at such standard areas of the law as contracts, torts, property, family law, and criminal law and (to a lesser degree) major state and federal constitutional law developments. It will look at the development of American law on both the state and federal level. Both English common law and American law development will be evaluated in light of Catholic social and, more broadly, moral teaching. These courses will be more history courses than intensive studies of cases, as is typical in courses in substantive areas of the law.

Administrative Law/Legislation - This course will combine two crucial areas into one course. Students will both learn how to draft legislation and administrative regulations—something lawyers play a crucial role in doing today. They will also learn the particulars of how law is implemented by bureaucratic and administrative agencies, through their rulemaking, enforcement, and regulatory functions. They will learn about agency procedures in carrying out these functions, rights and remedies of parties aggrieved by agency action, how to handle actions on behalf of clients dealing with agencies (e.g., proper forms, how to make findings of fact, the ins and outs of agency quasi-judicial functions)—in short, the content of a typical administrative law course but with a clear practical dimension. This training is crucial so that our students will know how to work as lawyers in dealing with or working within government agencies and legislatures where our public policy is almost entirely made.

Research Seminars - Students will be required to select one of these from among several choices in their third year. They will select a research topic and will be required to write a lengthy paper on it and present their papers to the seminar group. If there is a law review or journal and students are selected for it, their writing of a lengthy article for the review can substitute for this requirement.

The elective courses listed above would have a content like that of typical law school courses in the areas in question, except that: 1) the Basic Federal Taxation course would give some attention to justice in taxation from an ethical standpoint and from the position of Catholic social teaching and would also examine the social and moral dimensions of competing tax policy options; and 2) the Labor Law course would give some attention to critically evaluating labor law, labor policy, and unions from the standpoint of Catholic social teaching.

Notes

1. Editor's Note: Franciscan University's Board of Trustees, at its September 1996 meeting, decided against the establishment of a law school for now.