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THE DISTINCTIVE QUESTIONS OF CATHOLICS IN HISTORY

AMELIA J. UELMEN[†]

I.

Let me start by saying how much I enjoyed working through the manuscript that Professors Breen and Strang shared with us, and how much I look forward to the development of this project on the history of Catholic legal education. My comments focus on the architecture of Chapter Three and the conceptual driver for Chapter Five. The frame for my suggestions is the challenge that emerges clearly in the 1960s when, as James Burtchaell noted, students were “drop[ping] their faith like baby teeth.”¹ As Professors Breen and Strang summarize: “University administrators were well aware that even Catholic students were being more

[†] Lecturer in Religion & Professional Life and Special Advisor to the Dean at Georgetown Law; Senior Research Fellow, Berkley Center for Religion, Peace and World Affairs. A brief note on some of the ways in which I am personally wrapped into the history that Professors Breen and Strang recount: My father, Gerald F. Uelmen, a graduate of Loyola Marymount and Georgetown Law, taught at Loyola Law School in Los Angeles from 1970–1986, and then he served as the Dean of Santa Clara Law School from 1986 to 1994, retiring from Santa Clara only recently. Fr. Richard A. Vachon, S.J. (mentioned in Chapter Three on page 421 of *A Light Unseen*'s manuscript), the Jesuit who helped spearhead for Loyola Los Angeles a reflection on “what a Catholic law school ought to be and how Loyola can become such,” was a very important presence in our family as my parents matured in their meld of professional and family life within a Catholic faith perspective. Fr. Vachon is the priest who celebrated the mass for my First Communion, as well as that of my older sister and younger brother. I am also Jesuit-educated, with three degrees from Georgetown (B.A., J.D., and S.J.D.) and an M.A. in Theology from Fordham. I have been teaching at Georgetown Law since 2011, after serving from 2001 to 2011 as Fordham Law's founding director of the Institute on Religion, Law & Lawyer's Work. For thoughtful comments on and conversations about this manuscript, I would like to express particular gratitude to: Mark Bosco, S.J.; Kim Daniels; David Hollenbach, S.J.; Gregory A. Kalschuer, S.J.; Alexia Kelly; Mary Novak; William Michael Treanor; and Glenn Willard.

¹ John M. Breen & Lee J. Strang, *A Light Unseen: A History of Catholic Legal Education in the United States* 210–459, 415–16 & n.907 (Jan. 20, 2020) (unpublished manuscript) (on file with the *St. John's Law Review*) (quoting Robin Hoar, *What's So Special About Notre Dame*, *PACE* 23 (Jan. 1968) (alteration in original)).

thoroughly formed by the surrounding culture than by their faith.”²

Reflecting on this problem in 1971, Georgetown’s President Robert J. Henle noted that just twenty years prior “a Catholic university could assume that the students it accepted were ‘solid in their faith.’”³ On this basis, “the task of the university was to put intellectual substance into their belief, to ground it and found it rationally, to give them an intellectual control over their internalized system of values.”⁴ But by the 1970s this assumption was no longer valid. He submitted that the task (or “the point,” as Professors Breen and Strang might say) of Catholic higher education must respond to this change:

Our task is not to elaborate the faith into a rational system, to give it substance, to expand it, or increase it. Our problem is a missionary problem: to reestablish the faith, to reestablish their belief, to help young people find and internalize a sound system of values for themselves.⁵

Philip Gleason elaborates a similar observation in his magnificent history of Catholic higher education in the twentieth century. Tracing the dissipation of shared categories and a shared worldview, he describes several factors that led to the “[s]plintering of the Scholastic [s]ynthesis,” including varying interpretations of Thomism, which unsettled the sense that it could be an integrating force.⁶

Most to Henle’s point, Gleason reflected: “The stronger subjective dimension in existentialism, phenomenology, and Transcendental Thomism no doubt added to the appeal of these approaches to a generation that found traditional Scholasticism desiccated and formalistic.”⁷ As one professor observed in 1960, even his best undergraduate philosophy students found that a “‘moderately Thomistic’ approach bypassed their most pressing

² *Id.* at 414.

³ *Id.* at 415 (quoting Robert J. Henle, President, Georgetown Univ., Address at the Annual President’s Dinner at the Washington, D.C., Alumni Club (1971), *quoted in* Memorandum from Donald P. Merrifield, President, Loyola Marymount Univ., to various recipients (Mar. 5, 1971) (on file with the Loyola Marymount Univ. Archives)).

⁴ *Id.* (quoting Henle, *supra* note 3).

⁵ *Id.* (quoting Henle, *supra* note 3).

⁶ PHILIP GLEASON, *CONTENDING WITH MODERNITY: CATHOLIC HIGHER EDUCATION IN THE TWENTIETH CENTURY* 297, 299–300 (1995).

⁷ *Id.* at 302.

need, which was to determine what aspects of their own personal experience demanded reflective analysis.”⁸

What complexities does this raise for how we think about the history of Catholic legal education? Turning to the manuscript, I believe it would be helpful to probe more deeply how the various dimensions of the Chapter Three cohere. In my opinion, the unifying thread is not yet evident.

Catholic legal education is at the service of people—students, faculty, and staff—who journey through cultural, social, and ecclesial history. When we reflect on how students, faculty, and staff were, on the one hand, experiencing the massive culture, intellectual, social, and psychic shifts that were manifest in the 1960s, and on the other hand, reading and reflecting on the documents of the Second Vatican Council, what thematic connections emerge?

In the current manuscript, parts of the discussion of the Council documents seem to be thematized at a fairly high level of abstraction. I think it would strengthen the analysis to place at the center of Chapter Three the question that Fr. Henle raised: How has Catholic legal education tried (or fallen short in the effort) to help students make the *connection* between their faith and their daily lives, work, and study, precisely in light of the existential social and cultural questions raised at the time?⁹

A tighter connection between these elements might also complexify the authors’ very broad-brush account of the Council as a “violent wind” that shook the Church in the United States to its foundations and especially the supposition that the Council’s work was itself the cause of “demoralization and collapse” in Church life.¹⁰

I have two suggestions for illustrating the connections.¹¹ One is to take a few overarching themes, such as authority, or

⁸ *Id.*

⁹ This question, in turn, mirrors the foundational observation in the Council’s Pastoral Constitution on the Church in the Modern World. See PAUL VI, PASTORAL CONSTITUTION *GAUDIUM ET SPES* ¶ 43 (1965) (“This split between the faith which many profess and their daily lives deserves to be counted among the more serious errors of our age.”).

¹⁰ See Breen & Strang, *supra* note 1, at 216.

¹¹ It might also be interesting to explore the impact of shifting reflections on the criteria for federal funding at Catholic Law Schools. The Gellhorn Report, coauthored by Walter Gellhorn and a young R. Kent Greenawalt, and the story behind the exploration of funding for Fordham Law School’s Lincoln Center construction in the 1960s, is chock full of fascinating tensions.

sexuality, in order to trace how the cultural and ecclesial shifts on these themes had an impact on the law school curriculum, or cocurricular culture.¹² One catches a glimpse of the potential for this in the reference to the impact of the arrival of greater numbers of women and minorities in the 1970s.¹³ If the manuscript were to link this data with deeper thematic reflection, I think it could help to better illuminate the historical journey.

Similarly, in some parts of the manuscript, the upshot of the discussion of each of the documents of the Council could be thematized through closer focus on the extent to which the reflections might impact legal education. For example, in the discussion of *Unitatis redintegratio* and *Nostra aetate*, I would suggest shifting away from the topic of reception of the Eucharist,¹⁴ toward more focused discussion of the curricular and cocurricular impact of appreciation for what is “true and holy” in other religions.¹⁵

Reading the discussion of *Dignitatis humanae*, one wonders whether this might be a good space to query whether reflection on this document generated any new insights for law school curricula on the relationship between Church and State, the First Amendment, and other aspects of Constitutional Law, as

¹² See IN THE LÓGOS OF LOVE: PROMISE & PREDICAMENT IN CATHOLIC INTELLECTUAL LIFE (James L. Heft & Una M. Cadigan eds., 2016) [hereinafter IN THE LÓGOS OF LOVE]. In this volume, the chapter by historian Leslie Woodcock Tentler, *Breaking the Silence: Sex, Gender and the Parameters of Catholic Intellectual Life*, might be especially helpful. My own essay in the volume touches on some of the historical reasons why the Catholic intellectual life has not deeply permeated professional education and probes the challenge of competing definitions of the good and the corrosive effect of instrumental reasoning in a law school setting. See Amelia J. Uelmen, *Professional Education and the Paschal Mystery*, in IN THE LÓGOS OF LOVE, *supra*, at 67–99.

¹³ Breen & Strang, *supra* note 1, at 399–401.

¹⁴ *Id.* at 362–65.

¹⁵ *Id.* It might be helpful for the authors to acknowledge at some point that the Catholic intellectual tradition is not limited to engagement with Catholics, Catholic authors, and Catholic sources. At this point in ecclesial history, ecumenical and inter-religious dialogue are firmly embedded in the Catholic intellectual tradition itself. We have not yet seen Chapter Four of the manuscript, but I believe it would be extremely important to include as a core part of Catholic identity the multi-denominational and multi-faith work in which Catholic law schools were engaged in the 1990s and 2000s and how that engagement remains essential to their Catholic identity. For example, the gatherings of religiously affiliated law schools over many years since the 1990s and projects like Fordham’s Institute on Religion, Law and Lawyer’s Work, as well as many other centers that focus the interdisciplinary questions at the heart of law and religion—not just Catholicism, and not just Church life—are also a vital part of Catholic intellectual engagement and identity.

well as broader discussions about academic freedom, in light of the social, cultural, and ecclesial changes. The manuscript includes some references to these shifts, but it might be helpful to explore further how a more direct connection between these themes and reflection on the Council might strengthen the work as a whole.

My second suggestion for illustrating the thematic connections would be to let the data and research be enriched by the complex questions that emerge from the *biographies* of prominent Catholics educators and lawyers who wrestled with various documents of the Council in light of the social and cultural shifts in the 1960s and 1970s.

For example, one aspect of Raymond Schroth's biography of Father Bob Drinan that I find especially interesting is how it illustrates the extent to which Drinan's own efforts to face the challenges that emerged in the 1960s were limited by his pre-Conciliar spiritual, intellectual, and theological formation. If we look at Bob Drinan *in history*, we can see in a very concrete way just how challenging it was to hold together the moving parts that are discussed in Chapter Three.¹⁶ It might also be interesting to explore biographical aspects of the life and work of John T. Noonan, Jr., another prominent figure who wrestled deeply with the questions emerging from the Council.¹⁷

In sum, my first suggestion is to explore with more depth what was the *experience* of people—especially law faculty, students, and administrators—as they engaged the cultural terrain of the 1960s and beyond, and how that experience presented new questions and the need for new methods and approaches to Catholic legal education.

II.

My second question focuses on Chapter Five, which reflects on how Catholic legal education can maintain its *distinctive* contribution to the venture of legal education as a whole. I would like to suggest that Fr. Henle's probing questions point to a

¹⁶ See generally RAYMOND A. SCHROTH, *BOB DRINAN: THE CONTROVERSIAL LIFE OF THE FIRST CATHOLIC PRIEST ELECTED TO CONGRESS* (2011). See also Amelia J. Uelmen, *Bob Drinan in History*, 25 *GEO. J. LEGAL ETHICS* 341, 342–43 (2012) (reviewing SCHROTH, *supra*).

¹⁷ For example, Noonan includes a fascinating autobiographical account of the religious influences in his youth and childhood in the *Prologue* to JOHN T. NOONAN, JR., *THE LUSTRE OF OUR COUNTRY: THE AMERICAN EXPERIENCE OF RELIGIOUS FREEDOM* (1998).

different focus. As noted above: “Our task is *not* to elaborate the faith into a rational system, to give it substance, to expand it, or increase it.”¹⁸ Instead, in a post-Conciliar Church, our distinctive task is “to help young people find and internalize a sound system of values for themselves.”¹⁹

I would elaborate: the most urgent task for Catholic law schools is to help students reflect on the question of how to make the *connection* between the difficult cultural, social, and institutional questions that they will face as attorneys, in the light of critical reflection on their own deep values systems.²⁰

My suggestion for Chapter Five is to consider shifting the focus away from the question of which overarching conceptual system is the best vehicle for a distinctively Catholic approach to legal education. I think that question misses the mark of the task at hand.

I agree that natural law, Catholic social thought, and various dimensions of the Catholic intellectual tradition—including wide ranging Catholic spiritualities and engagement with ecumenical and interreligious dialogue—are all valuable bodies of work for raising critical questions regarding a deep values structure. All of these dimensions can and should be incorporated into the curriculum, legal scholarship, and cocurricular life in various ways.²¹ But the core question—the post-Conciliar question—is *how* to do this in a way that also corresponds to the existential reflections, needs, and critiques of current students, faculty, and staff.²²

In addition, for both Chapter Three and Chapter Five my suggested shift would be to move away from the search for

¹⁸ Breen & Strang, *supra* note 1, at 415 (emphasis added) (quoting Henle, *supra* note 3).

¹⁹ *Id.*

²⁰ See Amelia J. Uelmen, *An Explicit Connection Between Faith and Justice in Catholic Legal Education: Why Rock the Boat?* 81 U. DET. MERCY L. REV. 921, 925–26 (2004) (contesting the arguments that law school is both too early and too late to discuss values); Uelmen, *supra* note 12, at 77 (in response to arguments that “graduate students are already ‘formed’ in their character,” it is important to note that they “are certainly not yet formed in their *professional* identity”).

²¹ In fact, I have explicitly incorporated aspects of all of these bodies of reflection and scholarship into my own law school teaching and legal scholarship, and I currently run a Theology and Culture Reading Group as part of the Georgetown Law Campus Ministry offerings for law and other graduate students.

²² See generally the profound work of John C. Haughey, S.J., especially JOHN C. HAUGHEY, *WHERE IS KNOWING GOING? THE HORIZONS OF THE KNOWING SUBJECT* (2009).

articulated *motives* for setting up clinics, externships, and other forms of pedagogical engagement and contact with social needs, to the larger question of *how* these pedagogical methods and reflective practices do or do not address the question that Fr. Henle raised.²³ Because this project might be articulated and communicated in a variety of ways to a variety of audiences, I think it is something of a sand trap to focus the narrative on the search for explicitly religious justifications. I also think it is a mistake to assume that these explanations would give the best x-ray of religious motives and/or the extent to which an institution is aligned with an effort to strengthen Catholic identity.

For further reflection on all of these points, I would like to highlight a resource that might be especially helpful: an extraordinarily profound and prophetic article written by John Courtney Murray in 1944, entitled “Towards a Theology for the Layman.”²⁴

As Gleason pointed out, already in 1939 the young Murray had offered his reflections on the content of college-level theology.²⁵ In contrast to seminary theology, which “had for its formal object ‘the demonstrability of truth from the revealed Word of God,’ ” what “lay students needed was a theology geared toward ‘the livability of the Word of God.’ ”²⁶ Murray thus argued, theology taught in a college context should be “re-thought in terms of the particular purpose it was to serve, namely, relating the truths of faith to the problems lay persons encountered in the secular world.”²⁷

I believe we need to articulate a similar shift in emphasis in how we understand the history and current task of Catholic legal education. The distinctive purpose, the point of Catholic legal

²³ In this discussion I hope to respond to the specific questions that Professors Breen and Strang posed for our reflection: (A) Can Catholic legal education in principle, be distinctive, and if so, to what extent? (B) To what extent is a particular body of intellectual commitments necessary for Catholic legal education?

²⁴ John Courtney Murray, *Towards a Theology for the Layman* (pts. 1 & 2), 5 THEOLOGICAL STUD. 43, 340 (1944). What follows in the text is a riff off of previous theological scholarship. See Amelia J. Uelmen, *A Response to Kenneth Garcia: “Where They Are, Just as They Are,”* 73 THEOLOGICAL STUD. 909 (2012); see also Kenneth N. Garcia, “Reversing the Secularist Drift”: *John Courtney Murray and the Telos of Catholic Higher Education*, 73 THEOLOGICAL STUD. 890 (2012); Gregory A. Kalscheur, *A Response to Kenneth Garcia: Healthy Secularity and the Task of a Catholic University*, 73 THEOLOGICAL STUD. 924 (2012).

²⁵ GLEASON, *supra* note 6, at 165.

²⁶ *Id.*

²⁷ *Id.*

education, should be framed in terms of the problems that future lawyers will encounter in the world. Again, this does not discard the robust resources of the Tradition, but it does place much greater emphasis on the *methods* for helping students to engage these questions. For example, I believe we need to move far beyond podium-style explanations of intellectual categories and content in order to facilitate reflection on the actual connections that students make with their own values—and with problems in the world.

Murray's 1944 two-part analysis, "Towards a Theology for the Layman,"²⁸ is an amazing model for shifting the focus away from the abstract question of distinction (in and of itself), and the apologetic explanation of those distinctions, to the question of how the theological education of lay people should be shaped *by their distinct roles and tasks* in the world.²⁹ In contrast to those who suggested that lay theology should be "only quantitatively or rhetorically different from that taught in seminaries—a sort of *Summa Theologica* with the hard parts left out"³⁰—Murray explained that the lay person needed "a theology that, remaining theology, keeps to an order of its own, and has all the perfection proper to that order."³¹

The article then proceeds to outline the sensitivities, methods, content, and tone of an approach to lay theology. Working by analogy, I believe Murray points the way toward an elaboration of the kinds of methods, content, and tone that could be applicable to a professional school setting—and Catholic legal education in particular.³²

Below I summarize briefly what I have discussed in other scholarship,³³ while at the same time urging direct engagement with Murray's prophetic and illuminating text.

²⁸ Murray, *supra* note 24.

²⁹ John Courtney Murray, *Reversing the Secularist Drift*, 24 *THOUGHT* 36, 41–42 (1949) (noting that the "fulcrum" of a positive effort to reverse the intellectual tide not in undergraduate sections of the university, but among the potentially more influential research scholars in the graduate and professional schools).

³⁰ Murray, *supra* note 24, at 74.

³¹ *Id.*

³² Here it would be very important also to note that since the publication of Murray's 1944 reflection, the seminary formation of clergy has of course also undergone massive shifts, especially in light of the Second Vatican Council's broad openness to engaging the concerns and questions of the modern world. This very rich and important topic is far beyond the scope of this brief comment.

³³ See Uelmen, *supra* note 24.

1. The ground for lay theology is the perspective and experience of lay people themselves, to the point of saying that when it comes to the problem of devising the formula for penetrating the social order, “only the laity, by reason of their peculiar situation, are in a position to solve it.”³⁴ Lay theology courses “must reach their subject as grace reaches him, where he is, just as he is. They must insert themselves into the psychological context which is given, in order effectively to do their work of illumination and inspiration.”³⁵
2. Lay theology should also give prominence to an “affective and dynamic concept of faith, not only as knowledge of God but as a ‘movement’ towards a heavenly Father.”³⁶ “Its perspectives and movement should be ‘manwards,’ ” focused on an understanding of God’s action in the world.³⁷ The attention of lay theology should be directed to what the life of God is for us (*quoad nos*), not the life of God in God’s self (*quoad se*), “to psychological effectiveness of presentation rather than to abstract logic, . . . to the whole truth in its relation to personal and social life rather than to single truths in their relation to rational philosophy”³⁸
3. This focus also called for a shift in tone, away from polemical apologetics. As Murray describes it, the seminary “course practically moves from adversary to adversary, and at every turn comes to grips with error.”³⁹ The downside of this approach is that

it tends to create a defensive mentality; one is always answering, and one frequently has the defeated feeling that one is not reaching the source of the difficulty, which is often not in reason and cannot be reached by reason. There is always a gap between apologetic argument and faith; it leads up to faith, not into it, and still less does it engender an experience of faith as the power of God unto salvation.⁴⁰

In a lay course, Murray recommended that apologetics be given “a very subordinate place.”⁴¹

³⁴ Murray, *supra* note 24, at 70.

³⁵ *Id.* at 348.

³⁶ *Id.* at 356.

³⁷ *Id.* at 357.

³⁸ *Id.* at 361, 362–63.

³⁹ *Id.* at 60–61.

⁴⁰ *Id.* at 351.

⁴¹ *Id.*

4. Because the laity need to be prepared to face “secularism and [religious] indifferentism,” which are “not just religious errors, but religious diseases, which have to be healed at a level in the soul deeper than that of reason,”⁴² “the careful application of little apologetic ‘band-aids’ here and there will not suffice.”⁴³ Thus, Murray suggests, the tone and “mood of teaching” should be “pacific and positive.”⁴⁴
5. All these factors come together in an overarching vision not so much of the abstract unity of knowledge, but of the unity of the human family. Murray quotes extensively from the conclusion of Pope Pius XI’s encyclical *Quadragesimo Anno* (1931), which identifies “the mutual bond” of unity in the human family as the basis of peace and the common good.⁴⁵ He concludes: “[A] lay course in theology will have been essentially a failure if it does not succeed in communicating to the student this ‘vue obsédante de l’unité humaine’ which, as Lubac has well said, is at the basis of the Gospel.”⁴⁶ Because this vision is the “indispensable foundation of the Christian social mentality, the ultimate motivation of the whole Christian social program,” it is the primary expression of the experience of God, *quoad nos*, which can assure both academic unity and religious power.⁴⁷

I realize that it would take quite a bit of work to flesh out how Murray’s proposals for “lay theology” might inform various dimensions of the work of Catholic legal education. It would also require a further layer of research to explore which aspects of the analysis are no longer applicable in a post-Conciliar Church. Nonetheless, I believe that Murray’s frame contains powerful and even prophetic seeds for theorizing how to develop the content, the methods, and especially the tone with which to engage the Catholic intellectual tradition, Catholic social thought, and even the arguments of natural law, in a contemporary law school setting.

⁴² *Id.*

⁴³ *Id.* at 352.

⁴⁴ *Id.* at 355.

⁴⁵ *Id.* at 365–66 (quoting PIUS XI, ENCYCLICAL LETTER *QUADRAGESIMO ANNO* ¶ 137 (1931)).

⁴⁶ *Id.* at 366 (quoting Henri de Lubac, *Catholicisme: Les aspects sociaux du dogme catholique*, at iv (Paris, Les Eds. du Cerf 1938)).

⁴⁷ *Id.*

Further, attention to reaching the students “where they are, just as they are,”⁴⁸ helping them integrate their personal and religious values into their professional identity, leaving room also for the “affective and dynamic” dimensions of their efforts to find meaning in their own lives and work also underscores the path that many Catholic law schools have already pursued: courses that incorporate a substantial component of reflection and reflective practices (whether in seminars, externships, etc.) and a variety of clinical settings.

Murray’s “architecture” does not negate the need for intellectual categories, but neither does it neglect the dimensions of human experience that can foster, as Fr. Henle put it, reflection on the process that will help young professionals to “find and internalize a sound system of values for themselves.”⁴⁹

This is *not* to say that the mission is already accomplished in the ongoing work of clinics and other reflective practices in Catholic law schools today. It is only to submit that we need a more fertile terrain for reflection than that provided by a focus on the extent to which Catholic law schools are “distinctive” from their secular counterparts. In sum, for the work of Chapter Five, my suggestion is to read and meditate on John Courtney Murray’s “A Theology for the Layman.” In fact, I think Murray’s reflections are so profound that they would be worthy of a symposium like this one, perhaps with applications to various curricula in Catholic higher education.

III.

I close with gratitude to Professors Breen and Strang for seeking our input on their important work, to my colleagues in legal education for a very stimulating discussion, and especially to the students of and faculty advisors to the *Journal of Catholic Legal Studies* for making widely available our reflections on how to bring forward, together, our shared commitments to Catholic legal education.

⁴⁸ See *id.* at 348; text accompanying *supra* note 35.

⁴⁹ Breen & Strang, *supra* note 1, at 415 (quoting Henle, *supra* note 3).