Seven Principles for Catholic Law Schools Serious About a Preferential Option for the Poor
by William Quigley

INTRODUCTION

In 1978, a Catholic college invited Cesar Jerez Garcia, S.J., who lived in Guatemala and who had been subjected to death threats for his actions in solidarity with the poor, to give the commencement address. In his speech, he wondered whether the education the students had been given would help them change the unjust systems in the US or instead allow them to find and take a comfortable place in those systems. In strong and direct words that shocked and provoked outrage among many of the students and their families, he asked:

Do you plan to use your degree for your own profit, be it profit in the form of money or power status or respect? Will you end up with General Motors or Morgan Trust, with Chase Manhattan or Abbott Laboratories, with Goodyear or Boeing. . . . Will you become people who use your knowledge for the furtherance of justice . . . or live the good life of manipulated, unconcerned people in suburbia who grant honorary degrees to people from the Third World but refuse to join them in the fight for justice and liberty for the poor of the world?²

I would guess that if Fr. Jerez gave this same talk at most any Catholic law school today, he would get the same reaction as he did in 1978. His challenge is to actually take the preferential option for the poor seriously in theory and practice. That is what is so shocking. That there are few if any Catholic schools where these words would not provoke, shows just how much work there is to be done.³

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Catholic law schools, like most law schools, actually clearly have a preferential option for the rich. Law faculty are, by income and status, part of the ruling class of a society privileged beyond the dreams of billions of people in this world. Most law alumni are well off or busy getting that way. Most law students are aiming to achieve a comfortable lifestyle and achieve security for themselves and family and to pay off their extraordinarily high educational loans. It is the thesis of this article that a preferential option for the poor—built upon the foundational principles of respecting human dignity, hearing the poor, maintaining solidarity with the poor, distinguishing charity from justice, being countercultural, working in community, and acting on behalf of justice—must be a fundamental part of any ethical law school, but especially a Catholic law school. This is not the only distinctive characteristic of a Catholic law school and this article does not attempt to give a definite suggestion of what a Catholic law school should be. That said, a law school which calls itself Catholic and which is not engaged in trying to develop a preferential option for the poor is missing a big part of its heart. These schools need to re-examine both their mission and operation and engage in a process of re-education and transformation. Catholic law schools which actually do exemplify a preferential option for the rich are going the wrong direction.

This article describes the preferential option for the poor and sets out a series of seven principles which can help Catholic law schools who choose to take this seriously explore the process of transformation from a preferential option for the rich toward a preferential option for

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4 John J. Fitzgerald, *Today’s Catholic Law Schools in Theory and Practice: Are We Preserving Our Identity?* 15 Notre Dame J. L. Ethics & Pub. Policy 245 (2001). He noted that the Pope has officially identified four essential characteristics of a Catholic university: “Christian inspiration in individuals and the university as a whole, scholarly reflection and research in light of the Catholic faith, fidelity to the Christian message as revealed by the Catholic Church, and an institutional commitment to the service of others.” *Id.* at 248. John also surveyed Catholic law school websites and considered Catholic character based on mission statements, curriculum, scholarship by faculty, student organizations, conferences and journals, and indicia of public interest. *Id.* at 281-306.
the poor.

PREFERENTIAL OPTION FOR THE POOR IN CATHOLIC SOCIAL THOUGHT

Rights must be religiously respected wherever they are found . . . . Still, when there is question of protecting the rights of individuals, the poor and helpless have a claim to special consideration.
— Leo XIII, *Rerum Novarum*

As individuals and as a nation . . . we are called to make a fundamental “option for the poor.” The obligation to evaluate social and economic activity from the viewpoint of the poor and the powerless arises from the radical command to love one’s neighbor as one’s self. Those who are marginalized and whose rights are denied have privileged claims if society is to provide justice for all. This obligation is deeply rooted in Christian belief.
— U.S. Catholic Bishops, *Economic Justice for All*

A preferential option for the poor is an essential part of the spiritual and just mission of the Catholic faith. The preferential option for the poor means several things: maintaining solidarity with the poor and powerless; viewing and evaluating all economic, political and institutional action and institutions from the perspective of the poor; and having an ongoing commitment to action on behalf of justice. “To make an option for the poor is to choose to disengage from serving the interests of the powerful and instead to take the side of those who are relatively powerless.”

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7 Stephen J. Pope, *Proper and Improper Partiality and the Preferential Option for the Poor*, 54 Theological Stud. 242 (1993). Pope also quotes Gregory Baum’s definition: “[W]hen confronted by a conflict between rich and poor (or powerful and powerless, or masters and slaves), then the Gospel demands . . . that [one] side with the oppressed.” *Id.* at 243.


9 Dorr, supra n. 8, at 755.
option for the poor is not solely a Catholic or Judeo-Christian principle and is present in other traditions. Catholic Social Thought will be the focus of this analysis of the preferential option for the poor.

The primary source for the option for the poor is the Bible. Throughout the books of the Bible, the poor and oppressed are identified as special concerns for those serious about their faith. Exodus, Leviticus, Deuteronomy, Tobit, Psalms, Proverbs, Sirach, Isaiah

10 For example, Gandhi suggested that people “[r]ecall the face of the poorest person you have ever seen, and ask yourself if the next step you take will be of any use to that person.” Mairead Maguire, Reflections on the Fiftieth Anniversary of Gandhi’s Assassination, http://www.forusa.org/nonviolence/74Maguire.html (2001).

11 Exodus 22:20-21 (New Am.) (“You shall not molest or oppress an alien, for you were once aliens yourselves in the land of Egypt. You shall not wrong any widow or orphan.”).

12 Leviticus 25:35-36 (New Am.) (“When one of your fellow countrymen is reduced to poverty and is unable to hold out beside you, extend to him the privileges of an alien or a tenant, so that he may continue to live with you. Do not exact interest from your countryman either in money or in kind, but out of fear of God let him live with you.”).

13 Deuteronomy 10:17-19 (New Am.) (“For the Lord, your God, is the God of gods, the Lord of lords, the great God, mighty and awesome, who has no favorites, accepts no bribes; who executes justice for the orphan and the widow, and befriends the alien, feeding and clothing him. So you too must befriend the alien, for you were once aliens yourselves in the land of Egypt.”).

14 Tobit 4:16 (New Am.) (“Give to the hungry some of your bread, and to the naked some of your clothing. Whatever you have left over, give away as alms; and do not begrudge the alms you give.”).

15 Psalms 34:18-19 (New Am.) (“When the just cry out, the Lord hears and rescues them from all distress the Lord is close to the brokenhearted, saves those whose spirit is crushed.”); Id. at 72:2-4 (New Am.) (“O God, give your judgment to the King; your justice to the son of kings; That he shall govern your people with justice, your oppressed with right judgment, That the mountains may yield their bounty for the people, and the hills great abundance, That he may defend the oppressed among the people, save the children of the poor and crush the oppressor.”); Id. at 82:3-4 (New Am.) (“Defend the lowly and fatherless; render justice to the afflicted and needy. Rescue the lowly and poor; deliver them from the hand of the wicked.”).

16 Proverbs 21:13 (New Am.) (“He who shuts his ear to the cry of the poor will himself also call and not be heard.”); Id. at 31:8-9 (New Am.) (“Open your mouth in behalf of the dumb, and for the rights of the destitute; Open your mouth, decree what is just, defend the needy and the poor!”).

17 Sirach 4:1-9 (New Am.) (“My son, rob not the poor man of his livelihood; force not the eyes of the needy to turn away. A hungry man grieve not, a needy man anger not; do not exasperate the downtrodden; delay not to give to the needy. A beggar in distress do not reject; avert not your face from the poor. From the needy turn not your eyes, give no man reason to curse you; For if in the bitterness of his soul he curse you, his Creator will hear his prayer. Endear yourself to the assembly; before a ruler bow your head. Give a hearing to the poor man, and return his greeting with courtesy; Deliver the oppressed from the hand of the oppressor; let not justice be repugnant to you.”).

18 Isaiah 1:17 (New Am.) (“Make justice your aim: redress the wronged, hear the orphan’s plea, defend the
Jeremiah,\textsuperscript{19} Amos,\textsuperscript{20} Zechariah,\textsuperscript{21} Matthew,\textsuperscript{22} Mark,\textsuperscript{23} Luke,\textsuperscript{24} Acts,\textsuperscript{25} Timothy,\textsuperscript{26} James,\textsuperscript{27} and

19 Jeremiah 7:5-7 (New Am.) ("Only if you thoroughly reform your ways and your deeds; if each of you deals justly with his neighbor; if you no longer oppress the resident alien, the orphan and the widow; if you no longer shed innocent blood in this place or follow strange gods to your own harm, will I remain with you in this place, in this land which I gave to your fathers long ago and forever."); Id. at 22:3 (New Am.) ("Thus says the Lord: Do what is right and just. Rescue the victim from the hand of his oppressor. Do not wrong or oppress the resident alien, the orphan, or the widow, and do not shed innocent blood in this place.").

20 Amos 5:11, 12-13 (New Am.) ("Therefore, because you have trampled upon the weak and exacted of them levies of grain, though you have built houses of hewn stone you shall not live in them! Yes, I know how many are your crimes, how grievous your sins: oppressing the just accepting bribes, repelling the needy at the gate! Therefore the prudent man is silent at this time, for it is an evil time.").

21 Zechariah 7:9-10 (New Am.) ("Thus says the Lord of hosts: Render true judgment and show kindness and compassion toward each other. Do not oppress the widow or the orphan, the alien or the poor.").

22 Matthew 6:19-21 (New Am.) ("Do not store up for yourselves treasures on earth, where moth and decay destroy, and thieves break in and steal. But store up treasures in heaven, where neither moth nor decay destroys, nor thieves break in and steal. For where your treasure is, there also will your heart be."); Id. at 6:24 (New Am.) ("No one can serve two masters. He will either hate one and love the other, or be devoted to one and despise the other. You cannot serve God and mammon."); Id. at 25:32-46 (New Am.) ("The King will say to those on his right: ‘Come you who are blessed by my Father! Inherit the kingdom prepared for you from the foundation of the world. For I was hungry and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me, naked and you clothed me, ill and you cared for me, in prison and you visited me.’ Then the righteous will answer him and say, ‘Lord when did we see you hungry and feed you, or thirsty and give you drink? When did we see you a stranger and welcome you, or naked and clothe you? When did we see you ill or in prison and visit you?’ The King will answer them: ‘I assure you, as often as you did this for the least of my brothers, you did it for me.’ Then he will say to those on his left: ‘Out of my sight, you condemned, into that everlasting fire prepared for the devil and his angels! I was hungry and you gave me no food, I was thirsty and you gave me no drink. I was away from home and you gave me no welcome, naked and you gave me no clothing. I was ill and in prison and you did not come to comfort me.’ Then they in turn will ask: ‘Lord, when did we see you hungry or thirsty or away from home or naked or ill in prison and not attend you in your needs?’ He will answer them: ‘I assure you, as often as you neglected to do it to one of the least of these least ones, you neglected to do it to me.’ These will go off to eternal punishment and the just to eternal life.").

23 Mark 9:35-37 (New Am.) ("Then he sat down, called the Twelve, and said to them, ‘If anyone wishes to be first, he shall be last of all and the servant of all.’ Taking a child, he placed it in their midst, and putting his arms around
John all contain mandates to address the conditions of orphans, widows, immigrants, prisoners, the hungry, and the homeless.

Jesus was born in a stable while his parents were forced by law away from their home; he was forced to live as a refugee for two years, was poor his entire life, lived among others who were poor, and had very few possessions. He repeatedly preached about the dangers of money it he said to them, ‘Whoever receives one child such as this in my name, receives me; and whoever receives me, receives not me but the one who sent me.’”); *Id.* at 10:17-25 (New Am.) (“As he was setting out on a journey, a man ran up, knelt down before him and asked him, ‘Good teacher, what must I do to share in eternal life?’ Jesus answered, ‘Why do you call me good? No one is good but God alone. You know the commandments: You shall not kill; You shall not commit adultery; You shall not steal; You shall not bear false witness; You shall not defraud; Honor your father and your mother.’”) He replied, ‘Teacher I have kept all these since my childhood.’ Then Jesus looked at him with love and told him, ‘There is one thing more you must do. Go and sell what you have and give to the poor; you will then have treasure in heaven. After that, come and follow me.’ At these words the man's face fell. He went away sad, for he had many possessions. Jesus looked around and said to his disciples, ‘How hard it is for the rich to enter the kingdom of God!’ The disciples could only marvel at his words. So Jesus repeated what he had said: ‘My sons, how hard it is to enter the kingdom of God. It is easier for a camel to pass through a needle's eye than for a rich man to enter the kingdom of God.’”

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24 *Luke* 1:51-53 (New Am.) (“God has shown might with his arm; he has confused the proud in their inmost thoughts. He has deposed the mighty from their thrones and raised the lowly to high places. The hungry he has given every good thing, while the rich he has sent empty away.”); *Id.* at 4:18-19 (New Am.) (“The spirit of the Lord is upon me, therefore he has anointed me, he has anointed me to bring glad tidings to the poor, to proclaim liberty to captives, recovery of sight to the blind, and release to prisoners, to announce a year of favor from the Lord.”); *Id.* at 6:20-25 (New Am.) (“Blest are you poor; the reign of God is yours. Blest are you who hunger; you shall be filled. Blest are you who are weeping, you shall laugh. . . . But woe to you rich, for your consolation is now. Woe to you who are full; you shall go hungry.”).

25 *Acts* 4:32-35 (New Am.) (“The community of believers were of one heart and one mind. None of them ever claimed anything as his own, rather everything was held in common. With power the apostles bore witness to the resurrection of the Lord Jesus, and great respect was paid to them all; nor was there anyone needy among them, for all who owned property or houses sold them and donated the proceeds. They used to lay them at the feet of the apostles to be distributed to everyone according to his need.”).

26 *1 Timothy* 6:10 (New Am.) (“For the love of money is the root of all evils, and some people in their desire for it have strayed from the faith and have come to grief amid great pain.”).

27 *James* 2:5-7 (New Am.) (“Listen dear brothers, did God not choose those who are poor in the eyes of the world to be rich in faith and heirs of the kingdom he promised to those who love him? Yet you treated this poor man shamefully. Are not the rich exploiting you? They are the ones who hale you into the courts and who blaspheme that noble name which has made you God’s own.”); *Id.* at 2:14-17 (New Am.) (“My brothers, what good is it to profess faith without practicing it? Such faith has no power to save one, has it? If a brother or sister has nothing to wear and no food for the day and you say to them ‘Good-bye and good luck! Keep warm and well fed.’ But do not meet their bodily needs, what good is that? So it is with the faith that does nothing in practice. It is thoroughly lifeless.”).

28 *1 John* 3:17 (New Am.) (“I ask you, how can God’s love survive in a man who has enough of this world’s goods yet closes his heart to his brother when he sees him in need?”).
and power. Often, Jesus did not have a place to lay his head at night. He was wrongfully imprisoned, tortured, and executed by the death penalty at the hands of the occupying Roman imperial power.\textsuperscript{29}

The idea that there is to be a preferential option for the poor was first clearly articulated and strongly advocated by Latin American liberation theologians in the latter part of the twentieth century.\textsuperscript{30} In 1968, Latin American Bishops issued a pastoral document indicating that they heard the cries of the poor and responded that:

\begin{quote}
We ought to sharpen the awareness of our duty of solidarity with the poor, to which charity leads us. This solidarity means that we make ours their problems and their struggles, that we know how to speak with them.

This has to be concretized in criticism of injustice and oppression, in the struggle against the intolerable situation in which a poor person often has to tolerate, in the willingness to dialogue with the groups responsible for that situation in order to make them understand their obligations.\textsuperscript{31}
\end{quote}

The term preferential option for the poor was first used in the 1979 Puebla Third General Conference of Latin American Bishops:

\begin{quote}
\textit{Preferential option for the poor.} Pastoral openness in one’s labors and a preferential option for the poor represent the most noticeable tendency of religious life in Latin America. Indeed religious increasingly find themselves in difficult, marginalized areas; in missions to the indigenous peoples; and in silent, humble labors. This option does not imply exclusion of anyone, but it does imply a preference for the poor and a drawing closer to them.\textsuperscript{32}
\end{quote}

\textsuperscript{29} Luke 2 tells us that Mary and Joseph were forced to leave Galilee for Nazareth to comply with orders of the occupying power. The newborn Jesus was laid in a manger, a feeding trough for animals. Matthew 2 describes the family’s flight to Egypt to avoid genocide by the ruler. Luke 9:58 notes that Jesus often had no place even to sleep. Matthew 19:27-30 explains how the disciples gave up homes and family to follow Jesus. In Mark 6:7-13, Jesus tells the disciples to take no money or supplies with them on the road but to rely on the sharing of others. In Matthew 19:16-26, the rich young man presented another opportunity for Jesus to underline how hard it was for the rich to enter heaven, it was easier for a camel to pass through the eye of a needle.

\textsuperscript{30} Catholic Social Thought has held up solidarity with the poor and advocacy on behalf of the poor as an ideal for years. See Dorr, supra n. 8.


\textsuperscript{32} \textit{Evangelization in Latin America’s Present and Future: Final Document of the Third General Conference of the Latin American Episcopate} ¶ 733 (Jan. 27-Feb. 13, 1979), in \textit{Puebla and Beyond} 122, 222 (John Eagleson & Philip
The U.S. Catholic Bishops adopted this perspective in their 1986 pastoral letter, “Economic Justice for All”:

As individuals and as a nation, therefore, we are called to make a fundamental “option for the poor.” The obligation to evaluate social and economic activity from the viewpoint of the poor and the powerless arises from the radical command to love one’s neighbor as one’s self. Those who are marginalized and whose rights are denied have privileged claims if society is to provide justice for all. This obligation is deeply rooted in Christian belief. 33

Seven Principles for Catholic Law Schools Serious About A Preferential Option for the Poor

A preferential option for the poor should be a foundation of any ethical institution. 34 This is clearly a challenge for any institution that calls itself Catholic, but especially Catholic law schools, which, like most law schools, usually actually embody a preferential option for the rich. 35 There is no way to try to develop a preferential option for the poor without a fundamental

33 Economic Justice for All, supra n. 6, at ¶ 87.

34 A fourth characteristic of a Catholic law school is that it should devote substantial resources to clinical legal education and pro bono service to the poor. This reflects the “preferential option” for the poor central to Catholic Social Thought. A Catholic law school has an obligation to instill in its students—Catholic and non-Catholic alike—an awareness of their ethical and spiritual obligation as lawyers to serve those afflicted with poverty or oppression. . . . There is nothing uniquely “Catholic” about strong institutional support for such service to the poor. But that is once more beside the point. The Catholic law school, in my opinion, must commit to such service learning because it is Catholic. The providing of service to the poor, and, perhaps more significantly, the attempt to persuade students that they as lawyers should serve the poor, is, in essence, an essential part of the law school’s Catholic mission. The fact that non-Catholic law schools attempt to teach similar lessons and that Catholic law schools are not uniquely distinctive because of their commitment to such service establishes nothing of any great importance. What is important is why Catholic schools choose to follow the path of service. Clinical and pro bono programs are tangible expressions of the quest for human solidarity and the hunger and thirst for justice grounded in the Catholic conception of human dignity.


35 Anyone who questions whether there is a preferential option for the rich in their law schools should take the following test. When was the last time the law school invited the closest low-income community to participate in a law school function? When was the last time that the law school faculty or administration worked in partnership on community problems with working class and poor people? Does the law school pay a living wage to all the people who work there and clean there and serve there? How often does the law school host poor people’s organizations workshops and activities? How does the average salary of law school faculty compare with the average income of
re-education and turning away from the comforts provided by the preferential option for the rich.

Law school, like the law itself, is not usually a place where poor people are really thought of at all. On the few occasions when poor people are even considered at all in legal education or the legal profession it usually is in the clinical setting as people on whom young students can practice to learn how to become lawyers later, as the recipients of charity work done by pro bono lawyers, or in a brief discussion in professional responsibility on the very indefinite suggestion that lawyers spend some time helping those who cannot afford legal services. In the profession, there are occasional lawyers who make their living from government work representing the poor, or personal injury or criminal or family law where some lawyers work with or at least around some poor people. And there are occasions when law is actually used to help direct society in a more just direction. However, the reality is that, despite what is said at orientation, the annual lawyer mass, or graduation, and by law reform or pro bono action, the public and the profession understand that law schools and the legal profession are essentially about teaching people how to help service businesses, the status quo, and the upper classes and to help the lawyers who service them make money.

people who live in the surrounding city? Who sits on the various law school advisory boards? Which alumni does the Dean take to lunch? Whose names does the President know? What percentage of the law school budget is put into loan forgiveness for graduates doing work with the poor? How much does the school invest in summer clerking opportunities for students in justice work? Best of all, what would the poorest people who live around the school think of the law school’s commitment to the poor?

To be fair, as Professor Shaffer has implied, a law school assembled on the principles of the gospel could never get ABA approval. Thomas Shaffer, *Why Does the Church Have Law Schools?* 78 Marq. L. Rev. 401, 410 (1995).

36 Other institutions like social service agencies might think of the poor people they serve as clients or allies, but their importance is self-evident because without poor people the social service agency need not exist. Hospitals may have to balance the needs of the uninsured poor against their bottom lines, but they really need poor patients with their Medicaid and Medicare to be a part of the mix of services they provide. Law schools are different.

37 Deborah L. Rhode suggests “[t]he best estimates suggest that the nation supplies about one legal aid attorney for every nine thousand poor persons, compared with one lawyer for every three hundred residents.” Deborah L. Rhode, *In the Interests of Justice: Reforming the Legal Profession* 120 (Oxford U. Press 2000).

38 That law protects the status quo of the rich and powerful is usually glaringly more obvious in retrospect.
A preferential option for the poor turns the world, particularly the world of law, upside down. Real consideration of a preferential option for the poor in a law school requires serious commitment to change. Those satisfied with the status quo in the profession or in the academy need not read further. Without real willingness to risk being open to a completely different perspective, and a commitment of both resources and action, it is not worth looking at the option for the poor. Because of that, this article is not going to discuss specific suggestions about

Remember that Justice Harlan’s famous quote that there was no ruling class in this country was in the dissent in *Plessy v. Ferguson*: “in the eye of the law, there is in this country no superior, dominant ruling class of citizens.” 163 U.S. 537, 599 (1896) (Harlan, J., dissenting).

A great historical example can be examined in Reva B. Siegel, “The Rule of Love”: *Wife Beating as Prerogative and Privacy*, 105 Yale L.J. 2117 (1996). Likewise, Eugene D. Genovese states: “In southern slave society, as in other societies, the law, even narrowly defined as a system of institutionalized jurisprudence, constituted a principle vehicle for the hegemony of the ruling class. . . . The slave-holders as a socio-economic class shaped the legal system to their interests.” Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* 26-27 (Pantheon Books 1974).

But the role of law today as a protector of the status quo and as an agent against justice can also be seen. *See* Dalia Tsuk, *Corporations without Labor: The Politics of Progressive Corporate Law*, 151 U. Pa. L. Rev. 1861 (2003) (who points out that corporate law empowers the ruling class at the expense of the working and middle class).

Ironically, law can also help manage the transition times when the demands of social justice challenge the status quo protected by the law, even if the law is part of the unjust status quo. Professor Rodes gives a great insight into this role of law (though it is more optimistic about the role of law in holding the ruling class accountable than this author thinks reality suggests):

Law operates in society as a bridge between values and their realization. It is one that ruling classes are often willing to cross, and that they often cross, willing or not, because of the power of the rest of society. I might add, drawing on the history of various revolutions, that if the bridge is lacking the gap will be crossed in some other way. The drive for social justice is neither continuous nor overwhelming, but it cannot be permanently ignored. If it is not effectively institutionalized, it will find ways, often harsh ways, to become so.

The role of law in the institutionalization process is complex, because it controls all the institutions of society and at the same time is one of those institutions itself. It is, like any institution, under the power of the ruling class; at the same time, it is the main vehicle for holding the ruling class accountable to the wider society.


39 As Professor Rodes writes:

We are living in comfort and prosperity on the flip side of other people’s misery and degradation. The economic, social, political, and cultural structures that fund our research, publish our books and papers, put us up in nice hotels while we read them to each other, and provide our graduates with interesting and remunerative jobs are the same ones that imprison our poor people in a world of hamburger flipping, teenage pregnancy, drive-by shootings, and crack, and inveigle many of our rich people into a world of gilded banality punctuated by alcoholism and casual sex.

reworking mission, admissions, recruitment of students, allocation of scholarships, classroom opportunities, immersion programs, community service, new ways and content of teaching, clinics, faculty scholarship, pro bono requirements, international programs, loan repayment assistance, community partnerships, faculty selection, lecture series, budget, or boards and advisory committees. All of these specific issues can and must be considered, but only after there is an opportunity for discussion of fundamentals, an examination of foundational principles, and a commitment to change. Too many of us when confronted with something new are compelled to take some immediate action to respond. We can confuse action with progress. But when confronting a seismic shift like a preferential option for the poor, action is not as important as trying to learn a new way of living in and looking at the world. Subsequent action is necessary, but it must be based on these foundational principles. If a law school community engages in a process guided by these principles, specific ideas about changing the school will gush forth and justice will roll down like water.\textsuperscript{40}

\textbf{Respect for Human Dignity}

The struggle against destitution, though urgent and necessary, is not enough. It is a question rather of building a world where every man, no matter what his race, religion, or nationality, can live a fully human life, freed from servitude imposed on him by other men or by natural forces over which he has not sufficient control; a world where freedom is not an empty word and where the poor man Lazarus can sit down at the same table with the rich man.

—Paul VI, \textit{On the Development of Peoples} 1967\textsuperscript{41}

The first principle in implementing a preferential option for the poor is to understand that poor people are due the same everything as everyone else. That means people simply must commit to giving the same respect to poor people as law schools now give to rich people. This

\textsuperscript{40} \textit{Amos} 5:24 (New Am.).

means any one of the hundreds of low-wage workers at Wal-Mart are as important as the alums who are federal judges. This means any one of the thousands of people in the state prison are just as important as the faculty. This means the people of Iraq, Afghanistan, or Liberia are as important as our students. Anything less privileges those in the school community over those without. Certainly practical considerations enter into how people spend their time and resources, but the demand of human dignity is nonnegotiable and must permeate every action. There must be agreement that poor people have the right to the same expectations in life as anyone in the law school community. And that agreement has implications.

This is a small but powerful step. Taking this first principle seriously may well end the discussion. But if the process does not start with acknowledging the fundamental equal human dignity of poor people with all other people, then it is not going anywhere.\(^42\)

Part of the importance of recognizing that we all, rich and poor alike, share the same human dignity is the need to actually start our journey of transformation with people. For it is in the experience of sharing the lives of others that change comes about.

**Hearing the Poor**

I have heard the cry of my people and I see how they are being oppressed.

—Exodus 3:9

The second principle requires that the law school position itself to hear the cries of the poor. This is another example of our need for re-education. Law schools are part of the larger culture which never listens to the voices of the poor, but rather celebrates and hangs on the

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\(^{42}\) Steven M. Barkan, *Jesuit Legal Education: Focusing the Vision*, 74 Marq. L. Rev. 99, 112 (1990) (“[T]he dignity of the individual must be given the highest priority.”) (emphasis removed); Lucia A. Silecchia, *Reflections on the Future of Social Justice*, 23 Seattle U. L. Rev. 1121, 1140 (2000) (“[T]he future of social justice must begin with a recognition of those whose dignity is not fully respected. We must come to understand the reasons for this—complex, painful, and long-standing as they may be—and take steps to restore dignity to those most vulnerable and overlooked in the world today. Until it is understood that there is a dignity inherent in being human, it will be impossible to achieve any progress toward real social justice.”).
voices of the powerful and the successful and the wealthy. The poor are invisible and unheard.43

In order to hear, we must listen. And we have to acknowledge that what we hear depends on where we stand. No one can expect to hear the voices of the street from an insulated penthouse. We cannot just ask a group of poor people to come to the law school and talk to us and act as an advisory board. We must go to be with the poor in order to listen.44 Just as no law school would think of adding a new emphasis in international or maritime law without seeking out the people in the field, so too with an option for the poor. This means faculty, students, staff and alumni have to be in direct ongoing contact with poor people. This does not mean seeking out experts about the poor and relying on them to translate and explain poor people to us and our communities. While translators and guides are important, they are not point of the journey; they only help facilitate the journey. The law school community must be with the poor in order to hear the voices of the poor.

Listening to the poor means starting to hear the people who live around the school, but it cannot not stop there. There are poor people everywhere, but if we are serious about listening we must listen to the voices of the poor on the local, national, and international levels. That is very challenging because the mainstream media does not prioritize these voices. This requires us to take initiative to constantly re-educate ourselves about the needs of the poor. We will have to actively listen to different people and search out other news sources.

43 Thomas L. Shaffer & Robert E. Rodes, Jr., A Christian Theology for Roman Catholic Law Schools, 14 U. Dayton L. Rev. 5, 17 (1988) (“We are so far the victims of false consciousness that we will not notice the poor unless we go out of our way to do so.”); but see Christopher Wolfe, The Ideal of a (Catholic) Law School, 78 Marq. L. Rev. 487, 492 (1994-1995) (Some writers suggest that the option for the poor could stretch to cover the economically non-poor because those “who are poor in ‘truth’ are no less in need of a certain kind of ‘preferential option.’”).

44 Thomas L. Shaffer, The Christian Jurisprudence of Robert E. Rodes, Jr., 73 Notre Dame L. Rev. 737, 753 (1998) (“What I tell people, in talking about the preferential option for the poor, is, in any transaction you encounter, look and see who’s on the bottom. What’s the effect of this transaction on the people at the bottom of it? See how you take care of them.”).
The preferential option for the poor means that impact on the poor is the first question that should be asked about any law or public policy—it is not the only question to be asked but it should be the first question. The impact on the poor should be evaluated by first listening to poor people themselves.

**Solidarity with the Poor**

If you have come to help me, don’t bother. If you have come to walk beside me because your liberation is bound up with mine then come, let us walk together.

—Lilla Watson

The third principle is a commitment to solidarity with the poor. If we recognize the fundamental human dignity of each other and we move to a place where we are willing to listen, then we have started. But solidarity with the poor is a particularly difficult challenge because law professors, and most lawyers, are clearly members of the ruling class and thus a very big part of the problems of the poor. As Professor Tom Shaffer said recently specifically about lawyers:

The preferential option for the poor requires solidarity with the poor, and that means it is about taking sides. Poor people are on one side and we are on the other. Biblical justice says: change sides . . . . It means entering the world of the exploited in a concrete way; accepting the validity and even the superiority of the perspective of the poor . . . . yielding leadership to representatives of the poor (including clients); and abandoning membership in groups that identify with the oppressors of the poor.

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45 Curran, *supra* n. 8, at 188.


47 Shaffer, *supra* n. 45, at 752 (“American law teachers have one foot in the university and the other in the market place. . . . In one society, we may be too academic—so sophisticated in our analysis of the transcendent that we lose track of what is actually going on. In another, we may be too pragmatic—so aware of the things we can make happen that we hardly stop to think whether they ought to happen or not. But our situation in today’s managerial society is more problematic than ever, because we are so firmly established as members of the ruling class. We are unique in being so large a part of the problems we are supposed to be solving.”).

Solidarity means trying to engage the poor as partners in a relationship of mutual education and help. True solidarity means that lawyers and law schools cannot just start seeking ways to try to help the poor. Again we cannot confuse action with progress. It is not action for but action with the victims of injustice.49 Our challenge is not to speak for those whose voices are not being heard, though that is sometimes necessary, but rather to help create an atmosphere where the usually unheard voices must be listened to.

If a community is satisfied with the current situation, and thinks an option for the poor is a process of giving help to the poor, it still has to learn what solidarity means. Solidarity means that we understand that all of us have something to give and all of us have needs that we need help with. All of real life is give and take. Any school in a partnership with the poor will be certainly be giving but also absolutely will be taking.50 When one party is just giving or just taking, it is not a relationship built on respect. In a mutual relationship based on respect, we can be comfortable with giving and taking. Solidarity communicates a mutual relationship, a sense of our common humanity, our “oneness.”51

Solidarity also has implications for how we live and where we put our effort, how we dedicate our lives.52 Regular contact and communication with poor people will prompt some


50 As but one example of individual partnership, law school clinical programs clearly provide the benefit of legal representation to low income people. But clinical programs are created and maintained primarily as experience-based educational opportunities for students to learn how to become better lawyers. Thus, while individual people benefit from the giving of representation by the law school, the law school community also takes the representation as an opportunity for education.


52 Dorr, *supra* n. 8, at 757 (“In practice, this aspect of option for the poor has to do with lifestyle. Lifestyle includes the kind of food we eat, the clothes we wear, the way our homes are furnished. But these are of secondary importance. Much more significant are our choices about the area in which we live, the friends we cultivate, the kinds of work we undertake, and the attitudes and style we adopt in doing all these things.”).
sobering questions about why our society is ordered the way it is and what role we play in it. It will prompt examination of economic issues, on a societal and personal basis. Solidarity with the poor will confront us with issues of justice.

Charity and Justice

If you speak about the poor you are a holy person; if you speak about the root causes of poverty you are a communist.
—Dom Helder Camara, Bishop in Brazil

The fourth principle is a recognition of the critical distinction between charity and justice. Charity is an essential demand and is vital. But the preferential option for the poor is not one built exclusively on charity, but equally on justice.

If charity is giving something from our excesses to the needy, justice is a restructuring so that there are many fewer needy. The option for the poor is not only a call for the altruistic kindnesses of law school students, professors, or lawyers. Poor people, in this country and worldwide, appreciate kindness, but justice is what is needed.

Theologian Walter Bruggemann says that justice means “you find out what belongs to whom, and give it back!” This literally means redistribution of resources which are currently

53 Kammer, supra n. 8, at 156; see also Beatriz Lecumberri, Brazil’s Helder Camara, Champion Of Poor, Dies At 90, Agence France Presse (August 28, 1999).

54 See Shane Claiborne, Downward Mobility in an Upscale World, The Other Side 11, 15 (Nov./Dec. 2000) (“People do not get crucified for charity. People are crucified for living out a love that disrupts the social order, that calls for a new world. People are not crucified for helping poor people. People are crucified for joining them.”).

55 William Sloane Coffin recognized the difficult challenge of transforming the beautiful acts of charity into actions for justice: “Why are the churches so long on charity and short on justice? Because charity in no way affects the status quo while justice inevitably leads to political confrontation.” William Sloane Coffin, Civic Responsibility in the New Millennium: An Address to Christians, Fellowship (Nov./Dec. 2000) (available at http://www.forusa.org/Fellowship/Nov-Dec00/civic07.htm).

56 Maria Harris, Preparing for the Jubilee Year, American Catholic (February 1999) (available at http://www.americancatholic.org/newsletters/MM/ap0299.asp).

According to Harris this means redistribution of not just money but also the capital of education, literacy, healthcare, and the capital of privilege.
wrongfully allocated. Catholic Social Thought recognizes that private property does not constitute an absolute and unconditional right as long as there are people in need of necessities by going back to Saint Ambrose who said: “You are not making a gift of your possessions to the poor person. You are handing over to him what is his. For what has been given in common for the use of all, you have arrogated to yourself. The world is given to all, and not only to the rich.”

Charity provides the giver with a sense of helping the less fortunate. Justice is rock-breaking, hard, often controversial work that sweats everyone involved.

But it is justice that we pursue if we take the option for the poor seriously. This justice involves breaking down economic, institutional, and political relationships built on injustice and rebuilding those relationships on a new more just foundation.

This is particularly challenging for law schools for several reasons. First, the law is the great protector of the status quo—which is frequently based on unjust actions and consequences. In fact, law is inherently a difficult instrument to use to challenge the legitimacy of law. Second, as a group we proclaim that our profession is already about justice with money only a secondary consideration to our more noble aims. While few outside or inside the profession actually believe that proclamation, it is part of our self-definition and must be squarely faced.

Neutrality has no place in the option for the poor. For neutrality means you are on the side of the powers in charge. For, as Archbishop Desmond Tutu said, “When the elephant has his foot on the tail of the mouse, and you say you are neutral, the mouse will not appreciate your

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58 “‘Moralists of all ages have been eloquent in singing the praises of virtue,’ wrote [Abraham] Heschel. ‘The distinction of the prophets was in their remorseless unveiling of injustice and oppression.’” Taylor Branch, *Pillar Of Fire: America in the King Years 1963-65*, at 31 (Simon & Schuster 1998).
neutrality.” 59

As Professors Shaffer and Rodes have observed: “If we set out to deal evenhandedly between rich and poor, we will inevitably end up favoring the rich. If we set out to do no more than justice requires, we will end up doing less.” 60

If law is indeed often an instrument maintaining unjust systems, and lawyers are the ones protecting the systems of injustice and profiting from it, then what does justice mean? At least one of the meanings of justice is that the legal system itself must be broken down and rebuilt. That we are part of the problem for poor people and our profession and our occupations must profoundly change is a substantial challenge for law schools and the legal profession. But it is a challenge that we must face if we are to take the justice demands of the preferential option for the poor seriously.

**Change the Culture**

An elderly Cherokee Native American was teaching his grandchildren about life. “A fight is going on inside of me,” he said. “It is a terrible fight and it is between two wolves. One wolf represents fear, anger, envy, sorrow, regret, greed, arrogance, self-pity, guilt, resentment, inferiority, lies, false pride, superiority and ego. The other stands for joy, peace, love, hope, sharing, serenity, humility, kindness, benevolence, friendship, empathy, generosity, truth, compassion and faith. This same fight is going on inside of you and inside of every other person, too.” The children thought about it for a minute and then one asked the grandfather, “Which wolf will win?” The old Cherokee replied, “The one I feed.” 61

—Native American proverb

Despite the rosy vision of ourselves and our profession as a God-fearing, patriotic, generous, faithful people, our culture and our profession are engaged in a pattern of deceit covering up starkly unjust allocations of power and wealth. Speaking the truth is a radical step in

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60 Shaffer & Rodes, supra n. 44, at 17.

61 Native American proverb.
transformation. To make a real attempt to adopt a preferential option for the poor is to become countercultural, to “give counter-witness to the values of consumer society.”

Being countercultural in this way does not mean flowers in your hair or dropping out and doing your own thing. This type of counter culture action means challenging the economic, political, and social systems upon which so many of the unjust systems depend. These same unjust systems are the ones which reward lawyers and law professors so handsomely. Therefore, there is clearly an element of the biblical Sampson in this type of challenge to the culture.

There are elements deeply embedded in our culture that repeatedly tell us myths about poverty and wealth: poverty is just a state of mind; poverty is an individual matter and is the result of the laziness or immorality of poor people; poverty can be overcome by anyone anywhere who is willing to work. These myths in our culture are used to reinforce a focus on the inherent goodness of the wealthy, the priority of individual needs over those of the community, a sense that happiness and fulfillment comes from money and protection and a focus

62 Barkhan, supra n. 43, at 113.

63 Judges 16 tells the story of the death of Sampson. Sampson, the strong man who defeated the Philistines, was tricked by Delilah, captured, blinded and imprisoned. In captivity he was brought out to amuse the Philistines and placed in between the main columns that supported the temple. In his last act of resistance, Sampson pushed the columns of the temple with such force that they collapsed extinguishing the lives of his captors and his own. Judges 16:17-30 (New Am.).

Where would taking this seriously lead? Professor Rodes admits what we all must admit, that we have no idea. But he does acknowledge the Sampson-like nature of challenge the pillars of the temples unto which we are attached:

[I]t seems likely that it will eventually bring down many of the economic, social and cultural structures on which we now depend for the abundant material and psychic rewards of the academic life. The price may not be exacted today or tomorrow, but if we are to do our job with honesty and commitment, we must be prepared to pay it.

Rodes, supra n. 40, at 310.

64 See William P. Quigley, Ending Poverty as We Know It: Guaranteeing a Right to a Job at a Living Wage 19-26 (Temple U. Press 2003).
on me and my family.  

These cultural myths blind us or anesthetize us to the fact that 1.2 billion people, one in five people in the world, live on less than one dollar a day, or that thirty thousand children die each day, over ten million a year, from malnutrition and preventable diseases.  

54 countries in the world are poorer now than they were in 1990; in 21 countries a larger proportion of people are going hungry; in 14 countries more children are dying before age five.  

Law schools genuflect at the altar of success. Any graduate who has made money, no matter how, is an asset that law schools cultivate. All law schools continually search out ways to connect to their successful grads. Law schools trying to change from an option for the rich to an option for the poor must actively examine their extent to which they uncritically mirror mainstream cultural values and begin to challenge those definitions of success in light of the poverty and injustice in the world. 

In light of the pervasiveness the culture of individual success and materialism, we must actively re-define success. Success, in the tradition of Catholic Social Thought, means much more than achievement of money, status and power. Indications of success should include solidarity with the poor despite reduction in earnings and appreciation by the profession, creation of opportunity for empowerment of marginalized people and communities despite controversy and overbearing injustice, and faithfulness to principle despite apparent failure as judged by mainstream standards. 

Community 

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65 See generally John Francis Kavanaugh, Following Christ in a Consumer Society: The Spirituality of Cultural Resistance (Orbis 1982).


67 Id. at 34.
I don’t believe in heroes, but I do believe in community.
—Daniel Berrigan\(^68\)

No one person makes changes for justice. Justice work takes community. Consciously creating small communities where people can examine and share their spiritual and scriptural and ethical grounding for justice is essential. Small communities can engage in social analysis of current power systems, reflect on the invalidity of these systems in light of the demands of justice, and create ways to act and to support each other in the action to change the status quo towards a more just allocation of power and opportunity.\(^69\)

Law schools cannot hope to connect with the poor and challenge the mainstream culture of success by vision statements or institutional mandates alone, no matter how brave. It takes more energy to swim against the stream than to float along with it. That energy only comes from sharing the struggle for justice with others. Law schools must create environments where small justice communities are welcome and encouraged to present ideas and plans for change. It is from these communities that the dreams for change and the catalysts who are willing to experiment with change will emerge.

**Action on Behalf of Justice**

Action on behalf of justice and participation in the transformation of the world fully appear to us as a constitutive dimension of the preaching of the gospel, or, in other words, of the church’s mission for the redemption of the human race and its liberation from every oppressive situation.


\(^69^{69}\) Jack Nelson-Pallmeyer points out the need for all three of these phases to be interrelated:

The purpose of bible study is to encourage discipleship, not simply to know more about Jesus; the goal of social analysis is transforming action, not simply to know more about difficult social problems. Social actions are then evaluated and reformulated in the context of further bible study and social analysis.

None of the other principles make any sense unless there is follow through in action on behalf of justice. But action must be grounded in these principles, or even if it is well-intentioned, and maybe even charitable, it may not be action which leads toward justice.

Action involves taking risks. Advocacy with poor people puts us into conflict with the current priorities of institutions and power arrangements.

As David Hollenbach points out, the option for the poor involves making choices based on three moral principles: “[First,] needs of the poor take priority over the wants of the rich. [Second,] the freedom of the dominated takes priority over the liberty of the powerful. [Third,] the participation of marginalized groups takes priority over the preservation of an order which excludes them.”

One liberation theologian suggests that people in the United States living comfortably in the systems built on injustice are like the servants in pharaoh’s court, or as others might say, privileged slaves who live in the master’s house instead of out in the fields. In this, people in the master’s house have several options. The first is to be quiet, be grateful, and follow authority. The second is to try to use their privilege to help a few people on the outside as long as that help does not threaten their own position. The third is to stay inside with the master but try to act as the loyal opposition, working for change from the inside, and risking their positions by speaking

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71 “There are nine hundred and ninety-nine patrons of virtue to one virtuous man.” Henry David Thoreau, Civil Disobedience, in Walden and Civil Disobedience 22 (Paul Lanter ed., Houghton Mifflin Co. 2000). “Even if you are on the right track, you can get run over if you’re just sitting there.” This is a favorite saying of Rev. Timothy McDonald, a pastor in Atlanta, GA, who the author heard in 1999.

72 David Hollenbach, Claims in Conflict: Retrieving and Renewing the Catholic Human Rights Tradition 204 (Paulist Press 1979).
truth to power about the injustices of the system and taking concrete actions to dismantle the unjust system. The fourth is to abandon the position of privilege and work from the outside for radical social change or revolution or to try to create other alternative long-term models of living.\textsuperscript{73}

The action we are called to begins with understanding that justice demands we take less of the world’s resources and power from the poor for our own use but continues on to spur us toward transforming the current power arrangements that privilege some and oppress others.\textsuperscript{74}

Unless our action for justice is at the core of our work, not the periphery, we run the risk outlined by Professor Shaffer:

\begin{quote}
The option for the poor is not a career choice. We are very right to give our graduates who go in for legal services or public interest at least as much positive reinforcement as we give the ones who make partner on Wall Street, but to be content with that would be more false consciousness. The burdens of poverty are fashioned in the Wall Street offices faster and more effectively than the legal services and public interest offices can lift them. If you spend the day on corporate takeovers and plant closings without thinking about the people you put out of work, you cannot make up for the harm you do by giving a woman free legal advice in the evening when her unemployed husband takes out his frustrations by beating her.\textsuperscript{75}
\end{quote}

Lawyers, who everyday help shape and defend unjust power relationships, have special opportunities to use their skills in new ways to bring about justice rather than defend or even promote injustice. Lawyers working in partnership with the poor and powerless can help


\textsuperscript{74} Pedro Arrupe, S.J., Superior General of the Jesuits, summed up three concrete steps that must be taken if people and institutions are serious about justice:

\begin{quote}
First, a firm determination to live more simply. . . . Second, a firm determination to draw no profit whatever from clearly unjust sources. . . . Third, and most difficult: a firm resolve to be agents of change in society; not merely resisting unjust structures and arrangements, but actively undertaking to reform them.
\end{quote}


\textsuperscript{75} Shaffer & Rodes, \textit{supra} n. 44, at 17-18.
transform the world. Law schools that make an option for the poor can be learning centers to help make a more just world possible.

CONCLUSION

In a speech given to Jesuit alumni in Valencia Spain, Pedro Arrupe, S.J., the superior general of the Jesuits, defined what he meant by doing the “works of justice.”

First, a basic attitude of respect for all people which forbids us to ever use them as instruments for our own profit.

Second, a firm resolve never to profit from, or allow ourselves to be suborned by, positions of power deriving from privilege, for to do so, even passively, is equivalent to active oppression. To be drugged by the comforts of privilege is to become contributors to injustice as silent beneficiaries of the fruits of injustice.

Third, an attitude not simply of refusal but of counterattack against injustice; a decision to work with others toward the dismantling of unjust social structures so the weak, the oppressed, and the marginalized of this world may be set free.76

Many in the audience walked out.

The challenge to Catholic law schools is to be communities where people not only do not walk out of such a reminder but actively participate with the poor in a more just transformation of the world. For as one liberation theologian said:

[W]hile the world may need more liberation theologians, what it needs first and foremost are liberation plumbers, liberation teachers, liberation doctors, liberation retirees, liberation lawyers, liberation carpenters and other people who will put their particular skills to use in overcoming oppression.77

That is what a law school that changes from a preferential option for the rich to a preferential option for the poor can help bring about—liberation teachers, liberation students, liberation staff, and liberation lawyers working in solidarity with the liberated poor and

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77 Jack Nelson-Pallmeyer, supra, at 147-148 (quoting Jon Sobrino).
oppressed. Together each of us can share in the work to transform the world so there will be justice for all.