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Jesuit Identity in American Legal Education: An Historical Examen

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ABSTRACT

Georgetown University opened its law school in 1870. Today, fourteen universities in the US operate law schools under Jesuit auspices. Making use of St. Ignatius's examen, this article reviews the history of American Jesuit legal education. Most Jesuit schools were founded in the early twentieth century to provide professional opportunities for Catholic immigrants and their progeny. As law schools, these institutions have enjoyed great success in providing their students with the legal knowledge and skills necessary to serve as attorneys, largely mimicking their secular counterparts and satisfying the standards for accreditation. In this historical examen, we review how these schools have succeeded as Jesuit institutions, in the curricula offered, the pedagogies employed, the religious make-up of student bodies and law faculties, and the presence of Jesuits. Despite the contemporary rhetoric of "social justice," our examen questions whether the intellectual culture and other features at these schools are consistent with a claimed Jesuit identity.

Keywords:

Jesuit legal education; Jesuit identity; St. Ignatius; examen; Catholic higher education

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Introduction

In 2016, at the prompting of Father General Adolfo Nicolás, S.J., Jesuit universities and colleges in the United States began to undertake what became known as the Mission Priority Examen.¹ The term *examen* is taken from St. Ignatius Loyola's *Spiritual Exercises*, the foundational text of Jesuit spirituality. A Spanish courtier born into a noble Basque family, Ignatius experienced a profound conversion to the Christian faith during his convalescence after being severely wounded in battle defending Pamplona from the invading French. The *Exercises* derives from notes Ignatius prepared in the course of his conversion during his time at Manresa. Thus, as Rev. John W. O'Malley, S.J., describes it, the *Exercises* is "not a product of theory but of lived experience."² The book is not a theological treatise but a method—a kind of "manual with the practical purpose of helping a man to save his soul and find his place in the divine plan."³ The examen, which appears in the first part of the *Exercises*, and which Ignatius recommended as a daily practice,⁴ is a form of prayer and reflection that proceeds in five steps—gratitude to God for benefits received; grace to know one's sins; a review of all one has encountered during the day; seeking God's forgiveness for sin; and asking God for the grace of his assistance in going forward.⁵

With respect to Jesuit colleges and universities, the Mission Priority Examen (MPE) was conceived as a thoroughgoing process of self-evaluation, identifying the strengths and weaknesses of these institutions with respect to mission effectiveness. It proceeded through several stages

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- 1 This institutional examen had its origins in an address Nicolás gave to American Jesuit provincials, university presidents, and boards of directors at Loyola University Chicago. See Adolfo Nicolás, "A Call for Spiritual Leaders: The Jesuit Superior General on Higher Education," *America*, November 11, 2013, <https://www.americamagazine.org/faith/2013/10/31/call-spiritual-leaders-jesuit-superior-general-higher-education/>. In 2016, shortly before stepping down as Father General, Nicolás "invited all members of AJCU to participate in a Mission Priority Examen." Deanna Howes Spiro, "AJCU Mourns Adolfo Nicolás, S.J., Former Jesuit Superior General," Association of Jesuit Colleges and Universities, May 20, 2020, <https://ajcunet.edu/2020-5-20-ajcu-mourns-adolfo-nicols-sj-former-jesuit-superior-general/>.
 - 2 John W. O'Malley, *The Jesuits—A History from Ignatius to the Present* (Rowman & Littlefield, 2014), 8.
 - 3 Philip Caraman, S.J., *Ignatius Loyola—A Biography of the Founder of the Jesuits* (Harper & Row, 1990), 41.
 - 4 Louis J. Puhl, S.J., *The Spiritual Exercises of St. Ignatius* (Loyola University Press, 1951), para. 24.
 - 5 James Martin, S.J., *The Jesuit Guide to (Almost) Everything* (HarperOne, 2010), 87–97.

and is now, under the auspices of the Association of Jesuit Colleges and Universities, an ongoing review process.⁶ *Ecclesia semper reformanda est.*

In this short article, which is part of a larger book project on the history of Catholic law schools in the United States,⁷ we apply a kind of *examen* to the history of Jesuit law schools and their present condition. Of the twenty-nine Catholic law schools operating today in the US, fourteen are Jesuit. All of these schools are undeniably successful as *law schools*.⁸ The question we wish to explore (in the form of an historical *examen*) is the extent to which they have succeeded as *Jesuit law schools*. Here, however, we follow the observation of Rev. Philip J. Grib, S.J., that it is not “fruitful or useful, to delineate here a distinction between a Catholic law school and a Jesuit law school.”⁹ Bearing in mind the fact that different religious

6 “The MPE Is Now a Permanent, if Evolving, Process for the Society,” Stephanie Russell, “AJCU’s Mission Priority Examen: Much More Than a Measure of Mission Authenticity,” International Association of Jesuit Universities, March 18, 2024, <https://iaju.org/2024/03/18/ajcus-mission-priority-examen-much-more-than-a-measure-of-mission-authenticity/>.

7 The author’s planned book, *A Light Unseen: A History of Catholic Legal Education in the United States*, now in manuscript, is a first ever comprehensive history of Catholic law schools in the United States. Some histories of individual schools have been written. These include Eric Abrahamson, *The University of San Francisco School of Law: A History 1912–1987* (University of San Francisco School of Law, 1987); Daniel R. Ernst, *The First 125 Years: An Illustrated History of the Georgetown University Law Center* (Georgetown University Law Center, 1995); Thomas M. Haney, *Loyola University School of Law: The First 100 Years* (Loyola University Chicago School of Law, 2009); Robert J. Kaczorowski, *Fordham University School of Law: A History* (Fordham University Press, 2012); Maria Isabel Medina, *Loyola University New Orleans College of Law: A History* (LSU Press, 2016); Oliver B. Pollak, *To Educate and Serve: The Centennial History of Creighton University School of Law, 1904–2004* (Carolina Academic Press, 2007); Todd F. Simon, *Boston College Law School after Fifty Years—An Informal History, 1929–1979* (Boston College Law School, 1980); Mark Thomas, *From Promise to Prominence: The Santa Clara University School of Law* (Santa Clara University, 2003).

8 All of the fourteen Jesuit law schools are approved by the American Bar Association and are members of the Association of American Law Schools. Three—Georgetown, Boston College, and Fordham—are consistently ranked in the top forty of the nation’s nearly 200 ABA-approved schools (Georgetown, 14th; Boston College, 28th; and Fordham, 33rd). *U.S. News & World Report*, “2025 Best Law Schools,” <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings>.

9 Philip J. Grib, S.J., “Legal Education in Jesuit Universities,” in *Proceedings of Assembly 1989 Jesuit Ministry in Higher Education* (Georgetown University, 1989), 2. Grib notes that Jesuit educational strengths in “forensics, linguistics, and moral casuistry” might contribute to the study of law, but he also recognizes that these aspects of the Jesuit tradition “are not exclusive to Jesuit educational institutions.”

orders have different personnel, disparate histories, and distinct charisms, for purposes of this discussion of legal education, “Jesuit” and “Catholic” may be regarded as synonymous.

There are many ways to define Jesuit identity in legal education,¹⁰ but all of them may be summarized as falling into four general categories: (1) sponsorship by the Society of Jesus, which may be defined as public affiliation and may include ownership and/or administrative control; (2) a majority or a predominant number of Catholic students and/or faculty members and the use of policies in admissions and hiring that support the same; (3) engagement of the Catholic intellectual tradition as it relates to questions of law and justice as reflected in the curriculum offered to students and the scholarly work performed by faculty; and (4) promotion of the Catholic faith and care for the spiritual needs of Catholics through public prayer, celebration of the sacraments, hosting a Red Mass to begin the year, the offering of spiritual counseling and/or a retreat, and the display of Catholic iconography and religious symbols.

Here we examine how each of these manifestations of identity was present in distinct but often overlapping ways in the history of Jesuit law schools, which we divide into three rough phases: the period of mere affiliation from the founding era to approximately 1930; the period of Neo-Thomism and Catholic atmosphere from about 1930 to 1960; and the period of public service and social justice from roughly 1960 to the present day. We end with a brief conclusion.

The Founding Period of Mere Affiliation

From the time of the nation’s founding through the postbellum era, American legal education was based in the law office, where clerks apprenticed to established practitioners, reading from *Blackstone’s Commentaries* and other available legal texts in their spare time between copying writs, wills, and contracts.¹¹ Although the existence of some law schools preceded the Civil War, the shift in legal education from law office to law school

10 Thomas Haney lists no fewer than thirty different markers of Catholic and Jesuit identity in a law school. See, “The Role of Religion in a Catholic “Law School: A Century of Experience at Loyola University Chicago” (unpublished manuscript), 2.

11 Charles R. McKirdy, “The Lawyer as Apprentice: Legal Education in Eighteenth Century Massachusetts,” *Journal of Legal Education* 28, no. 2 (1976–77): 124, <https://jle.aals.org/home/vol28/iss2/2/>; Charles Warren, *A History of the American Bar* (Cambridge University Press, 1911), 157 (discussing legal education in Colonial America); Alfred Zantzinger Reed, *Present-Day Law Schools in the United States and Canada for the Years 1926 and 1927* (Carnegie Foundation for the Advancement of Teaching, 1928), 209; Dennis R. Nolan, “Sir William Black-

largely took place in the late nineteenth and early twentieth centuries. This coincided with the university movement among American colleges—that is, the transformation of some number of small, sectarian liberal arts colleges and analogous state-sponsored institutions into genuine universities offering courses across all disciplines as well as graduate research and professional education.¹²

Instead of the small-scale and uneven practice of apprenticeship, law could now be taught to large numbers of men in schools with a planned curriculum and a systematic program of instruction. In 1870 there were 31 law schools in operation, but by 1917 there were 140. During the same time, law school enrollments grew from just over 1,600 students nationwide to nearly 23,000.¹³ By 1926 178 law schools enrolled over 45,000 students.¹⁴

Jesuit legal education in the United States was born during this era. Georgetown University was the first,¹⁵ founding its law school in 1870, followed by Creighton (1904), Fordham (1905), St. Louis (1908), Loyola Chicago (1908), Marquette (1908), Santa Clara (1911), Detroit Mercy (1912), Gonzaga (1912), San Francisco (1912), Loyola New Orleans (1914), Xavier (1919), Loyola Los Angeles (1920), and Boston College (1929).¹⁶ The Jesuit identity of these law schools was, in a very real sense, obvious from the face of things. The host colleges for these newly founded or acquired law schools were run by communities of Jesuits. The provincial appointed the president and filled the other senior administrative positions with fel-

stone and the New American Republic: A Study of Intellectual Impact,” *New York University Law Review* 51, no. 5 (November 1976): 764.

- 12 See, for example, Frederick Rudolph, *The American College and University: A History* (Alfred A. Knopf, 1962); Christopher J. Lucas, *American Higher Education: A History* (Palgrave Macmillan, 2006).
- 13 Alfred Zantzinger Reed, *Training for the Public Profession of the Law* (Carnegie Foundation for the Advancement of Teaching, 443, Tables 3 and 4 (hereafter *Reed Report*)).
- 14 Alfred Zantzinger Reed, *Review of Legal Education in the United States and Canada* (Carnegie Foundation for the Advancement of Teaching, 1928), 34.
- 15 St. Louis University School of Law can rightly claim to be the first Jesuit law school in the United States. It offered classes between 1842 and 1847 and ceased operation upon the death of its sole instructor, Judge Richard Alyette Buckner. Walter H. Hill, S.J., *Historical Sketch of St. Louis University* (Patrick Fox, 1879), 1; Edward J. Power, *A History of Catholic Higher Education in the United States* (Bruce Publishing Company, 1958), 248.
- 16 Xavier University closed its law school in 1934. The sole Jesuit law school founded outside the 1870–1929 period is Seattle University School of Law. Founded as the University of Puget Sound School of Law in 1972, Seattle University acquired the law school from Puget Sound in 1994. In 1999 the school relocated from Tacoma to a newly built facility on the Seattle University campus.

low Jesuits, and the college was owned and controlled by a board made up entirely of members of the Society.

The impetus to establish these schools was neither philosophical nor religious in the proper sense. They were instead founded for practical reasons to meet the needs of practical men. Their creation served the twofold purpose of enhancing the reputation and financial position of their host Jesuit institutions while providing Catholic immigrants and their progeny with the means for becoming lawyers and attaining professional status.¹⁷

In the early twentieth century, the study of law was not yet firmly established as graduate-level education. Of the eleven Jesuit law schools listed in the 1921 *Reed Report* surveying American legal education, only four required any college work for admission (one or two years) whereas the other seven required only a high school diploma or less.¹⁸ Across legal education, admission standards rose as the American Bar Association (ABA) and the Association of American Law Schools (AALS) gained authority as accrediting bodies.¹⁹ Still, in contributing to the formation of a public profession, Jesuit law schools enhanced the prestige and academic

17 Dennis Wieboldt helpfully notes that in 1929 then president of Boston College, James H. Dolan, S.J., argued that BC should open a law school in part to protect Catholic students from the corrupting influence of secular schools. Dennis J. Wieboldt III, “The ‘Crusading Fanatics’ of American Law: American Jesuits and the Origins of the Neo-Scholastic Legal Revival, 1870–1960,” *Journal of Law and Religion* 40, no. 1 (2025): 81–107, <http://dx.doi.org/10.2139/ssrn.4887908>. This fear of corruption and desire to protect was shared by others. See Abrahamson, *University of San Francisco School of Law*, 16 (describing Henry Woods, S.J.’s concern about the loss of faith by Catholics who attend state institutions as a reason for Jesuit colleges in California to sponsor professional schools); *America*, “The Catholic Law School,” editorial, August 11, 1928 (at a Catholic law school, all students “have the opportunity, found in no non-Catholic law school, of grounding themselves in the moral and religious truths upon which our national institutions and our Christian civilization are reared”); Paul L. Blakely, S.J., “Fifty Catholic Professional Schools,” *America*, March 29, 1930 (warning of the “immoral principles and practices, taught and sanctioned by the secularized university” and that “the protection of a philosophy which tells man what he is, and man what God is” can be taught “only in the schools which uphold Catholic ideals”). This motivating idea certainly may be regarded as “religious.”

18 Reed, *Reed Report*, appendix, §1.C. In 1905 the AALS established the standard of high school graduation for admission to member schools. Rather than see its class size decline, Georgetown withdrew from the AALS. Robert Emmett Curran, *A History of Georgetown University: The Quest for Excellence 1889–1964*, vol. 2 (Georgetown University Press, 2010), 59.

19 Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (University of North Carolina Press, 1983); Susan K. Boyd, *The ABA’s First Section: Ensuring a Qualified Bar* (American Bar Association, 1993).

standing of their host institutions, supporting the attainment of university status²⁰ while generating additional revenue. In many instances the beginning of a law school was the occasion for a Jesuit college to refashion itself as a university.²¹ Hosting a law school required less capital investment than hosting a medical school, and legal education fit naturally with the Jesuit tradition of humanistic and ethical learning.²²

The idea of hosting a law school was often put forth by lawyer-alumni or friends of the Jesuit college.²³ Located in large urban areas, most Jesuit law schools began as evening schools that allowed working people (almost entirely men) to support their families while gaining the education needed for admission to the bar. Enrollments were predominantly though not exclusively Catholic as Jesuit schools welcomed students of different backgrounds.²⁴

The courses taught at Jesuit law schools replicated those at secular schools. The curriculum was entirely required, made up of courses covering the basic common law subjects such as torts, contracts, and property, as well as foundational doctrinal areas such as civil procedure, criminal law, and business corporations.²⁵ Notwithstanding the occasional reference to the *Ratio Studiorum* in a course catalogue,²⁶ there is no evidence that Jesuit law schools featured a pedagogy that was distinctly Jesuit. Instead, Jesuit

20 Philip Gleason, *Contending with Modernity: Catholic Higher Education in the Twentieth Century* (Oxford University Press, 1995), 95. (The Catholic university movement was “a response both to the galloping professionalization of one aspect of American life after another, and to the mobility aspirations of American Catholics, increasing numbers of whom perceived the connection between higher education and enhanced life chances”).

21 See John Bernard McGloin, S.J., *Jesuits by the Golden Gate: The Society of Jesus in San Francisco 1849–1969* (University of San Francisco Press, 1972), 100; Abrahamson, *University of San Francisco School of Law*, 16; Thomas M. Haney, “The First 100 Years: The Centennial History of Loyola University Chicago School of Law,” *Loyola University Chicago Law Journal* 41, no. 4 (Summer 2010): 663; Thomas, *From Promise to Prominence*, 15.

22 Power, *A History of Catholic Higher Education*, 248; Power, *Catholic Higher Education in America—A History* (Appleton-Century Crofts, 1972), 221.

23 Haney, “First 100 Years,” 652; Ernst, *First 125 Years*, 6; Simon, *Boston College Law School*, 4; Medina, *Loyola University New Orleans*, 7.

24 Robert Emmett Curran, *A History of Georgetown University: From Academy to University 1789–1889*, vol. 1 (Georgetown University Press, 2010), Appendix F, Tables 10.2 and 11.3.

25 Haney, “First 100 Years,” 659; Simon, *Boston College*, 8; Abrahamson, *University of San Francisco*, 34.

26 Haney, “Role of Religion,” 25 (quoting Loyola University Chicago’s 1909–10 catalogue).

and other Catholic law schools mimicked the teaching methods of their secular peers. Some began using lecture and recitation, but later adopted the case method of Socratic interrogation, made popular by Harvard Law School, whose graduates went on to serve as faculty at law schools across the country.²⁷

Most Jesuit law schools began with one or two full-time faculty members who, aided by a cadre of part-time colleagues, taught their courses in rented offices, often in the district of the city near the courts. The faculty at these schools were not exclusively Catholic.²⁸ Indeed, eager to gain notoriety and establish a reputation for excellence, Jesuit schools often turned to well-regarded non-Catholic lawyers and judges to serve as professors.²⁹ Historically, a defining feature of Jesuit education had been the personal interaction between Jesuit teachers and their students, yet few Jesuits were lawyers or otherwise qualified to teach law. Thus, as was true with medical schools and other technical vocations, Jesuits were largely absent from the law school classroom experience.

There were two related exceptions to this. First, during the founding era, some schools offered a course or courses taught by a Jesuit that were provided as a kind of remedial Jesuit undergraduate education, grounding the students in a Catholic worldview. Thus, in its early history, Loyola-Chicago offered a year-long course entitled Logic, Philosophy, and Sociology that met once a week on Friday nights for two-and-a-half hours. Attendance was voluntary, but a majority of law students took the course even though it meant attending classes five nights a week.³⁰ Unlike other courses, a detailed outline of this course appeared in the law school's catalogue.³¹ Taught by Rev. Edward J. Gleeson, S.J., Logic, Philosophy, and

27 Stevens, *Law School*, 51; Bruce A. Kimball, *The Inception of Modern Professional Education: C.C. Langdell, 1826–1906* (University of North Carolina Press, 2009).

28 Medina, *Loyola University New Orleans*, 26; Curran, *From Academy to University*, 291 (three of the first six faculty at Georgetown were non-Catholics, including Supreme Court Justice Samuel Miller); Kaczorowski, *Fordham University*, 7–14 (the Fordham faculty included non-Catholics I. Maurice Wormser and Alton Parker); Robert F. Boden, “The Milwaukee Law School, 1892–1928,” (unpublished manuscript), 29n73 (describing the diverse religious make-up of Marquette’s law faculty). But see Abrahamson, *University of San Francisco*, 19 (noting that all of USF’s initial faculty were Catholic and all but one were the “progeny of Irish parents”).

29 Power, *History of Catholic Higher Education*, 248; Power, *Catholic Higher Education*, 221.

30 Loyola University of Chicago School of Law, *The School of Law—An Historical Sketch* (Loyola University Chicago, 1984), 3.

31 Department of Law of Loyola University Chicago, Fourth Annual Announcement (Loyola University Chicago, 1911–12), 12.

Sociology introduced students not only to formal and informal logic but also to epistemology, philosophical anthropology, and the political and social order of society beginning with the family and ending with the church. A similar course appears to have been taught by Jesuits Rev. Michael Kenny, S.J., at Loyola-New Orleans³² and Rev. Denis J. Mahony, S.J., and others at the University of San Francisco.³³

Even more ambitious, in the 1920s Loyola Law School in Los Angeles (then known as St. Vincent Law School) required students to take a two-semester Ethics course in moral philosophy that focused on natural law. Another six-semester required course, Logic and Mental Philosophy, covered such subjects as logic, metaphysics, psychology, and theodicy.³⁴ The three Jesuits who taught the two courses assigned texts by a fellow Jesuit, Rev. Charles Coppens, S.J.: *A Brief Text-book of Logic and Mental Philosophy* and *A Brief Text-Book of Moral Philosophy*.³⁵

32 Medina, *Loyola University New Orleans*, 36–37. An internal history of the law school records that Father Kenny, a co-founder and associate editor of *America*, “became a member of the faculty as professor of scientific jurisprudence and legal ethics in 1915–16. He lectured weekly on fundamental law to freshmen and on legal ethics to seniors from the historic Christian viewpoint of law and morals.” I. A. Timmreck and Francis L. Janssen, S.J., *Loyola University New Orleans, A Compendium of Historical Information to Approximately 1974*, vol. I (unpublished manuscript, 1974), 8.

33 Abrahamson, *University of San Francisco*, 48 (citing the 1912–13 bulletin and noting that while “[n]o course in religion, philosophy, or ethics was listed in the law school curriculum,” Mahony was listed under faculty as “Special Lecturer on Philosophy in the College of Law,” and that alumni recalled “a Thursday night course in ethics and philosophy taught by Fathers Foote, Cunningham, and—the great orator himself—Cavanaugh, which was required for all students who were not enrolled in the day program of the college”).

34 *St. Vincent Law School, Bulletin 1926–1927* (Loyola College, 1926), 20. The remedial nature of the course, making up for the lack of a full Jesuit education, is reflected in the fact that the course was required “for all who have not already completed these studies, or who are not attending upper division classes in the department of Arts and Science of Loyola University.” *Loyola University at Los Angeles College of Law, Catalogue 1930–1931* (Loyola University Los Angeles College of Law, 1930), 17. By 1935, this course was no longer part of the curriculum. *Loyola University School of Law, Catalogue 1935–1936* (Loyola University School of Law, 1935), 16–24. A similar remedial course appears to have been offered at Creighton Law School in its opening years. See Pollak, *To Educate and Serve*, 33–35.

35 Charles Coppens, S.J., *A Brief Text-Book of Logic and Mental Philosophy* (Schwartz, Kirwin & Fauss, 1891); Charles Coppens, S.J., *A Brief Text-Book of Moral Philosophy* (Schwartz, Kirwin & Fauss, 1895).

A second way in which Jesuits encountered students in the classroom was in a course on legal philosophy or jurisprudence. Georgetown began offering a course, Natural Law, in 1894 taught by Rev. Rene I. Holaind, S.J., though as a special lecture course and not as a part of the required curriculum.³⁶ When Fordham opened in 1905, the law school required students to take Legal Ethics and Natural Law taught by Rev. Terence J. Shealy, S.J. The course was later split in two with the Jurisprudence half being taught by Shealy from a Thomistic perspective.³⁷ Sometimes a school's jurisprudence course represented a revised, more modest version of the remedial courses described above, now narrowly focusing on natural law.

That appears to have been the case at Loyola-Chicago, where Rev. Frederic Siedenbueg, S.J., inherited Gleeson's course, which Rev. Patrick A. Mullens, S.J., took over and presented as Natural Law.³⁸ Some of these courses were short-lived but returned in a more robust form in the second phase of the history of Jesuit legal education. While Jesuit law schools were founded as professional schools designed to help students achieve the practical end of admission to the bar and success in legal practice, these classes reflected the Jesuit understanding that even professional education should be informed by pertinent parts of the Catholic intellectual tradition.

One especially prominent way in which Jesuits were present, and Jesuit identity was on display, was in the office of regent. The law school regent was an administrative role, held by a member of the Society who served as both a liaison between the school of law and the university president and as an advisor to the law school dean. The power and influence of the regent varied at different schools and with different regents. In some instances, the regent was little more than a figurehead, whereas in others he effectively ran the law school notwithstanding the presence of the dean.

36 *Georgetown University School of Law, Annual Bulletin 1894–1895* (Georgetown University School of Law 1894), 2, 6–7. Ernst reports that Holaind published his lectures in 1899 and continued to teach the course until his death in 1906. Ernst, *First 125 Years*, 21–22. The course was subsequently assumed by Rev. John A. Conway, S.J., who taught it in the fourth year or as a postgraduate course. *Georgetown University School of Law, Annual Bulletin 1908–1909* (Georgetown University School of Law, 1908), 3, 6–7, 10.

37 Fordham University, *Announcement of the School of Law 1905–1906* (Fordham University School of Law, 1905), 12; *Fordham University, Bulletin of Information, School of Law Announcement 1920–1921* (Fordham University School of Law, 1920), 3, 13. See Kaczorowski, *Fordham University*, 15–18; Raymond A. Schroth, S.J., *Fordham: A History and Memoir* (Fordham University Press, 2008), 129–30.

38 *Loyola University, Department of Law, Bulletin 1917* (Loyola University, 1917), 23; *Loyola University, Department of Law, Bulletin 1920* (Loyola University, 1920), 4. See also Haney, “Role of Religion,” 28.

Regents such as Rev. Francis Lucey, S.J., at Georgetown and Rev. Joseph Donovan, S.J., at Loyola-Los Angeles, had such lengthy tenures that they profoundly influenced the operation and direction of their schools.³⁹ The accrediting authorities were often suspicious of the regent position, fearful of law school oversight by a religious authority and nonlawyer with no special competence in legal education.

The Period of Maturation: Neo-Thomism and Catholic Atmosphere

In the years following the founding era, Catholic law schools sought to solidify their position in the legal academy.⁴⁰ Although understaffed and chronically short of resources, they managed to accomplish this goal. The addition of full-time day divisions assisted the accreditation process while also responding to market demands.⁴¹ By 1940 all but one of the twelve Jesuit schools then operating had been approved by the ABA and were members of the AALS. This relatively secure position afforded the opportunity for some introspection as to the point of legal education under Jesuit and Catholic auspices.

A harsh assessment came in the form of a paper by Lewis Cassidy, a graduate of Mount St. Mary's College and Harvard Law School with a Ph.D. from Georgetown. Cassidy taught law at Creighton, Boston College, and Georgetown, as well as Harvard, before briefly serving as dean of the University of San Francisco (USF) School of Law from 1934 to 1936.⁴² In his 1937 paper, *A Critique of Catholic Legal Education*, Cassidy sharply criticized both Catholic law schools and their host institutions on a number of fronts: their entirely clerical boards, small endowments, and unimpressive leaders, as well as low salaries and lack of tenure for faculty. Catholic institutions were, he said, "invariably . . . pale copies of state universities." In the administration of these schools, Cassidy located their "glaring defect"

39 Lucey served as Georgetown's regent from 1931 to 1961, and Donovan was regent at Loyola Los Angeles from 1927 to 1971.

40 Brendan F. Brown, "The Place of the Catholic Law School in American Education," *University of Detroit Law Journal* 5, no. 1 (November 1941): 1 (describing 1929 as the year when Catholic legal education ended the formative stage and entered maturity).

41 Both Georgetown and Loyola Chicago added three-year full-time day divisions in 1921. Ernst, *First 125 Years*, 75; Haney, "First 100 Years," 665. In 1929 Santa Clara reorganized as a full-time day school. Thomas, *From Promise to Prominence*, 42.

42 Cassidy left USF following a bitter dispute with the regent, Rev. Raymond T. Feely, S.J., concerning the authority of the dean relative to that of the regent in the operation of the school. Abrahamson, *University of San Francisco*, 41; also, Ernst, *First 125 Years*, 98.

in the lack of authority given to lay teachers. And here he found that the “most flagrant abuse of the relationship occurs in Jesuit law schools where regents have been appointed” and serve as the “de facto” deans of these schools, even though they do not “understand[] how to conduct a first rate school.”⁴³ A copy of the paper was sent to every law school in the country, but appears not to have influenced the accrediting bodies,⁴⁴ and the reforms he recommended, including eliminating the regent position, would not take place for a generation.

While Cassidy proposed reforms that were structural in nature, others urged an intellectual and cultural shift that was more explicitly Catholic. In the early 1930s, a series of articles published in *America* presaged the themes that would dominate Catholic legal education up until Vatican II. In 1930, reviewing the fifty university-based professional schools then under Catholic sponsorship, Rev. Paul L. Blakely, S.J., explained that these schools had the advantage of “a philosophy which tells man what he is, and man what God is, and which emphasizes the obligations consequent upon these facts.” A Catholic law school was needed in response to “the replacement of objective ethical and moral standards by purely subjective norms.”⁴⁵ Writing in 1931, Rev. Francis J. Shalloe, S.J., asked the question “Why Catholic Law Schools?” He answered that “only a Catholic school could fashion a Catholic lawyer,” where the student learns “not only the technicalities of the civil law” but “a true philosophy of law, a Catholic sense in his work, a Catholic knowledge of his duties and the law of his Church.”⁴⁶ Later that year, William P. Moyles sounded a similar note, describing Catholic schools as offering an alternative to the sociological, pragmatic, and materialistic theories of law provided by secular schools. In offering “an appreciation of the spiritual, an acceptance of a Divine sanction, of natural law, of moral responsibility, and fundamental principles of

43 Lewis C. Cassidy, “A Critique of Catholic Legal Education” (1937), in *Historical Papers of the University of Detroit School of Law*, Vol. III, 1935–1945 (University of Detroit Mercy School of Law, 1960).

44 Series of letters between Dean Maurine F. McKenna and Dean H. W. Arant (Ohio State University), October 13, 1937; L. J. Lynch, S.J. (regent of the University of Detroit), October 23, 1937; and Rev. Joseph Donovan, S.J. (Loyola Los Angeles School of Law), October 13, 1937; Arant (as secretary of AALS) and McKenna, October 14, 1937; Rev. H. E. Ring, S.J. (president of USF) and Lynch, October 23, 1937. They are found in University of Detroit Mercy, *Historical Papers*, Vol. III.

45 Paul L. Blakely, S.J., “Fifty Catholic Professional Schools,” *America* magazine, March 29, 1930, 600.

46 Francis J. Shalloe, S.J., “Why Catholic Law Schools,” *America* magazine, June 13, 1931, 233.

morality,” Catholic schools “have a real vindication for their existence, and a very solemn and important duty to perform.”⁴⁷

The shift indicated by these articles had in fact already begun. In 1928 Georgetown’s president, Rev. W. Coleman Nevils, S.J., announced the appointment of a regent “who would be in charge of the School.” Other schools had already adopted the position of regent,⁴⁸ but, since its founding in 1870, the Georgetown University president had served as the president of the “Law Department.”⁴⁹ Nevils further explained that going forward, “Catholics were to be preferred” in the appointment of new teachers, “gradually securing a Catholic faculty.” In addition, a Catholic Ethics course was to be established, the law journal was to include articles on Catholic subjects, “a Crucifix [was] to be placed in each class room,” books by Catholic authors were to be used, and “an effort [was] to be made to secure conversions among non-Catholic students and professors.”⁵⁰ More than a case of mere affiliation, Georgetown’s law school was to be evangelically and intellectually Catholic.⁵¹

The call for a more robust identity also came from more critical quarters. In 1933, writing in the pages of the Catholic periodical *Truth*, the Brooklyn priest Edward Lodge Curran reached a very different conclusion from those of the writers in the magazine *America*. He charged that there was “not one jot or tittle of difference between a Catholic Law School and a nonsectarian Law School.”⁵² By not teaching Catholic philosophy and

47 William P. Moyles, “Our Law Schools,” *America*, Oct. 3, 1931, 616.

48 For example, see, *St. Louis University, Bulletin* (St. Louis University, 1909), 101 (listing Rev. James J. Conway, S.J., as regent for the Institute of Law, then the name of the newly reopened law school). Rev. Francis B. Cassilly, S.J., served as regent of Loyola Chicago when it began in 1908. He was succeeded the following year by Rev. Edward J. Gleeson, S.J., who was in turn succeeded by Rev. Patrick A. Mullens, S.J., in 1916. Rev. Frederic J. Siedenburgh, S.J., succeeded Mullens in 1921 and remained in the position until 1932. Thus, Loyola had already had four regents by the time Georgetown had its first.

49 Curran, *From Academy to University*, 291.

50 Georgetown University Law Center Executive Faculty, Minutes, October 15, 1928, Box 1 of 5, Folder 1.15, Special Collections and Archives Department, Georgetown University Law Center, Washington D.C.

51 The change appears to have been prompted by a complaint in Rome, shared with the father general of the society, Rev. Włodimir Ledochowski, S.J., in a February 1927 meeting with Rafael Cardinal Merry del Val, head of the Holy Office, that Jesuit colleges and universities in the United States were gravely deficient in Jesuit and Catholic identity. Paul A. Fitzgerald, S.J., *The Governance of Jesuit Colleges in the United States, 1920–1970* (University of Notre Dame Press, 1984), 21.

52 Edward Lodge Curran, “Catholic Law Schools,” *Truth* 30 (March 1933): 3.

ethics to students, Curran believed, these schools forfeited the right to call themselves Catholic.

Catholic legal educators saw some truth in this criticism. James Thomas Connor, dean of Loyola University School of Law in New Orleans, acknowledged that all law schools, including Catholic ones, were “not producing the kind of lawyers that [they] . . . should develop.”⁵³ Brendan F. Brown, dean of the law school at Catholic University of America, went even further: “Why should church law schools continue to exist?”⁵⁴ There was, said DePaul University law dean William F. Clarke, “little or no point to the bestowal of the appellation *Catholic* upon any institution the actions of which do nothing to set it apart from those who lay no claim to that title.” What, he asked, would “stamp [Catholic law schools] as distinctive in their field”?⁵⁵

The response of Catholic legal educators to these questions was to call for Catholic law schools to adopt a distinctive legal culture that integrated Thomistic natural law theory with the study of American positive law.⁵⁶ In 1935 a group of these educators met at Loyola-Chicago’s law school under the auspices of the American Catholic Philosophical Association (ACPA) to form a committee on the philosophy of law. The committee unanimously agreed “that the time was opportune for launching a movement to develop a Neo-Scholastic philosophy of law, and to work out means of applying it in the work of Catholic Law Schools.”⁵⁷

The work of the group continued through much of the 1930s and 1940s,⁵⁸ but it failed to achieve its goal of generating teaching materials

53 James Thomas Connor, “Some Catholic Law School Objectives,” *Catholic Education Review* 36 (1938): 161.

54 Brendan F. Brown, “Jurisprudential Aims of Church Law Schools in the United States, A Survey,” *Notre Dame Lawyer* 13, no. 3 (March 1938): 174.

55 William F. Clarke, “The Catholicity of the Law School,” *Journal of Religious Instruction* 6 (April 1936): 700.

56 Brown, “Jurisprudential Aims,” 167 (calling for adopting “a legal culture . . . under the influence of neo-scholastic philosophy”).

57 American Catholic Philosophical Association, “Report of Committee on Philosophy of Law,” *Proceedings of the American Catholic Philosophical Association* 11 (1935): 201, <https://doi.org/10.5840/acpaprocc1935112>.

58 For example, Linus Lilly, “Christian Philosophy and the Social Sciences,” *Proceedings of the American Catholic Philosophical Association* 12 (1936): 111, <https://doi.org/10.5840/acpaprocc1936122>; Walter B. Kennedy, “Philosophy of Education,” *Proceedings of the American Catholic Philosophical Association* 13 (1937): 186, <https://doi.org/10.5840/acpaprocc1937136>; Franklin F. Russell, “Philosophy of Education,” *Proceedings of the American Catholic Philosophical Association* 13 (1937): 196, <https://doi.org/10.5840/acpaprocc19371310>; Miriam Theresa Rooney, “The Philosophy of Democracy,” *Proceedings of the Ameri-*

integrating Thomism and various doctrinal legal subjects that could be used in an American law school classroom.⁵⁹ So little progress was made that by 1950 Brendan Brown wrote to the ACPA “urging the revival of a Philosophy of Law Section.”⁶⁰ The movement achieved some successes that remain today, including the creation of the Natural Law Institute at Notre Dame,⁶¹ as well as the establishment of two journals, *The Catholic Lawyer* (now published as the *Journal of Catholic Legal Studies*) and the *Natural Law Forum* (now published as the *American Journal of Jurisprudence*). Some proponents of the reform proposal and other Catholic educators made use of the natural law tradition in responding to the critique of law offered by the proponents of Legal Realism.⁶²

The movement also brought about a significant change in the curricula and self-understanding of Jesuit and other Catholic law schools, one that

can Catholic Philosophical Association 20 (1945): 157, <https://doi.org/10.5840/acpapro19452024>; Brendan Brown, “The Philosophy of Democracy,” *Proceedings of the American Catholic Philosophical Association* 20 (1945): 169, <https://doi.org/10.5840/acpapro1945201>; Ben W. Palmer, “The Philosophy of Being,” *Proceedings of the American Catholic Philosophical Association* 21 (1946): 147, <https://doi.org/10.5840/acpapro19462112>; Joaquin F. Garcia, “The Absolute and the Relative,” *Proceedings of the American Catholic Philosophical Association* 22 (1947): 1, <https://doi.org/10.5840/acpapro19472226>; R. W. Mulligan, S.J., “The Absolute and the Relative,” *Proceedings of the American Catholic Philosophical Association* 22 (1947): 176–86, <https://doi.org/10.5840/acpapro19472217>.

59 Miriam Teresa Rooney, “Truth in the Contemporary Crisis,” *Proceedings of the American Catholic Philosophical Association* 18 (1942): 185, <https://doi.org/10.5840/acpapro1942183>, (complaining of “the practical difficulty of finding competent texts, intelligible to even highly trained legal minds in America, has proven a serious obstacle” and describing the “immediate need” for publications “where Neo-Scholastic principles of law can be studied” and “invalid juridical postulates” critiqued). The Association did approve the publication of a book in the form of an outline on Scholastic legal philosophy with materials from already published works, together with a bibliography, and perhaps new essays. Committee on the Philosophy of Law, “Special Report,” *Proceedings of the American Catholic Philosophical Association* 19 (1943): 168, <https://doi.org/10.5840/acpapro19431915>.

60 Charles A. Hart, “The Natural Law and International Relations,” *Proceedings of the American Catholic Philosophical Association* 24 (1950): 161.

61 For a discussion of the significance of Notre Dame’s Natural Law Institute and its influence in the immediate postwar era, see Dennis J. Wieboldt III, “Ideas With(out) Consequences? The Natural Law Institute and the Making of Conservative Constitutionalism During the Cold War, 1947–1951,” *Law and History Review* 43, no. 4 (2025): 847–75, <https://doi.org/10.1017/S0738248025000021>.

62 See John M. Breen and Lee J. Strang, “The Forgotten Jurisprudential Debate: Catholic Legal Thought’s Response to Legal Realism,” *Marquette Law Review* 98, no. 3 (Spring 2015): 1203.

remained in place until the 1960s. The curricular change was the addition of a required course in natural law theory. Whether a continuation or resumption of the earlier courses described previously, or an entirely new offering, the course was usually taught by the law school's regent. The orientation was invariably Thomistic, using such texts as *Outlines of Pure Jurisprudence*, by Rev. Francis P. LeBuffe, S.J.,⁶³ or LeBuffe and James V. Hayes's revised version, *Jurisprudence with Cases to Illustrate Principles*,⁶⁴ or Aquinas's *Treatise on Law* from the *Summa Theologica* or materials assembled by the instructor. Over time this change was often accompanied by a new description of the law school which tied the school's purpose to knowledge of the law and a natural law perspective.

The experience at Loyola-Chicago provides an example. As noted earlier, Loyola began by offering a voluntary course, Logic, Philosophy and Sociology, later restyled Natural Law. In the 1920s, when Rev. Frederic Siedenburgh, S.J., became regent, the course, now Legal Ethics and Natural Law, was required, and Siedenburgh assigned LeBuffe's *Pure Jurisprudence* and another text.⁶⁵ In the 1930s, when Rev. John P. Noonan, S.J., was regent, he taught Jurisprudence and also used LeBuffe's book.⁶⁶ At this time, Loyola described the aim of the law school in its bulletin simply as "giv[ing] its students a thorough training, both theoretical and practical, in all branches of the law."⁶⁷ The bulletin mentioned that the university had been established by "the Jesuit Fathers," but did not otherwise promote this affiliation or tie it to how the school conducted its work. In 1938 this changed when Loyola added a lengthy paragraph describing its aims. The bulletin retained language about preparing students for the practice of law, but added:

The school, as a department of the University, aims at building the consciences of its students to the fulfillment of their civic, social, and religious duties. The faculty strives, wherever possible, to evaluate the positive law in relation to Neo-Scholastic principles of jurisprudence.⁶⁸

63 Francis P. LeBuffe, S.J., *Outlines of Pure Jurisprudence* (Fordham University Press, 1924). The text was based on the lecture notes of Rev. Terence J. Shealy, S.J.'s lecture notes for Shealy's Jurisprudence class at Fordham that LeBuffe took over.

64 Francis P. LeBuffe, S.J., and James V. Hayes, *Jurisprudence with Cases to Illustrate Principles* (Fordham University Press, 1938).

65 *Loyola University Chicago School of Law, Bulletin 1927–1928* (Loyola University Chicago, 1927), 15.

66 *Loyola University Chicago, Catalogue 1934–1935* (Loyola University Chicago, 1934), 16.

67 *Loyola University, Catalogue* (1934), 9.

68 *Loyola University Chicago School of Law, Bulletin 1938* (Loyola University Chicago, 1938), 10.

This description, with some variation, remained in Loyola's bulletin into the early 1960s.⁶⁹ Beginning in 1948, the bulletin contained an even more elaborate statement further providing that

The rules, standards, and principles of law are treated not as ends in themselves but as rational means to the attainment of objective justice. The School of Law, as a department of the University, is dedicated to the philosophy that there is an ideal and objective order of justice, based upon the natural law, by which human beings are endowed with certain inalienable rights and obligations, to enable them to realize in human dignity the divine destiny decreed by their Creator; that the natural law respects and governs all human actions and therefore the actions of man in civil society which is subject to constantly changing political, social, and economic forces; that by the recognition and application of natural law to the positive civil law, human society can approach the ideal and objective order of justice intended for human beings.⁷⁰

These ideas were underscored by the required Jurisprudence course that remained in place until the end of the 1950s.⁷¹

During this era, other Jesuit law schools described their aims and objectives in similar ways. Beginning in 1947, Boston College Law School had language nearly identical to the full paragraph from Loyola just quoted, expressing its dedication to "the philosophy that there *is* an ideal and objective order of justice based upon the natural law."⁷² In later versions of its bulletin through the mid-1960s, Boston College expanded this idea, explaining that human beings possess both "natural rights and obligations" that are

inalienable precisely because they are God-given. They are antecedent, both in logic and in nature, to the formation of civil societies. They are not granted by the beneficence of the state; wherefore the tyranny of a state cannot destroy them. Rather it is the high moral responsibility of civil society, through the instrumentality of its civil laws, to acknowledge their existence and to protect

69 *Loyola University Chicago School of Law, Bulletin 1966–1967* (Loyola University Chicago, 1967), 11 ("The faculty endeavors to relate the positive law in relation to scholastic natural-law principles and to evaluate it in light of those principles.").

70 *Loyola University Chicago School of Law, Catalogue 1947–1948* (Loyola University Chicago, August 1948), 8.

71 The 1955–1956 bulletin lists Jurisprudence as a required course in the third year taught by Rev. P. A. Woelfl, S.J., whose main text was "St. Thomas, Tract on Law." Loyola, *Bulletin 1955–1956*, 25. By 1959 the course was replaced by a course entitled Philosophy of Law and of Government with no text listed and the teacher "to be announced." *Loyola University Chicago School of Law, Catalogue 1959–1960* (Loyola University Chicago, 1959), 31.

72 *Boston College Law School, Catalogue 1946–1947* (Boston College, 1946), 13.

their exercise, to foster and facilitate their enjoyment by the wise and scientific implementation of the natural law with a practical and consonant code of civil rights and obligations.⁷³

Like Loyola, Boston College confirmed its commitment to this perspective in a required Jurisprudence course that made use of Seton Hall law professor John C. Wu's *Cases and Materials on Jurisprudence*.⁷⁴

Likewise, in its bulletins during this time, Fordham Law School declared its belief in "the principle of Natural Law that all men are endowed by their Creator with inalienable rights and that certain legal implications flow therefrom."⁷⁵ It noted the "regrettable phenomenon" that some law schools are known for "the complete separation of law from morality" but that "a well-grounded lawyer, especially if he is to be equipped to be a leader in public affairs, should have inculcated in him a sound philosophy of law" and to that end, "a comprehensive course in historical and analytical jurisprudence is given."⁷⁶ This study, it said, includes "the traditional scholastic and American viewpoint on the ultimate basis of civil authority and limitations on the power of the state."⁷⁷ And so Fordham required a two-hour course in Jurisprudence in the first year for both day and evening divisions.⁷⁸

In addition, some law schools advertised their Jesuit identity by publishing what was known as the Credo. Written in 1939 by the University of San Francisco's law school regent, Rev. Raymond T. Feely, S.J.,⁷⁹ the Credo was a kind of one-page mission statement that set forth the basic philosophical and political commitments of Jesuit education: belief in God and the dignity of man, the existence of natural rights, the evils of totalitarianism and racism, the importance of the family and private property, the complementarity of labor and capital, the virtues of American democracy,

73 *Boston College Law School, Bulletin 1964–1965* (Boston College, 1964), 11.

74 John C. Wu, *Cases and Materials on Jurisprudence* (West Publishing Company, 1958).

75 For example, see *Fordham University School of Law, Bulletin 1959–1960* (Fordham University 1959), *Cases and Materials*, 9.

76 *Fordham, Bulletin 1959–1960*, 9.

77 *Fordham, Bulletin 1959–1960*, 9–10.

78 *Fordham, Bulletin 1959–1960*, 24–25.

79 McGloin, *Jesuits by the Golden Gate*, 170; Abrahamson, *University of San Francisco*, 43. Feely was also the author of a series of anti-Communist pamphlets published by the Paulist Press: *Just What Is Communism?*; *Fascism, Communism, the USA* (1937); *Morals and Moscow* (1935); *Communism and Union Labor* (1937); *Communism Today or Red Fascism* (1945). See also Charles R. Gallagher, S.J., "Decentering American Jesuit Anti-Communism: John LaFarge's United Front Strategy 1934–1939," *Journal of Jesuit Studies* 5, no. 1 (December 2018): 97.

the sanctity of law, and the importance of the teachings of Christ “if civilization is to endure.”⁸⁰ Law schools such as USF, Creighton, and Detroit published a version of the Credo in their bulletins⁸¹ making clear the normative outlook informing the legal education they sought to provide.

In addition to an intellectual environment dedicated to natural law, Jesuit law schools sought to provide a spiritual environment that would appeal to and be supportive of Catholic students. Catholic educators had long competed for Catholic students attracted to more prestigious⁸² or more affordable non-Catholic schools, and they worried about the attendant risk of the loss of faith that could occur in such an environment.⁸³ Following the Second World War, fully two-thirds of all Catholic college students attended non-Catholic colleges and universities.⁸⁴ To counter this, Catholic schools sought to promote their institutions as offering an encounter with “Christian values, traditions, attitudes, instincts, history and culture”⁸⁵—an atmosphere in which the student would be able to address questions in a genuinely liberal way, not limited by secular humanism or religious neutrality.⁸⁶

80 “Credo of the University of San Francisco,” *Jesuit Educational Quarterly* 18, no. 1 (June 1955): 64. See also University of San Francisco, *Bulletin: Announcement of the School of Law, 1941–42* (University of San Francisco, 1941), 6.

81 As McGloin notes, “many of the American Jesuit colleges and universities asked for and obtained permission to use the statement in their own catalogues and other publications.” McGloin, *Jesuits by the Golden Gate*, 170. For an example of use of the Credo by a Jesuit law school, see “Credo of Creighton” (inside cover), *Creighton University School of Law, Bulletin 1966–1968* (Creighton University, 1966). Creighton continues to make use of a version of the “Credo of Creighton” that it promotes, at least to its alumni. See “Alumni and Friends,” <https://www.alumni.creighton.edu/s/1250/15/site/index.aspx?sid=1250&gid=1&pgid=582>. The University of Detroit School of Law incorporated the Credo into its bulletin from 1941 into the early 1960s. (University of Detroit, 1961).

82 Charles M. Lynch, “Why Do They Go to Princeton?” *America*, January 18, 1936, 353.

83 Thurston N. Davis, “Should Catholic Lambs Eat Ivy?” *America*, May 21, 1955, 205 (warning that “the unobtrusive authority which an urbane pagan mind can exercise over the uninformed during the four crucial years of college cannot be exaggerated”).

84 “Catholic Students in Non-Catholic Colleges,” *America*, September 19, 1953, 591.

85 Davis, “Should Catholic Lambs Eat Ivy?,” 206.

86 Gerald B. Fugat, “Where Are You Going? Reasons for the Catholic High School Graduate to Attend a Catholic College,” *America*, May 16, 1964, 673.

Although the idea was present during the first phase of their history,⁸⁷ during this second phase the idea that a Jesuit law school offered the advantage of a Catholic environment, in which a student's character would be formed and his faith would thrive, became more pronounced. This can be seen in an article published by Rev. David C. Bayne, S.J., in the *University of Detroit Law Journal*,⁸⁸ which was also separately published as a brochure and in much abbreviated form as an article in the *Jesuit Educational Quarterly*.⁸⁹ Bayne served as a faculty member, regent, and dean at the University of Detroit School of Law. In fifty pages of text Bayne answered the question "Why a Catholic law school?" by pointing to the strengths of these schools, but he singled out as their "most important" factor their "environment," the "totality of the atmosphere," "the air of the place, the tone of the school, the outlook of student and faculty." This atmosphere had an intellectual dimension in "the slant on the law, the philosophy of life, the concept of justice." More than this, he located the difference in a student's personal interactions with fellow students and faculty, and in his time "at Mass, in the chapel, during sodality meetings, during visits to the Blessed Sacrament" and with his spiritual director and on his annual retreat.⁹⁰ It was, he said, in the "general influence for good in morality, religion, philosophy, both of life and law" that "the Catholic law school surpasses by far the other law schools of the country."⁹¹

The devotional practices highlighted by Bayne were a mainstay of the pre-conciliar church and a definite feature of Jesuit law schools during this time. Celebration of the Red Mass, a centuries-old liturgy invoking the assistance of the Holy Spirit for lawyers, judges, and law students at the beginning of the judicial term, was widely observed. Law school communion breakfasts, membership in the Sodality of Our Lady, and recitation of the rosary were all ways in which Catholic students could experience a spiritually supportive Catholic atmosphere. Jesuit law schools placed crucifixes in their classrooms and adorned their facilities with images of

87 Linus Lilly, S.J., "The Catholic Law School," *America*, April 12, 1930, 18 ("The stimulus of the Catholic environment and the guidance of the Catholic faith, are needed throughout the formative period of life, in professional as well as preparatory study"). Lilly served as regent of St. Louis University School of Law and was a leader in the reform movement.

88 David C. Bayne, S.J., "Pre-Legal Guidance: An Outline for the Prospective Law Student," *University of Detroit Law Journal* 17, no. 4 (1954): 211.

89 David C. Bayne, S.J., "Counseling the Future Lawyer," *Jesuit Educational Quarterly* 15, no. 3 (1953): 147.

90 Bayne, "Pre-Legal Guidance," 255.

91 Bayne, "Pre-Legal Guidance," 257. Ironically, Bayne left Detroit in 1960 and spent twenty-five years teaching law at the University of Iowa.

St. Thomas More or St. Ives. As they improved their physical plant, building or acquiring dedicated space and sometimes moving to the university campus, some added chapels where Mass was celebrated and the Eucharist reserved. They were also sometimes assigned a chaplain or “counselor” to serve the spiritual needs of law students. The importance attached to this can be seen in the concern that Boston College had in planning its new building in 1952 that the counselor’s office be soundproof so that he might hear confessions.⁹² One feature, difficult to imagine on today’s Jesuit law school campus, was a mandatory annual retreat for Catholic students.⁹³

During this second phase of Jesuit legal education, roughly 1930 to 1960, students at Jesuit law schools were predominantly Catholic. Through most of their history, Jesuit schools regularly kept track of the religious affiliation of their students. Unfortunately, the documentary record varies in completeness from school to school. However, a survey for the 1950–51 academic year, conducted by Rev. David C. Bayne, S.J., under the auspices of the Jesuit Educational Association (JEA), reported that 71 percent, or 3,748 of the 5,247 students enrolled that year, were Catholic. The survey did not provide the names of specific schools but reported that the school with the lowest percentage of Catholic students had 36 percent while the highest had 93 percent. One school had 55 percent Catholic students; the remaining ten schools had between 60 and 80 percent.⁹⁴

The range of 60–80 percent average Catholic enrollment at Jesuit schools is supported by other available data. For example, Catholic enrollment at Georgetown rose from an average of 52 percent during the five years before 1925 to an average of 70 percent during the five years after 1925, when Rev. Coleman Nevils, S.J., implemented his reforms. Through the 1950s, three-quarters of Georgetown’s law students were Catholic,

92 Boston College Archives, BC 2013.016, Series I, Box 4, Folder 9, “Planned Law School Building,” December 5, 1952.

93 See, for example, *Loyola University Chicago, Catalogue 1959–1960* (Loyola University, 1959), 22 (“Catholic students in the Day Division are obliged to make an annual retreat at the time appointed in the University calendar”); *Saint Louis University, Bulletin: Day and Evening Divisions 1950–1951* (Saint Louis University, 1950), 10 (“Each year the Spiritual Exercises of St. Ignatius Loyola are conducted for the law students and are of obligation for all Catholics”); University of Detroit Mercy, “Retreat for Day Law Students,” *Historical Papers of the University of Detroit School of Law, vol. 4, 1946–1951* (Detroit Mercy School of Law, 1960), Jan. 27–29, 1947; Jan. 26–28, 1948; Jan. 31–Feb. 2, 1949; Jan. 30–Feb. 1, 1950; Jan. 29–31, 1951.

94 David C. Bayne, S.J., *Survey of Jesuit Law Schools: 1950–1951*, 3, Conducted by Conference of Jesuit Law Schools of the Jesuit Educational Association; Boston College Archives, BC.2013.16, Series I, Box 4, Folder 21.

drawn from “a network of Catholic colleges that were [its] major feeders.”⁹⁵ Similarly, Loyola-Chicago reported that it had a 74 percent Catholic enrollment in 1931, 78 percent in 1935, and 67 percent in 1940. In 1943 it reported to Loyola’s president that its student body was usually between 75 and 80 percent Catholic. In its 1957 report to the ABA, Loyola said that at least two-thirds of its students were Catholic.⁹⁶ Likewise, Fordham Law School had between 68 and 75 percent Catholic enrollment between 1925 and 1947. Between 1948 and 1957, Fordham’s Catholic enrollment rose to about 80 percent before dropping to about 75 percent for the period 1958 to 1968.⁹⁷

During this time, the faculties at Jesuit law schools were also predominantly Catholic.⁹⁸ Bayne’s survey reported that 83 of the 105 full-time professors at these schools were Catholic, that is, 79 percent. The percentage varied at different schools, with 33 percent being the lowest. Four Jesuit law schools had 100 percent Catholic full-time faculty. Six schools had between 75 and 85 percent, and the other two schools had 56 and 60 percent. Of these 105 full time professors, 59, or 56 percent, had college degrees from Catholic colleges and 53 percent had law degrees from Catholic law schools.

In faculty hiring, the leaders of these schools knew that personnel is policy. A strong majority of Catholic faculty was indispensable to the intellectual project of fostering a Neo-Thomistic exposition and critique of American law. They would also serve as role models for the integration of law as a profession and faith as a way of life. Moreover, such a man (for they were almost always men) could be trusted not to indulge in false ideas that would lead students astray. A man’s educational pedigree—attendance at Catholic college and law school—was *prima facie* evidence that he had been introduced to a scholastic way of thinking and so could pass on to his students that which he had received.⁹⁹ This, however, led to “inbreeding,” where a law school hired faculty members almost exclusively from the pool of its own graduates. Accreditors from the ABA and AALS were strongly

95 Curran, *Quest for Excellence*, 313.

96 Haney, “The Role of Religion,” 67.

97 Kaczorowski, *Fordham University*, 66.

98 John M. Breen and Lee J. Strang, “The History of Religious Hiring at American Catholic Law Schools,” *Touro Law Review* 38, no. 4 (2023), 1123.

99 Compare James Tunstead Burtchaell, C.S.C., *The Dying of the Light: The Disengagement of Colleges and Universities from Their Christian Churches* (Wm. B. Eerdmans, 1998), 628 (observing that no political science faculty at Boston College had their undergraduate or graduate degree from a Catholic university: “therefore no one in the department has ever experienced what BC claims to offer”).

critical of the practice and urged the schools to hire faculty from a wider range of backgrounds.¹⁰⁰

Even at the height of pre-conciliar Catholicism, when the number of Jesuit vocations was near its apex, the presence of Jesuits teaching in these schools remained thin. Bayne's survey for 1950 and 1951 reported that twelve Jesuits were teachers at the thirteen law schools, six full-time and six part-time. Of the full-time teachers, six were lawyers. Bayne also reported that there were seven Jesuit regents and that "[i]n the main the Fathers teach Jurisprudence or allied subjects, with the exception of the lawyer Jesuits who teach their own particular fields of law."¹⁰¹

People with a common mission often congregate, finding intellectual support and strength in numbers, so it is unsurprising that during this era Jesuit law schools joined together to form a body. In 1947 Rev. Edward Rooney, S.J., executive director of the JEA, called to order a sub-commission on Jesuit Law Schools at Loyola-Chicago.¹⁰² The sixteen individuals attending included four deans and five regents representing nine law schools. The group met annually in subsequent years, hearing presentations from Santa Clara's dean, Edwin J. Owens, on "The Meaning of a Catholic Law School"¹⁰³ and Georgetown's regent, Rev. Francis E. Lucey, S.J., on "The Place and Scope of Jurisprudence in the Law School Curriculum."¹⁰⁴

The group grew in size as it continued to meet,¹⁰⁵ but experienced frustration at the lack of resources to carry out the integration of Catholic thought and doctrinal, legal subjects.¹⁰⁶ In 1948 the group had reached consensus that a Catholic law school was "one whose faculty and student body are predominantly Catholic in faith and practice, one whose atmo-

100 Breen and Strang, "History of Religious Hiring," 1150.

101 Bayne, *Survey of Jesuit Law Schools*, 4. Optimistically, Bayne noted that there were then eight Jesuits training to be lawyers, either in law school or recently graduated.

102 Jesuit Educational Association, Office of the Executive Director, Minutes of First Annual Meeting of Sub-Commission on Jesuit Law Schools, Loyola University Chicago, December 28, 1947, Boston College Archives, BC.2002.16, Series I, Box 2, Folder 1.

103 Jesuit Educational Association, Minutes of First Annual Meeting, Xavier University, Cincinnati, Ohio, December 29, 1948, Boston College Archives, BC.2002.16, Series I, Box 2, Folder 1.

104 Jesuit Educational Association, Minutes of First Annual Meeting, Loyola University, Chicago, Illinois, December 29, 1947, Boston College Archives, BC.2002.16, Series I, Box 2, Folder 1.

105 "The Fourth Annual Meeting of Jesuit Law Schools," *Jesuit Educational Quarterly* 13, no. 4 (March 1951): 211 (noting that the number in attendance had grown from sixteen in 1947 to sixty in 1950).

106 Paul L. Gregg, S.J., "Catholic Thought and Law: A Cooperative Plan," *Jesuit Educational Quarterly* 14, no. 4 (March 1952): 197.

sphere and culture are Catholic, and very especially one whose curriculum is a fusion of Catholic thought with standard legal materials.”¹⁰⁷ It was thus troubling that a fact-finding committee in 1955 concluded that “[a] major difficulty of American Jesuit law schools is to bring American Jesuit educators and administrators to understand the distinctive nature of the law school and its high potentiality for influencing society” and that this included the “[f]ailure of the faculty of the law school in an understanding as to what a law school should be.”¹⁰⁸ As an antidote to this problem, the committee recommended the creation of a formal Conference of Jesuit Law Schools and circulated a draft constitution. The constitution was adopted in 1957 after it was amended to preclude the conference from functioning as an accrediting body. The group continued for several years but ceased to function after 1968. It was overtaken by events in the wake of Vatican II, which revolutionized American Catholic higher education. Its demise was also a symptom of the failure of the movement to transform Catholic legal education along neo-Thomistic lines—a failure that was itself owing not only to the lack of proper legal teaching materials but to the inability to gather law school faculty who were well-versed in both Scholastic philosophy and American law.¹⁰⁹

The Period of Public Service and Social Justice

With only a meager Jesuit presence and without an identity firmly rooted in an intellectual mission (and lacking the personnel willing to carry out such a mission), as the 1960s began the “distinctive identity” of Jesuit law schools was largely a matter of cultural Catholicism. The schools were

107 Gregg, “Catholic Thought and Law: A Cooperative Plan,” 197.

108 “Report of Fact-Finding and Analysis Committee Nominated in Accordance with the Directive of the Conference of Jesuit Law Schools, *Loyola University Chicago Archives*,” August 26, 1956, 1, Accession # UA 2023–2027, Loyola University Chicago School of Law, Office of the Dean Records, 1900–1997 (Bulk 1925–1997), UA 2023.27, Box 10, File 10–36.

109 See, for example, editorial “Catholic Professional Schools,” *America*, January 29, 1949, 452 (noting that “such schools have not been able to the present either to offer much instruction in Christian social philosophy or to integrate it sufficiently with professional courses” and complaining of the serious “dearth of teachers able to offer instruction in Christian social principles”). At least one reader agreed. See letter to the editor, *America*, February 26, 1949 (“The greatest need is, of course, for professors who can present to the students, together with the technical aspects of our American law, the Catholic attitude on the many moral and ethical problems which are part and parcel of legal study and legal practice”). For a discussion of these reasons, see John M. Breen and Lee J. Strang, “The Road Not Taken: Catholic Legal Education at the Middle of the Twentieth Century,” *American Journal of Legal History* 51, no. 4 (2011): 553.

ill-prepared to face the upheaval that took place in society, the Church, and American legal education in the ensuing years.

The social and political turmoil that took place in the 1960s and 1970s was a revolt against a wide array of established institutions, social norms, and mores. The Civil Rights Movement challenged the gross racial injustice, lack of opportunity, and legal discrimination suffered by black Americans since the time of Jim Crow. Women challenged the traditional domestic roles of wife and mother, and sought access to the various kinds of employment, social standing, and civic participation from which they had been excluded. The environmental movement challenged the degradation of the earth, water, and air by industrial pollution and wanton consumerism. The sexual revolution, aided by the development of the oral contraceptive pill, challenged monogamy and promoted the freedom to engage in sex outside of marriage while seeking social acceptance for behaviors traditionally considered to be deviant. In addition to these movements, the Second Vatican Council (1962–65) brought changes in theological perspective, liturgy, and devotional practices that were like “a spiritual earthquake” to many Catholics, leaving them with “the overall impression . . . of demoralization and collapse.”¹¹⁰

On top of all this, there was a general challenge to various kinds of authority—political, religious, and cultural—as corrupt or incompetent or simply out of touch with reality and the concerns of ordinary people, and so underserving of respect, let alone deference. The overt suspicion and resentment of authority was nurtured by the failures of Vietnam and Watergate. In the post-conciliar Church, a failure of authority was perceived by many in Pope Paul VI’s disapproval of artificial contraception in *Humanae Vitae*.

Such changes were not merely culturally significant. Each of these movements also had a transformative effect on American law. To cite only a few examples, the Civil Rights Movement prompted Congress to enact the 1964 Civil Rights Act and the 1965 Voting Rights Act; the environmental movement led to clean air and water legislation; protests against the Vietnam War led to greater free speech rights and governmental transparency; and the sexual revolution and legal feminism contributed to the Supreme Court’s creation of both an expansive right to contraception in *Griswold v. Connecticut* and other cases and a right to abortion in *Roe v. Wade*.

The conventional wisdom is that these legal changes inspired a generation of young people to pursue careers in law to make the world a better

110 Philip Gleason, *Keeping the Faith: American Catholicism, Past and Present* (University of Notre Dame Press, 1987), 137.

place.¹¹¹ It may be that law school enrollments were the product of less altruistic motivations.¹¹² What is indisputable is that in a span of only ten years, from 1965 to 1975, law school enrollments nearly doubled, from 56,510 students enrolled in JD programs in ABA-approved schools to 111,047.¹¹³ Jesuit law schools participated in this explosive growth. In 1965 Jesuit schools were home to 5,391 JD students.¹¹⁴ By 1975 this total had risen to 11,294.¹¹⁵

Women, and to a lesser extent minorities, accounted for part of the increase nationwide and in Jesuit schools. In 1965 women accounted for only 241 JD students, or 4.5 percent, at Jesuit schools. By 1975 women accounted for 2,770, or 24.5 percent. The reporting on the number of minority students for these years is incomplete. In 1975, seven out of the eleven schools reporting had minority enrollments in the single digits. Enrollments ranged from a high of 17.6 percent or 134 out of 761 students at USF to a low of 16 out of 916 students or 1.7 percent at Gonzaga. That year 292 of Georgetown's 1,951 JD students, or 15 percent, were minorities.

The percentage of Catholic students dropped substantially in this period of student growth. For example, in the 1950s Georgetown had relied on recruiting heavily from a network of Catholic colleges for its student body. As a result, three-quarters were Catholic and 17 percent received their undergraduate degree from Georgetown. In 1962 Georgetown decided to move away from this model and instead heavily recruit in "the Ivy League schools as well as eastern and midwestern independents."¹¹⁶ As a result, the percentage of Catholic law students fell from 52 percent in 1964 to 42 percent in 1975.¹¹⁷

111 Walter B. Raushenbush, "The Unmet Demand for Legal Education," *Learning and the Law* 1, no. 1 (1974): 12 (claiming that law students see legal training "as preparation for working toward changes in society that they consider necessary").

112 Seymour Warkov and Joseph Zelan, *Lawyers in the Making* (University of Chicago Press, 1965); Robert Stevens, "Lawyers and Law Students," *Virginia Law Review* 59, no. 4 (1973): 551.

113 Section of "Legal Education and Admissions to the Bar of the American Bar Association," *A Review of Legal Education in the United States: Fall 1995*, ed. Rick L. Morgan (American Bar Association, 1996), 67.

114 "Section of A Legal Education and Admissions to the Bar of the American Bar Association," *Review of Legal Education: Fall 1965* (American Bar Association, 1965), 4.

115 "Section of Legal Education and Admissions to the Bar of the American Bar Association," *Law Schools and Bar Admission Requirements: A Review of Legal Education in the United States—Fall 1975* (American Bar Association, 1975), 6.

116 Curran, *The Quest for Excellence*, 313.

117 Robert Emmett Curran, *A History of Georgetown University, Vol. 3: The Rise to Prominence 1964–1989* (Georgetown University Press, 2010), 99.

To satisfy the increased classroom demands posed by growing enrollments, law schools expanded their faculties. In 1970 the ABA-approved schools were staffed by 2,873 full-time professors and 1,520 part-time instructors.¹¹⁸ Just five years later, they employed 3,584 full-time law professors, and 1,777 part-time instructors.¹¹⁹ Jesuit law school faculties also expanded, from 164 full-time and 194 part-time in 1965¹²⁰ to 295 full-time and 205 part-time in 1975.¹²¹

The most salient and consequential aspect of faculty hiring at Jesuit and other Catholic law schools during this time was that it was conducted without regard to mission.¹²² Or rather the search for new faculty was conducted to satisfy a *new* mission that was wholly unconcerned with a distinctive Catholic or Jesuit identity. There was no longing for a Neo-Scholastic synthesis of natural law and American law or other conscious engagement with the Catholic intellectual tradition. There was no aim to recruit teachers who could serve as role models of professional competence and religious faith. There was, instead, only a desire to fill curricular needs and improve the school's academic reputation. Jesuit law schools discarded the practice of hiring from their own graduates and sought a new breed of law professor. They placed a premium on the prestige of the candidate's academic pedigree and his or her (as women were now open to consideration) scholarly potential. Standards for tenure were formalized, and the Jesuit schools that most succeeded in enhancing their reputations placed a premium on the number and placement of scholarly publications. Jesuit law faculties became much more diverse in terms of not only religious background but also gender and race. The leadership of Jesuit schools also changed. In the 1990s, Jewish deans were so prevalent among Jesuit law schools that they regularly met for an informal lunch during the AALS annual meeting.¹²³

Even if Jesuits had wanted to resist these changes, they were in no position to do so. In the wake of the Second Vatican Council, the number of Jesuits was in serious decline due to a drop in vocations, natural mortality, and voluntary separation from the order. "The Society of Jesus reached its largest size in the United States in 1965 with 8,393 members" but by 1975

118 Section of Legal Education and Admissions to the Bar of the American Bar Association, *Review of Legal Education: Law Schools and Bar Admission Requirements in the United States—Fall 1970* (American Bar Association, 1970), 45.

119 ABA, *Review of Legal Education: Fall 1975*, 43.

120 ABA, *Review of Legal Education: Fall 1965*, 4.

121 ABA, *Review of Legal Education: Fall 1975*, 6.

122 Breen and Strang, "History of Religious Hiring," 1150.

123 Conversation between Lawrence Raful, dean of Creighton University School of Law (1988–99), and John Breen, Touro Law School, September 15, 2022.

their number had fallen 25 percent, to 6,220.¹²⁴ As noted previously, the number of Jesuits teaching in law schools was never more than a handful. With the elimination of the regent position in the 1950s and early 1960s, the presence of Jesuits in Jesuit law schools was even more rare.

Furthermore, the Jesuits had, to a significant degree, given up their authority to direct the institutions they had founded. Beginning with St. Louis University in 1967 and continuing through the 1970s, every Jesuit college and university underwent a reorganization in which its ownership and control were formally separated from the religious community and vested in a majority-layperson board of trustees.¹²⁵ The Jesuit community was also often separately incorporated with some property settlement made with the university. By January 1972, seventeen of the twenty-eight Jesuit colleges and universities had separately incorporated the Jesuit community, including eleven of the thirteen Jesuit universities hosting law schools.¹²⁶ The main theoretical justification for these moves, as set forth in the *Land O'Lakes Statement* and other contemporary statements by university leaders, was that a Catholic university needed "true autonomy" free of clerical control in order to pursue its goal of genuine academic excellence.¹²⁷ A second factor was the hope that control by a lay board (including non-Catholics) rather than the Society of Jesus would render the university legally "nonsectarian" and so eligible for government funding, consistent with the First Amendment. A third claim was that lay control of universities was a fulfillment of Vatican II, which acknowledged the autonomy of earthly affairs, the responsibility of the laity to be the Church in the world, and the importance of ecumenical outreach.¹²⁸ Jesuits embraced these changes

124 David J. Collins, *The Jesuits in the United States—A Concise History* (Georgetown University Press, 2023), 126. See also Joseph M. Becker, S.J., "Changes in U.S. Jesuit Membership, 1958–1975: A Symposium," *Studies in the Spirituality of Jesuits* 9, nos. 1/2 (1977): 1–104.

125 Alice Gallin, O.S.B., *Independence and a New Partnership in Catholic Higher Education* (University of Notre Dame Press, 1996).

126 "Summary of Separate Incorporation as of January 1, 1972," Loyola University Chicago Archives, Office of the President, Rev. Raymond Baumhart, S.J., Addenda 9, 1944–1993, Box 1, Folder 1, AJCU 1972.

127 "The Land O'Lakes Statement: The Nature of the Contemporary Catholic University" (1967), §10, reprinted in *American Catholic Higher Education: Essential Documents, 1967–1990*, ed. Alice Gallin (University of Notre Dame Press, 1992), 7.

128 Paul C. Reinert, S.J., with Paul Shore, *Seasons of Change: Reflections on a Half-Century at Saint Louis University* (Saint Louis University Press, 1996), 48; Reinert, editorial "Catholic Higher Education in the 1970's," *America*, January 26, 1974, 45 (attributing "the establishment of independent, self-perpetuating boards of trustees in Catholic colleges and universities" as "due to the influence of Vatican II and the cultural changes in the United States").

and so could hardly complain when Jesuit law schools, already run by lay people and enjoying more autonomy than other academic units, decided to hire a new kind of law professor.

The rejection of a school's prior mission was not overt, but was evident from its absence in school bulletins. The change was rather abrupt. For example, by 1966 Boston College had jettisoned the lengthy description of its mission as education dedicated to a "philosophy of an objective moral order" and "natural rights and obligations." Its 1971 bulletin articulated no special mission whatsoever. It mentioned that the "original intention" of the host institution "was to provide collegiate instruction to men in an atmosphere of specific religious tradition" but that now BC "is open to men and women of any and every background."¹²⁹ Jurisprudence was not required, but Legal Philosophy was available as an elective.¹³⁰ Likewise, by 1971 the University of San Francisco School of Law's bulletin no longer contained the Credo authored by its former regent Rev. Raymond T. Feely, S.J.¹³¹ Also, gone was mention of any special quality that USF would bring to the education or formation of lawyers. The only reference to Jesuit education was the brief historical note that USF was founded by "the Jesuit Fathers in 1855."¹³²

The crisis in Jesuit mission reached an inflection point following the publication of Pope John Paul II's *Ex Corde Ecclesiae* in 1990. This apostolic constitution called for each Catholic university to robustly pursue its mission as "a community of scholars . . . in which Catholicism is vitally present and operative," teaching students and "conducting an impartial search for truth."¹³³ This would, the Pope said, "depend[] to a great extent on the competent and dedicated service of lay Catholics" who must "constitute a majority within the institution."¹³⁴ Notably, the Association of Catholic Colleges and Universities and several Jesuit university presidents criticized *Ex Corde* in its drafting and in the preparation of the US bishops' implementing regulations.¹³⁵

129 *Boston College Law School, Bulletin 1971–1972* (Boston College, 1971), 5.

130 *Boston College Law School, Bulletin 1971–1972*, 37.

131 The Credo still appeared in the university's bulletin up until 1980.

132 *University of San Francisco School of Law, Bulletin 1971–1972* (University of San Francisco, 1971), 3.

133 John Paul II, *Apostolic Constitution on Catholic Universities, Ex Corde Ecclesiae* (Aug. 15, 1990) paras. 7, 14, reprinted in *American Catholic Higher Education, Essential Documents, 1967–1990*, ed. Alice Gallin (University of Notre Dame Press, 1992), 413.

134 John Paul II, *Ex Corde Ecclesiae*, para. 25, art. 4.4.

135 James T. Burtchaell, C.S.C., "Out of the Heartburn of the Church," *Journal of College and University Law* 25, no. 4 (1999): 653.

As a juridical document, *Ex Corde* has been ignored. Noncompliant universities and fainthearted bishops have combined to effect a kind of nullification by neglect. Nevertheless, it has succeeded in making the then forgotten question of mission in Catholic and Jesuit legal education relevant again. In its wake, several commentators addressed the question,¹³⁶ and Jesuit law schools felt the need to confirm their affiliation as something more than a brand label or historical remnant. The consensus that emerged was that these schools were distinctive and authentically Jesuit because they were dedicated to the promotion of justice.

This depiction of Jesuit identity was not new. Rather, it drew from the well of identity articulated by the order—a source of identity that faculty in other parts of the university had already begun to tap. In 1975, the 32nd General Congregation of the Society of Jesus reoriented the Jesuit mission, defining it as “the service of faith, of which the promotion of justice is an

136 Steven M. Barkan, “Jesuit Legal Education,” *Marquette Law Review* 74, no. 1 (1990): 99; Barkan, “Jesuit Law Schools: Challenging the Mainstream,” *Conversations on Jesuit Higher Education* 3, article 4 (1993): 7; Alfred C. Krammer, S.J., “Why Should a Jesuit University Have a Law School,” *Saint Louis University Public Law Review* 10, no. 2 (1991): 565; Joseph P. Daoust, S.J., “Legal Education in a Catholic University—Mission and Possibilities,” *University of Detroit Mercy Law Review* 78, no. 1 (2000): 27; Jeffrey S. Brand, “Jesuit Law Schools and the Pursuit of Justice: Unique Opportunities, Unique Responsibilities,” *Conversations on Jesuit Higher Education* 19, article 6 (2001): 28; Daniel Gordon, “*Ex Corde Ecclesiae*: The Conflict Created for American Catholic Law Schools,” *Gonzaga Law Review* 34, no. 1 (1999): 125; Leonard Pertnoy and Daniel Gordon, “Would Alan Dershowitz Be Hired to Teach Law at a Catholic Law School? Catholicizing, Neo-Brandeisizing, and an American Constitutional Policy Response,” *Seattle University Law Review* 23, no. 2 (1999): 355; Daniel L. Morrissey, “A Catholic Moment in Legal Education?” *America*, October 29, 1994, 4; Morrissey, “Bringing the Messiah Through Law: Legal Education at the Jesuit Schools,” *Saint Louis University Law Journal* 48, no. 2 (2004): 549; Nicholas P. Cafardi, “Catholic Law Schools and *Ex Corde Ecclesiae*, or What Makes a Law School Catholic?” *University of Toledo Law Review* 33, no. 1 (2001): 7; Mark A. Sargent, “An Alternative to the Sectarian Vision: The Role of the Dean in an Inclusive Catholic Law School,” *University of Toledo Law Review* 33, no. 1 (2001): 171; Mark A. Sargent, “We Hold These Truths: The Mission of a Catholic Law School,” *Commonweal*, April 25, 2003, 14; Thomas L. Shaffer, “Why Does the Church Have Law Schools?” *Marquette Law Review* 78, no. 2 (1995): 401; David L. Gregory and Charles J. Russo, “Proposals to Counter Continuing Resistance to Implementation of *Ex Corde Ecclesiae*,” *Saint John’s Law Review* 74, no. 3 (2000): 629; Christopher Wolfe, “The Idea of a Catholic Law School,” *Marquette Law Review* 78, no. 2 (1995): 487; David K. DeWolf and Robert John Araujo, “And God’s Justice Shall Become Ours: Reflections on Teaching Law in a Catholic University,” *Regent University Law Review* 11, no. 1 (1998): 37.

absolute component.”¹³⁷ In the law school context, “the service of faith” was effectively dropped so that the mission was simply “the promotion of justice.” This proof of and rationale for Jesuit identity was readily compatible with the law schools’ current operations, as they could point to a part of their educational program—legal clinics—that was already being offered.¹³⁸

In the 1960s and 1970s, law schools across the country (Catholic and non-Catholic alike) began hosting direct service in-person legal clinics in large numbers. Overseen by a practicing lawyer, these clinics gave law students the opportunity to serve the poor and disadvantaged in need of legal assistance. They frequently focused on a particular area of legal need such as landlord-tenant law, public benefits, criminal defense, immigration law, and family law. Jesuit and other Catholic law schools were part of this trend, and today all fourteen offer a variety of clinical programs. Law schools established these clinics for pedagogical reasons: to teach students practical legal skills by giving them the hands-on experience of actual client representation. There is no evidence in the historical record to support the claim that the clinics were of Catholic inspiration or that they were created to reflect the school’s dedication to a Jesuit identity.¹³⁹ That claim was an afterthought, articulated years later as proof that they were helping to fulfill a Catholic mission.

Now, in the third decade of the twenty-first century, Jesuit law schools still point to their support for social justice as evidence of their Jesuit identity. But what constitutes “social justice” has changed with the times, often in ways that are difficult to square with a school’s claimed Jesuit and Catholic identity. They have, more often than not, been followers of the culture and “imitators of men.”¹⁴⁰

137 Society of Jesus, Decrees of the 32nd General Congregation of the Society of Jesus (Curia of the Society of Jesus, 1975), decree 4, para. 2.

138 See John M. Breen, “Justice and Jesuit Education,” *Loyola University Chicago Law Journal* 36, no. 2 (2005): 383.

139 In his history of Georgetown University Law Center, Dan Ernst states: “[i]n 1958 Oliver Gasch, U.S. Attorney for the District of Columbia, challenged the city’s law schools to found and staff ‘legal aid clinics’ for indigent and criminal defendants.” Ernst, *First 125 Years*, 127. He then claims that “[t]he proposal appealed to members of the law faculty, combining as it did lawyers, obligation to serve the public interest, Catholic concern for the inherent dignity of the individual, especially when confronted by the state, and Georgetown’s long tradition of involvement with the local courts.” Ernst, 127. The idea that a Catholic rationale for these efforts moved support among the faculty for the development of clinics at Georgetown is simply not supported by the record. Ernst’s comment may be an impression considered in hindsight.

140 See Eph. 5:1 and Acts 5:29.

In its 2003 statement, *Standing for the Unborn*,¹⁴¹ the Society of Jesus in the United States declared: “Among all the justice issues we as a society should view with grave concern, abortion is a key social evil.” It describes abortion as “a human rights issue” and makes clear that the unborn “must be treated with respect and be protected by the laws of our nation.” Jesuits “must seek an end to the injustice of abortion.” Given the grave nature of this hideous injustice and its clear connection to law, it is astonishing that no Jesuit law school in the country has sought to host a center or law clinic dedicated to the pro-life cause. On the contrary, several programs at Jesuit law schools actively seek to preserve and expand the legal right to kill unborn children at home and abroad.

For example, the Georgetown University Law Center has long hosted the International Women’s Human Rights Clinic. Of course, support for human rights would be wholly consistent with an authentic Jesuit mission, but the clinic sees abortion as a human right and has advocated for it in African countries.¹⁴² Georgetown Law also hosts a Women’s Law and Public Policy Fellowship Program (WLPPFP), which includes a program for domestic fellows and a Leadership and Advocacy for Women in Africa program. A survey of the WLPPFP’s newsletter confirms that the program serves as a pipeline for fellows to abortion advocacy organizations in the US and Africa.¹⁴³ In 2022, as *Roe v. Wade* was on the verge of being overturned by *Dobbs v. Jackson Women’s Health*, WLPPFP’s executive director, Jill Morrison, wrote that “many of our Alumnae are working to advance reproductive health, rights and justice. I know we will continue this fight, not only in our ‘day jobs,’ but as board members of organizations, in scholarship, and volunteering in our communities.”¹⁴⁴ Morrison, a former national board member for the abortion rights group If/When/How, also developed the Reproductive Justice curriculum for Georgetown Law’s Street Law Program.¹⁴⁵

141 Society of Jesus in the United States, *Standing for the Unborn: A Statement of the Society of Jesus in the United States on Abortion* (Society of Jesus, 2003).

142 International Women’s Human Rights Clinic, *Killing Women and Girls: Malawi’s Abortion Crime*, Georgetown University Law Center, <https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/international-womens-human-rights-clinic/press-and-publications/malawis-criminal-ban-on-abortion/>.

143 The newsletter for the WLPPFP is called “Outreach.” Past issues are available at <https://www.law.georgetown.edu/wlppfp/newsletters/>. They are rife with reports of the placement of fellows in various abortion rights organizations.

144 “Outreach” (Spring/Summer 2022), https://www.law.georgetown.edu/wlppfp/wp-content/uploads/sites/30/2022/07/WLP_Spring_22-2.pdf.

145 WLPPFP, “Our Team: Jill Morrison, Executive Director,” Georgetown University Law Center, <https://www.law.georgetown.edu/wlppfp/our-team/>.

Support for “sexual and reproductive health,” including abortion, is a regular part of the work of Georgetown Law’s O’Neill Center for National and Global Health Law.¹⁴⁶ The O’Neill Center for Health and Human Rights project in Sexual and Reproductive Health and the Law uses a legal human rights framework “to inform litigation, law and policy reform, and regulation related to reproductive health, rights, and justice throughout Latin America” in “assessing the impacts of criminal law in reproductive health, including the criminalization of reproductive health services.”¹⁴⁷

Georgetown Law also hosts the Gender+Justice Initiative, which “seeks to promote an intersectional and interdisciplinary approach to gender justice.” It claims that this work “advances Georgetown’s Jesuit tradition and commitment to ‘address the social realities of . . . injustice and oppression.’”¹⁴⁸ The initiative is a center for abortion advocacy. In September 2022, a few months after the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health* overturning *Roe v. Wade*, the Gender+Justice Initiative hosted a conference, “After *Dobbs*: The Assault on Women’s Reproductive Freedom and Equality.” The perspective presented at the conference was monolithic. All nineteen participants, including three Georgetown Law professors, spoke against *Dobbs* and in favor of abortion rights, encouraging others to respond with “creative rage.”¹⁴⁹

146 O’Neill Center for National and Global Health Law, Georgetown University Law Center, <https://oneill.law.georgetown.edu/issues/sexual-and-reproductive-health/>.

147 O’Neill Center for National and Global Health Law, Center for Health and Human Rights, Sexual and Reproductive Health and the Law, <https://oneill.law.georgetown.edu/projects/sexual-and-reproductive-health-and-the-law/>.

148 Gender+Justice Initiative, “Mission,” <https://genderjustice.georgetown.edu/about-us/mission/>.

149 Gender+Justice, “After *Dobbs*: The Assault on Women’s Reproductive Freedom and Equality,” <https://genderjustice.georgetown.edu/event-announcements/gji-events/lectures/after-dobbs/>. For another example of this abortion activism, see Gender+Justice, *Annual Report 2020–2021*, 26 (panel presentation “Legal Vigilantism: Texas and the End of *Roe*?” featuring four speakers all of whom are against a Texas prolife statute), <https://georgetown.app.box.com/s/hidbsx08e-8zldlt3pnwsulqksnho1f0l>.

Additional examples of abortion advocacy can be found at Fordham¹⁵⁰ and Boston College,¹⁵¹ to say nothing of the abortion advocacy by many individual faculty at Jesuit law schools.¹⁵² Faculty members at these and other Jesuit schools are, of course, free to teach, publish and advocate for whatever position they wish. As is true with secular institutions of higher learning, academic freedom is a constitutive part of every Jesuit university. At the same time, respect for academic freedom does not require a Jesuit university to devote resources to any particular program or initiative, let alone one that would seem to undermine its claimed Jesuit identity. When a Jesuit law school can actively promote, in the name of “justice,” that which the Jesuits themselves describe as a perverse “injustice” and “key social evil,” Jesuit identity in legal education has become deeply confused and sorely in need of thoughtful clarification.

A Jesuit law school has an obligation to make available a variety of perspectives to its students. Moreover, as part of a genuine university that values academic freedom, the school should be a place where any point of view may be offered for consideration and subject to rigorous and respectful intellectual engagement. To satisfy these goals, it need not hire a faculty member who embraces a particular normative point of view or establish a center or program that seeks to advance that perspective. Finite resources preclude the possibility of supporting *every* point of view in this manner. Even if such material support were possible, it would not be necessary. In a law school classroom, faculty members are expected to present points of

150 150 Crowley Program in International Human Rights, “Overview,” <https://leitnercenter.org/studying-human-rights/crowleyprogram/#cp-overview> (advocating in Kenya against the Mexico City Policy so that NGOs supporting abortion can access U.S. foreign aid); Walter Leitner International Human Rights Clinic, Leitner Center for International Law and Justice, <https://leitnercenter.org/studying-human-rights/walter-leitner-international-human-rights-clinic/> (advocating to ensure “access to safe abortion”).

151 Julia Palmerino, “In Defense of Reproductive Rights,” *BC LAW*, May 11, 2023, <https://lawmagazine.bc.edu/2023/05/in-defense-of-reproductive-rights/> (discussing two abortion advocacy events).

152 See Peter Jesserer Smith, “Fordham Law Professor Will Argue Texas Case Before Supremes—for Abortionists,” *National Catholic Register*, February 17, 2016 (then Fordham professor Stephanie Toti working for the Center for Reproductive Rights and arguing abortion rights before the Supreme Court). One health law professor at Loyola Chicago has repeatedly said that the law school is in “desperate need” of a “reproductive rights scholar” and has called for Loyola to hire one. When candidates have been put forth, other faculty, concerned with the effect that such a hire would have on mission, have sought to inform the university administration of these efforts. Only the intervention of the university provost and president has prevented such appointments from taking place to date.

view with which they disagree in a serious and convincing fashion, modeling an essential lawyering skill that students must acquire if they are to become successful attorneys. In addition, Jesuit law schools and others often supplement the variety of perspectives sincerely held by faculty members by inviting outside speakers to campus. In doing so, the school is not lending institutional support to the speaker's point of view. It is merely serving as a forum for ideas in which those ideas may be subject to intellectual scrutiny and challenged and defended by rational argument. By contrast, in hosting a center or program that seeks to advance the practice of abortion by legal means, as Georgetown has done, a Jesuit law school lends institutional support to what the Jesuits themselves describe as "the injustice of abortion." Likewise, in hiring a faculty member who is dedicated to abortion, as reflected in that person's research agenda and published work, the school lends financial security and a public platform to someone who the school knows will use it to advance something that the Church teaches is "intrinsically evil"¹⁵³ and an "unspeakable crime"¹⁵⁴ that contributes to a "culture of death."¹⁵⁵ If it is possible to reconcile these sorts of actions with a Jesuit identity that is more than a vestigial reference or attempt to capitalize on a cherished brand, that argument has yet to be made.

Conclusion

Today, Jesuit law schools cannot point to a substantial Jesuit presence or to a dominant number of students or faculty as proof of their Jesuit and Catholic identity. Nor can they point to an idea or set of ideas from the Catholic intellectual tradition that informs the curriculum and animates the intellectual life of the school. The language of "justice" and "service" may be more pronounced at Jesuit law schools, but the meaning of these terms follows that of secular and non-Catholic schools in ways that can be worthy of praise but are sometimes deserving of severe criticism. Some schools can point to a chapel and perhaps a chaplain, but a Jesuit law school is supposed to be more than a secular law school with a Newman Center in proximity.

In 1967 Neil G. McCluskey, S.J., a key figure in the transformation of Catholic higher education, wrote that the tragedy of church-related schools is that "so few of them have been able to successfully articulate

153 United States Conference of Catholic Bishops, *Forming Consciences for Faithful Citizenship* (2023), para. 22.

154 Second Vatican Ecumenical Council, Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes* (Dec. 7, 1965), para. 51.

155 John Paul II, *Apostolic Encyclical on the Value and Inviolability of Human Life, Evangelium Vitae* (March 25, 1990), para. 28.

a distinctive philosophy to justify their present existence.”¹⁵⁶ The challenge, said historian Philip Gleason, writing nearly thirty years later, is to articulate “a theoretical rationale for the existence of Catholic colleges and universities as a distinctive element of American higher education.”¹⁵⁷ However, the problem is not that the words cannot be found. The problem is that they will not be said. The problem is, as Rev. Paul V. Mankowski, S.J., explained in 1993, the “apathy, diffidence, and intellectual fecklessness” of those in charge.¹⁵⁸

In his remarks first proposing what would become the Mission Priority Examen, Father General Nicolás observed that when it comes to self-evaluation, Jesuits today are often weak and defensive.¹⁵⁹ In his explanation of the daily examen, Rev. James Martin, S.J., notes that in the review of one’s day—all that one has encountered and how one has responded—it is common to “feel resistance to something” and that this is often a resistance to “God’s invitation to growth.”¹⁶⁰ Those currently responsible for Jesuit legal education should not be defensive and should not resist the opportunity to consider whether their institutions are failing to fulfill an authentic Jesuit mission. An examen is not simply a history or a recitation of past acts, whether those of an individual at the end of the day or an institution recounting changes that have taken place over decades. The examen is an encounter with the living God in which one gives thanks for the blessings of providence and vows to make amends for the mistakes of the past. The blessings of Jesuit law schools are apparent. How can they make amends?

156 Neil G. McCluskey, “Financial Crisis in Catholic Colleges,” *America*, September 23, 1967, 304. He goes on to say that this is why they have “failed to win the support of the public they serve, to say nothing of the larger public.” McCluskey was an editor and writer on education at *America*. After serving as academic vice president at Gonzaga University, he became the dean-director of Notre Dame’s Institute for Educational Study. He also served as secretary of the Land O’Lakes Conference. McCluskey resigned from the Society in 1975 and married in 1978.

157 Gleason, *Contending with Modernity*, 322.

158 Paul V. Mankowski, “Why Universities Went Secular,” *First Things*, January 1993.

159 Nicolás, “A Call for Spiritual Leaders.”

160 Martin, *Jesuit Guide to (Almost) Everything*, 93.