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December 17, 1986

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Dean Monroe E. Price  
Yeshiva University  
Benjamin N. Cardozo  
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55 Fifth Avenue  
New York, New York 10003

Dear Monroe:

I read with much interest Report #6 issued by the Council of Governing Boards consisting of the excerpts of an address by Dr. Lamm entitled "A Moral Mission for Colleges." I enthusiastically endorse his valuable message and have raised with you over the telephone the question as to whether it could be applied to the teaching of law in the Cardozo Law School. Quoting from Dr. Lamm's paper, "the nature of the good life; truth and goodness and beauty; and the value of thought and reflection" apply with even greater force to the teaching of law at a university law school than to the undergraduate college. I fully agree with President Lamm that a university must teach "the moral superiority of education as opposed to ignorance, of reason over impulse, of discipline over slovenliness, of integrity as against cheating." I say amen to his statement "that there are verities that are eternal" and to me these verities should be the underpinnings of any legal system whose objective is to achieve and administer justice.

When I studied law upwards of sixty years ago, it was customary to draw a distinction between law and morals.

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It was not uncommon particularly in the 19th century for rules which were inherently unfair and unjust to be continued in effect by adherence to the principle of precedent leaving it to the legislators to effect a change. Later on there developed a school whose approach was pragmatic and which measured the validity of a rule by its workability and not by its adherence to any preconceived theory of principle or precedent. Today in my field, the Chicago School of Economics measures our doctrines by their adherence to that school's theoretical economic models. I believe that there is room to appraise our doctrines by the moral standards which Dr. Lamm articulates.

Thus I believe that there is a task which should be undertaken by your school which would give it a degree of uniqueness and which would make it synonymous with the moral foundations of modern law. Let me state negatively that I do not have in mind the teaching of the traditional course in jurisprudence or of legal philosophy where the students are confronted with abstract and abstruse reasoning which is occult and un-understandable to most law school students. We've had such courses in most law schools and while I think they are very desirable, they don't achieve the purpose I have in mind. I would call the course "Law, Morals and Justice." I would use as my teaching material actual cases and teach the course by the case method. This would not be a course on legal ethics the value of which is somewhat debatable. There would be a comparative law flavor to it. I would take common problems that arise in all civilizations and cultures and all systems of government. How are they handled under various systems of law? To what extent is the decision or the rule influenced by the moral considerations outlined in the Lamm address? How do they conform to the eternal verities? What happens when a court permits moral considerations to override the purely legal, or to say it differently, when moral factors are taken into account in the formulation of law either by courts or by legislators?

To give meaningful content to a course of this character requires a great deal of stratospheric thinking and research. It needs an innovative mind -- a person of broad culture and knowledge with the imagination to tackle a task of this profound difficulty and significance. If as Holmes remarked to Brandeis, "Were I only 70 again", I might be willing to undertake the task myself. I stand ready, however, as an Ancient Mariner to be of help in any

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way that I can if this proposal meets with the approval of your school and if you are lucky enough to obtain a good man to head the enterprise.

In concluding this letter I would like to refer to an article written by the late Felix S. Cohen, a former student of mine, entitled Transcendental Nonsense and the Functional Approach in 35 Columbia Law Review, 809, 847-849 in which he suggests that law and legal institutions should be appraised in terms of some standard of human value and argues that "legal description is blind without the guiding light of a theory of values."

I'll be interested in your reactions.

With kindest personal regards.

Sincerely,



Milton Handler

MH/eg