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God and Man in the Catholic Law School

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In the summer of 1974, crucifixes were removed from the walls of Gonzaga University School of Law. This event was symptomatic of several poignant changes at Gonzaga, as well as at most Catholic law schools throughout the United States. During the 1960's and 1970's, a pronounced trend towards the secularization of Catholic law schools began. The size of most Catholic law schools increased substantially during this period, and many persons who came to the schools had no commitment to the vision of the Catholic university. As a result of these changes, today's typical Catholic law school is indistinguishable from its secular counterpart. Thus, the schools have lost their raison d'être. Radical reforms are necessary to reestablish the distinctive features of Catholic legal education.

This article will examine the early history of the Catholic law school and obstacles to the realization of its vision. Specific examples of the development of these schools will then be discussed. Finally, a number of reforms will be proposed.

I. Early History: Vision and Reason for the Catholic Law School

Prior to the last quarter of the nineteenth century, the training of lawyers had occurred primarily through the apprenticeship system. St. Louis University was the first Catholic school to venture into the study of law, through a series of lectures in 1843.1 The College of Law was opened at St. Louis in 1908. The first permanent venture into legal education by a Catholic college was by Notre Dame, which opened its law school in 1869. Initially, the Notre Dame faculty consisted of four teachers and a handful of students. In 1871, three graduates completed the two-year

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course of study. Notre Dame was one of the first schools to require preliminary education in liberal arts. \(^2\) Georgetown's law school was established in 1870. Its first faculty consisted of: Samuel F. Miller, United States Supreme Court Justice, Professor of Constitutional Law and Equity Jurisprudence; J. Hubley Ashton, Assistant United States Attorney General, Professor of Pleading, Practice, and Evidence; Judge Charles P. Jones, Professor of Real Property and Evidence; and General Thomas Ewing, Jr., Lecturer on International Law. The curriculum required two years of study for the LL.B. \(^3\)

Catholic universities founded law schools for several reasons. \(^4\) In light of their philosophical and ethical heritage, Catholic colleges felt they could make important contributions to the law. The legal profession, of course, played a powerful role in government. Moreover, the establishment of a law school was relatively inexpensive, requiring only a few books and teachers.

The founding ideals of the Catholic law school were premised on longstanding notions of the nature of law as originally postulated by Cicero and Aristotle and later Christianized by St. Augustine and St. Thomas Aquinas. St. Thomas Aquinas' *Treatise on Law* was perhaps the most profound influence on Catholic legal education in its formative years. Aquinas' treatise is the classic scholastic statement of natural-law jurisprudence. In his treatise, Aquinas identifies four types of law: eternal law, divine law, natural law, and human law. Eternal law is immutable and composed of general principles, the foremost of which is that man must do good and avoid evil. Divine law is composed of principles revealed to man by God. Natural law is man's participation in the eternal law through utilization of reason. Human laws are those rules enacted and implemented by human societies. Human law, however, partakes of the character of law only insofar as it is in accordance with the natural law. \(^5\)


> [I]n a university [a professor of law] will just know where he and his science stand, he has come to it, as it were, from a height, he has taken a survey of all knowledge, he is kept from extravagance by the very rivalry of other studies, he has gained from them a special illumination and largeness of mind and freedom and self possession, and he treats his own in consequence with a philosophy and a resource, which belongs not to the study itself, but

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\(^2\) *Id.*
\(^3\) *Id.* at 251.
\(^4\) *Id.* at 248-49.
\(^5\) *ST. THOMAS AQUINAS, TREATISE ON LAW* (Fathers of the English Dominican Province trans. (1927)).
to his liberal education.\

Since most of the Catholic law schools in this country are associated with Jesuit universities, the thought of St. Ignatius has proven influential. In his original Constitution for the Society of Jesus, St. Ignatius indicated that the study of law "being rather remote from our Institute, will not be taught in the universities of the Society, or at least the Society will not undertake this activity through its own members." St. Ignatius believed, however, that education should be adapted to the needs of society. He believed in training the whole man—body, mind and spirit—for Christ-like participation in society. In recognition of an expanded role in society, Jesuit universities in the late nineteenth and early twentieth centuries, added law schools composed primarily of lay faculty members.

Other societal pressures, such as anti-Catholic nativism, encouraged the opening of Catholic law schools. As Catholic immigrants arrived in the United States they threatened the uncontested Anglo-Saxon Protestant domination. Catholics were smeared as foreigners, whose final loyalty was to the Pope, and as persons who could not be trusted with any degree of power or influence. Although Catholics were encouraged to attend Harvard College, for example, the attitude towards them was paternalistic; the official religious atmosphere at Harvard was skeptical and Unitarian. A subtle variety of anti-Catholicism was evidenced by the barriers to graduates of Catholic colleges who desired to attend Harvard Law School. These anti-Catholic attitudes among intellectuals acted as an additional incentive to the opening of Catholic law schools. By the addition of a law school, a Catholic college could not only call itself a university, but also could create opportunities otherwise unavailable to its graduates.

Another factor contributing to the establishment of Catholic law schools was the economic circumstances of the Catholic immigrants. By 1900, the American Church was entering its second-generation stage. This coming of age was accompanied by improvements in the socioeconomic status of American Catholics. According to Professor Philip Gleason:

The advance between the first and second generations in professional occupations is a conventional index of upward social mobility, and it has obvious connection with educational aspirations . . . .

These social changes affected Catholic colleges and universities in a number of ways. They created a much greater demand for higher education

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* Id. at 76.
The need to provide professional training caused a number of Catholic institutions to add medical, dental, and other professional schools to their liberal arts colleges.10

Many second-generation Catholic immigrants desired professional education. Since they frequently could not afford to attend law school on a full-time basis, however, most Catholic law schools were initially entirely part-time, or both part-time and full-time. Classes in the part-time program were usually scheduled in the late afternoon, evening, or early morning for the convenience of those working at full-time jobs. Additionally, many Catholic law schools were located downtown, near the business and legal community—rather than on the university campus, thereby rendering it more convenient for the working student to attend classes.

The opening of the legal profession to the offspring of the immigrants through part-time education exposed the Catholic law schools to criticism from the establishment. Professor Michael Cox states:

At inception, evening programs (as were day programs) were designed to supplement training received by reading in lawyers' offices, but by the beginning of the twentieth century part-time legal education had made a dramatic shift. Evening students included not only persons reading the law, but also employees of banks, business houses, governmental agencies, real estate companies, etc. The hostility of leading academic and practicing attorneys came boiling to the surface as evening legal education supplanted reading the law and even in some instances, attendance at full-time day institutions. Jerold S. Auerbach's study makes it quite clear that the attack on evening legal education was based at least in part on ethnic grounds. The existing Bar did not want the legal profession put into the melting pot.11

An American Bar Association delegate exhibited his Nativist attitude when he stated that "[i]t was absolutely necessary to have lawyers 'able to read, write, and talk the English language—not Bohemian, not Gaelic, not Yiddish, but English.' "12

II. Early Obstacle to the Realization of the Vision

By meeting the demand for professional education, Catholic law schools became an important factor in accelerating the upward social mobility of second and third-generation American Catholics. The immigrants’ desire for acceptability, however, resulted in a dilemma: the suc-

cess of these schools in enhancing the social position of their graduates depended, in large part, upon their ability to achieve status in the legal community. In the profession of law, the status of one's alma mater may be more important, in both initial employment and subsequent advancement, than an individual's true competence. According to historian Edward J. Power:

In order to achieve status, Catholic law schools tried to attract teachers who had some reputation in the law. In some cases this meant appointing non-Catholics to the law faculty and the consequent anomaly which resulted from such a practice: the school was committed to purveying a Catholic philosophy of law, but its wisest and most prominent teachers were neither intellectually nor emotionally equipped for this task. Because the heritage of Catholic schools of law was so meager and so brief, legal scholars and teachers who were Catholics were not easy to find.¹³

Even at the outset, therefore, Catholic legal education was faced with the problem of secularization. Although the schools had been opened, at least in part, for the purpose of injecting Catholic thought into the American legal system, acceptance by traditional institutions necessitated secularization. Other influences accelerated this push toward secularization: the autonomy of the Catholic law school, the environment of American legal education, and the pressures of the principal accrediting agencies.

From the beginning, Catholic law schools were generally free of clerical control. It was difficult for the clerical administration to control the faculty of Catholic law schools because these faculties were composed primarily of Catholic laymen and non-Catholics. The liberal arts faculties, on the other hand, consisted largely of members of religious orders, directly subject to clerical control. Moreover, professional persons could easily find other employment, whereas the faculty of the liberal arts college could not. This autonomy was further enhanced at many schools by the physical separation of the law school from the rest of the university campus, and the fact that law schools, by virtue of their tuition income and their success in soliciting funds, were often self-supporting.

The Catholic law schools were not isolated from trends in legal education. Indeed, it is an interesting coincidence that at the same time Notre Dame and Georgetown were establishing the nation's first Catholic law schools—inspired in part by the notion of introducing Catholic philosophy into the American legal system, Dean Langdell introduced his case method of teaching law at Harvard. A basic premise underlying Langdell's method is that there is no higher law: the only law is contained in the cases. Although there was strong resistance initially to Langdell's innovations, American law schools, including the Catholic schools, even-

¹³ E. Power, supra note 1, at 249.
tually adopted Langdell's teaching methods. This had a profound effect on the theology of the law school: "In 1870, Langdell introduced not just a new method of learning law, but a new faith about law. He believed that man, led by the ablest scholars and judges, could determine the laws governing human affairs. Langdell dropped God out of legal education, not by default, but by design."

Langdell's approach contrasted dramatically with the original God-centered atmosphere of legal education in America. Prior to Langdell's innovation, legal education had been conducted primarily by means of lectures which presupposed a body of immutable principles.

In the early nineteenth century, legal education in America was greatly influenced by Blackstone's Commentaries. In Tapping Reeve's law school at Litchfield, Connecticut, lectures paralleling Blackstone's Commentaries were supplemented with practical education. Blackstone's belief in a higher law was clear:

This will of his Maker is called the law of nature. For as God, when He created matter, and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion; so, when He created man, and endued him with free will to conduct himself in all parts of life, He laid down certain immutable laws of human nature, whereby that free will is in some degree regulated and restrained, and gave him also the faculty of reason to discover the purport of those laws.

Prior to Langdell's leadership, legal education at Harvard was also God-centered. In 1829, Harvard hired United States Supreme Court Justice Joseph Story to lecture at the law school. Story's belief in a higher law was exemplified by his decision in Swift v. Tyson in which he held that the word "laws," as used in the Rules of Decision Act, did not include state judicial decision but only state statutes: "In the ordinary use of language it will hardly be contended that the decisions of Courts constitute laws. They are, at most, only evidence of what the laws are; and are not of themselves laws." Ironically, Story's view of the law was first repudiated by Harvard Law School, and later by the United States Supreme Court in Erie v. Tompkins. Justice Frankfurter observed that "Erie did not merely overrule a venerable case. It overruled a particular way of looking at law . . . ."

As Langdell's innovations were being implemented, the Catholic law schools were founded, devoted at least in theory to the Natural Law. Their thought had little impact on the secular academic world, since few

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15 1 W. BLACKSTONE, COMMENTARIES 56-58 (W. Jones ed. 1916) (footnotes omitted).
16 Swift v. Tyson, 41 U.S. (16 Pet.) 1, 18 (1842).
17 304 U.S. 64, 79 (1938).
Catholic law school graduates taught, and those who did usually did so at a Catholic law school. The Catholic law schools did, however, produce politicians, practitioners, and judges, and their effect on the fabric of American law was primary and direct. Eventually, the prevailing legal culture of Positivism was to overwhelm these schools.

Following World War I, there was a trend in the leading law schools to integrate the social sciences into the law school curriculum. Initially, Columbia was in the forefront of this new approach to legal education. Subsequently, Yale and the Johns Hopkins Institute for the Study of Law emerged as leaders. In the 1930's, a somewhat eclectic group of legal scholars, centered primarily at Yale, developed a school of thought known as Realism, which built on Holmes' skepticism and on Pound's social engineering. It further attacked the transcendental aspects of the law. Leaders of the Realism movement were William O. Douglas, Leon Green, Karl Llewellyn, and Jerome Frank. Robert Stevens summarizes the influence of the Realists on American legal culture:

The Realists went a long way toward killing the idea of a system altogether. All legal logic came under suspicion. American law became increasingly "purposive," increasingly secularized, and increasingly atomized. Whatever enhanced value this secularization gave to social and political causes of the right and left, seeking to enlist "the law" on its side, law became less valuable as an objective force binding together different elements of the community. It is one thing to agree that legal objectivity and neutrality is a myth; it is another to destroy such a myth without offering any alternative. That proved to be the Realists' chief contribution. The effect of that on the law generally and legal education in particular has been felt from that day to this.\(^\text{19}\)

A trend towards the notion of a higher law became apparent in the 1940's. This movement signified a reaction against the excesses of Nazism and Fascism, as well as the vacuum left by Realism, and attempted to reinstill a sense of morality in the legal system. During the post-war period, Catholic law schools continued to affirm their devotion to the higher law, although little was actually done to effectuate these ideals. In 1942, Dean Pound of the Harvard Law School noted the "revival of what was called juridical idealism, a revival of philosophical jurisprudence, and as it soon came to be called, a revival of natural law."\(^\text{20}\) Shortly thereafter, the Notre Dame Law School instituted a program of readings in the Great Books of the legal profession,\(^\text{21}\) including St. Thomas' *Treatise on Law*. In December 1947, Notre Dame sponsored the first Natural Law Institute. These annual institutes continued through 1951; the *Natural Law*

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\(^{19}\) Stevens, *supra* note 12, at 481 (footnote omitted).


Beginning in the late 1960's, an increasing reluctance to even acknowledge the ideals of Natural Law became evident. Financial pressures contributed to this: in a time of increasing cost and falling undergraduate enrollments, law schools were expanded to accommodate the increasing demand for legal education. There were large influxes of students and faculty, most of whom were not Catholic, and many of whom were hostile to the notion of Natural Law. Promulgation of a coherent philosophy was abandoned, as modern marketing techniques dictated curricular innovation. Since law had to be made relevant to the student, a greater emphasis was placed on the teaching of skills.

Secularization was also encouraged by the desire of Catholic law schools to receive accreditation from the American Bar Association (the A.B.A.) and the Association of American Law Schools (the A.A.L.S.). From the beginning, these schools sought and achieved accreditation. While these organizations previously had been more tolerant of diversity, the official policy of both accrediting bodies in recent years has been to tolerate the secular model of legal education. Fortunately, the A.B.A. has recognized recently that strict adherence to this approach would inhibit preservation of a religious heritage. Recognizing the peril this holds for free exercise of religious rights under the first amendment, a revised standard has been proposed which would allow a law school to implement an employment policy compatible with the purpose of preserving its religious mission. This revised standard, however, has not yet been adopted. The A.A.L.S. continues to declare religious factors impermissible considerations in the selection, promotion, and tenure of faculty members. Therefore, at present, both the A.B.A. and A.A.L.S. continue to accept only the secular model of legal education.

III. Three Case Studies of the Struggle, Triumph, and Failure of Distinctively Catholic Law Schools

The experience of three Jesuit law schools, Loyola (Chicago), Boston College, and the University of Detroit, illustrates the development of the Catholic law schools within the context of American legal education. In this review, the distinctively Catholic components of legal education will be emphasized.

The Lincoln College of Law of Chicago welcomed its first class. The following year, it combined with St. Ignatius College to form Loyola University, and the name was changed to Loyola University School of Law. Classes initially were conducted only in the evening in a downtown office building. In 1921, a full-time day division was established with a three-year course of study. The evening division was expanded to four years, and the first women were admitted. The usual common law courses as
Well as a required course in Natural Law were offered.

By 1924, the school's full-time faculty had been increased from one to three. A two semester-hour course in Legal Ethics and Natural Law was required during the second or third year of both divisions. In 1924, the school was admitted to membership in the Association of American Law Schools, and in March of 1925, the American Bar Association placed Loyola on its list of approved law schools. The school moved to new quarters in downtown Chicago in 1927.

In the 1930's, a vigorous moot court competition was begun, and the school's team reached the national moot court finals several times. The 1934-1935 catalogue lists Jurisprudence as a two semester-hour required course for the first year of the day division. Listed among the recommended readings for the 1941 pre-law students were the papal encyclical Quadragesimo Anno and Walter Farrel's Companion to The Summa. Beginning in 1938, and for several years thereafter, the Loyola catalogue stated: "The school as a department of the University aims at building the consciences of the students for the fulfillment of their civil, social, and religious duties. The faculty strives, wherever possible, to evaluate the positive law in relation to neo-scholastic principles of jurisprudence."

Because of World War II, no new students were admitted to the law school from 1941 through 1946, and no classes were held from June 1944 to 1946. No Jurisprudence courses are listed in the 1947 catalogue, but in the 1948 catalogue a summer course in Jurisprudence is listed, with Rommer's The Natural Law and Aquinas' Treatise on Law as required texts. The 1948 catalogue also includes the following statement which was included until 1959:

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 rejects and governs all human actions and therefore the action of man in civil society which is subject to constantly changing political, social, and economic forces; that by 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.

A unique addition to the course offerings was added in 1949—a first-year, first-semester, one-hour required course entitled Survey I

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which included "The Social Encyclicals and the Lawyer" among its topics. In 1959, the Special Lecture course was dropped, and the Jurisprudence course was offered as a third-year course for day division students only. A course in the Philosophy of Law and Government was offered in the 1961-1962 term for third-year day students, which included among its required texts St. Thomas Aquinas' *Treatise on Law* and Appleton's *Papal Thoughts on the State*. By 1965, however, there were no distinctively Catholic courses listed. The 1968-1970 catalogue explains:

> Although an integral part of a Catholic University, the student body, approximating 400, consists of men and women of many races and creeds. The faculty, largely laymen, is made up of members of the Jewish and Protestant faiths as well as Catholics, all experienced teachers and scholars primarily dedicated to the imparting to the student of a thorough knowledge of fundamental legal principles and a broad undertaking of the origin, development and function of these principles in a society historically structured on the Judaeo-Christian philosophy of law.\(^4\)

The omission in the 1972-1973 catalogue of the statement relating the law school to the overall purposes of a Jesuit University demonstrated an additional step towards secularization. The transformation to total secularism was complete by 1978. There is no statement of purpose indicating anything distinctively Catholic in the Loyola University School of Law's approach to legal education; no distinctively Catholic courses are offered. Further, the application inquires in detail as to the applicant's ethnic background for affirmative action purposes, but makes no inquiry as to religion.

Throughout this period, secularization in the atmosphere of Loyola Law School became apparent. Beginning in 1935 and continuing until 1966, a Red Mass, an ancient tradition in Europe, was celebrated annually. This Solemn Votive Mass of the Holy Spirit is celebrated at the beginning of the judicial year, for the purpose of invoking the blessing and guidance of Almighty God in the administration of justice. The popular name is derived from the predominant color surrounding the ancient ceremony—centuries ago, the attending Justices wore red robes—and because it is a Mass of the Holy Spirit. Until 1966, catalogues also indicated that Catholic students in the day division were required to attend an annual retreat, while non-Catholic students were required to attend conferences on moral questions. Students of the evening division were also invited to these activities. In the old law school quarters in the Lewis Building, the Chapel of the Sacred Heart was open on all class days for private devotions.

The 1978-1980 Loyola University Law School catalogue deletes all

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references to a Catholic Spiritual Life: the Red Mass, the annual retreat, and the Chapel of the Sacred Heart apparently have been relegated to the past, as were the course offerings in Natural Law and the social encyclicals. Both the Catholic intellectual and spiritual life have disappeared from the law school.

The saga of the University of Detroit Law School also reveals progressive secularization. Founded by the Jesuits in 1877, the first class in the law school was held October 1, 1912. Until 1922, admission could be obtained upon completion of a high school education. A three year course of study was offered, with most courses scheduled in the late afternoon or evening. Three teaching methods were utilized—lectures, textbooks, and cases. The school offered both an LL.B. program and an additional one-year LL.M. program. While the LL.B. curriculum does not indicate any distinctively Catholic courses, the graduate course consisted of courses in Roman Law, International Law, Theory of Jurisprudence, Roman Constitutional History, and History of International Law in Europe.

The 1920's were a period of expansion for the University of Detroit and, by 1930, the course of study for students in the afternoon school had been extended to four years, while the day-division course spanned three years. The 1930-1931 catalogue lists no distinctively Catholic courses. The school was placed on the approved list of the Section of Legal Education of the American Bar Association in 1933, and was elected to membership of the Association of American Law Schools in 1934.

The 1949-1950 catalogue contained a new and forceful statement of purpose, known as the University of Detroit Credo:

The University of Detroit refuses to subscribe to doctrine that "academic freedom" may be used as pretext to teach systems which destroy all freedom. It proudly boasts that by its very nature as a Catholic institution it has always taught and always will teach the principles on which rest all law, order and right government . . . .

It believes, briefly, in the teachings of Christ, who taught that morality must regulate the personal, family, economic, political and international life of men if civilization is to endure. 25

Another excellent statement of the school's objectives is included in the 1958-1959 catalogue:

The school of law has two objectives—professional and apostolic. It blends two great traditions of which it is singularly the possessor—the legal and the Jesuit . . . .

The School of Law of the University of Detroit, therefore, is not only a technical professional school but it is a Jesuit school impregnated with the culture, ethics and tradition of Saint Ignatius Loyola and the Society of

25 1949-1950 U. DET. SCH. L. ANNOUNCEMENTS.
Jesus. Dedicated to the principle that the law is the most important factor, short of religion itself, in shaping the culture and society, the school of law endeavors to bring to bear on the law the full impart of its Judaeo-Christian heritage and Jesuit tradition.26

The catalogue also indicates that Daily Mass is offered in St. Catherine's Chapel in the law quadrangle. The catalogue refers to an annual closed retreat where the student body, under the direction of a Jesuit lawyer-priest, makes a three-day closed retreat on the weekend of the Red Mass. Finally, the catalogue lists two courses taught from a Catholic perspective: Jurisprudence and Domestic Relations.

The University of Detroit Credo had been omitted from the catalogue by 1968. The substituted version stated:

The University of Detroit seeks to provide outstanding academic experiences for all students in a full range of humanistic, scientific and technical disciplines through excellence in teaching and research. Because it is a Catholic University, it seeks to generate a clearly ecumenical, intellectual, moral, social, and liturgical witness to the life and the teachings of Christ, and a climate that creates the desire among students of all creeds to lead lives centered in a high sense of values.27

By the late sixties, the Daily Mass and the annual closed retreat were no longer mentioned. Jurisprudence was listed as required for graduation, but no Natural Law emphasis was indicated. No distinctively Catholic courses were included in the curriculum. The most recent catalogue (1978-1980) of the University of Detroit School of Law contains no statement of objectives and no statement on spiritual life. With the exception of the annual celebration of the Red Mass, the law school appears to be totally secular in its atmosphere and curriculum.

The Boston College Law School catalogue reveals a similar pattern of secularization. Boston College, one of the oldest Jesuit schools in America, was established in 1865. The law school was founded in 1929 and achieved A.B.A. accreditation upon graduation of its first class in 1932. Membership in the A.A.L.S. was awarded five years later. The 1939-1940 catalogue indicates that the Boston College Law School had both a day and evening division, with a total enrollment of 382 students. No distinctively Catholic courses were included in the curriculum. The purpose statement of the 1940-1941 catalogue is decidedly secular. It states in part: "The purpose of the school is to prepare young men of intelligence, industry and character, for careers of service in the learned and public profession to which society has committed the high dignity and grave re-

sponsibility of the administration of justice."

The 1941-1942 course listing includes a Comparative Law course which focuses on a study of the Canon Law and Anglo-American Law of marriage. The Red Mass was introduced to the Boston College Law School in October 1941 by William Cardinal O'Connell, Archbishop of Boston. Fifteen hundred members of the bench and bar filled the Church of the Immaculate Conception in Boston for the occasion. In addition to the Comparative Law course, a course in Domestic Relations, which discussed the rights and obligations of Catholic lawyers and judges respecting civil separation, divorce, and annulment, was offered by 1947. Jurisprudence I and II, which seemed to focus upon the Natural Law philosophy, was also included in the curriculum. A revised statement of purpose, appearing in the 1963-1964 catalogue, acknowledged the existence of an "objective moral order, to which human beings and civil societies are bound in conscience to conform." The existence of a St. Thomas More Society, devoted to the students' spiritual welfare and religious activities, had been established. The catalogue further describes an annual retreat, communion breakfast, and sponsored informal discussions. With the exception of the Jurisprudence course, no distinctively Catholic courses are listed in the 1963-1964 catalogue.

By 1979, however, all remnants of a religious tradition had been eradicated. The Bulletin forthrightly states:

Its original purpose similar to that of almost every leading college and university in the nation, was to provide collegiate instruction for young men in an atmosphere of a specific religious tradition. Boston College has followed the honored pattern of other American universities by growing into an eclectic institution of higher education. Its academic community is open to men and women of all backgrounds, its scholarly pursuits range the entire spectrum of contemporary thought and interest.\*\*

Boston College Law School, therefore, is now virtually indistinguishable from state sponsored law schools, as are Loyola University (Chicago), the University of Detroit, and most other Catholic law schools. Their curricula rarely contain any distinctively Catholic course offerings and the institutions do not give any evidence of fostering an active Catholic spiritual life. With a few exceptions which will be noted below, Catholic law schools have become progressively secular and now offer distinctively non-Catholic attributes.

IV. General Review of the Transformation of the Catholic Law School During the 1960's and 1970's

In 1975, Professor Thomas Shaffer of Notre Dame Law School summarized the trend toward secularization in American law schools:

The fostering of ethical and religious concern among lawyers might be thought to be a task which belonged . . . to those who founded, maintained and taught in Christian university law schools. But most of the law faculties at what were once . . . the great Protestant Christian universities appear uninterested in their institutional heritage, if not ashamed of it. Law faculties in Roman Catholic universities have rarely passed beyond fruitless phrases about natural law, which long ago became a banner rather than an idea, and it is now neither banner nor idea.  

A 1938 American Catholic Philosophical Association questionnaire contained five questions concerning the jurisprudential aims of the law schools. Most of the answers from teachers, deans, and regents, favored development of a distinctively Christian legal culture in church law schools. One answer was particularly revealing:

The influence of the Positivist School of Jurisprudence and the relation already established between law and questionable principles of sociology and economics have infected the ideals of Catholic law schools. Reorientation can be brought about principally through the influence of neo-scholastic philosophy.  

Most answers suggested that courses such as contracts and torts should be approached differently in church law schools than in secular law schools. While attitudes varied as to how this distinctiveness could be implemented, most approved explanation of underlying moral principles, warnings against positivism, and an exposition of the connection between positive law and natural law as elements of a distinctive approach. It was suggested that teaching in all law schools should aim at the presentation of a sound philosophy of law, rather than a conglomeration of case law. Integration of law and the social sciences was also suggested. In response to a query as to why Catholic law schools should continue to exist in the absence of a distinct approach, some respondents indicated that the religious atmosphere of these schools was sufficient justification in and of itself.

There were several suggestions in response to the survey concerning how Catholic legal education could be made more distinctive. The possibility of supervision of all instruction by a legally-trained cleric was

raised. Others suggested curricular means; some favored the teaching of scholastic jurisprudence as part of the positive law courses, while others favored offering separate courses on scholastic jurisprudence. Dean Brown summarized the responses:

Among those who advocated distinctive elements in the positive law courses, there was variation of approach. There was favored the teaching of such general concepts in church law schools as belief in God, or a Catholic viewpoint, or a scholastic philosophy, or moral principles, or law as a means of social control in practically all, or at least in certain specific courses.3

The responses also included suggestions as to how to infuse scholasticism into positive law courses. In some instances, the individual teacher could emphasize natural law, or teach that the lawyer is an agent of social betterment. In a Business Associations course, the papal encyclical *Quadragesimo Anno* was utilized. Several answers approved of attempts to discuss moral questions such as child labor and sterilization in terms of scholastic philosophy.

Dean Brown closed his 1938 article with a plea for a greater cooperation among teachers in church law schools, so that the cause of scholastic jurisprudence might be advanced. A more pessimistic note is sounded in another article, published thirty-six years later, as Dean Brown examined the trend towards the continuing secularization of church-related schools. The dormancy of the conference of Jesuit Law Schools and the recent refusal of a Catholic law school to host a breakfast for the St. Thomas More Society—because it was seeking public monies which depended upon the school’s demonstration of its completely secularized status—were noted.

A survey of a series of articles concerning Catholic law schools, which appeared during the 1950’s and 1960’s in *The Catholic Lawyer*, confirms that many schools, until quite recently, proudly proclaimed their Catholic heritage. In a 1956 article on Fordham Law School, an address by Judge Edward S. Dore is quoted approvingly as an expression of the school’s purpose:

At all events we should not leave the gross materialistic superstition unanswered that science and materialistic evolution explain all without God; that religion demands we accept the unseen, whereas science gives us demonstration. The invisible is in every order a reality; and without faith it is impossible to live. Facing this ultimate choice in the presence of God, the source of God, the source of all goodness, truth, and beauty, each of us with our whole minds and all our hearts should re-echo the prayer that came from the great mind and ear of Augustine (after he had tried, and found useless for enduring human happiness all the world could offer):

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3 Id. at 179-80 (footnotes omitted).
Oh! Everlasting beauty, ever
ancient, ever new,
All too late have
I known Thee;
All too late have I
loved Thee!33

In contrast, the present Fordham Law School catalogue focuses on an optional personal religious faith, rather than an attempt at institutional commitment.

Similarly, in a 1961 article on Gonzaga Law School, Dean Smithmoore P. Myers of Gonzaga University School of Law is quoted as saying: “We attempt in all our classes to show the relationship of the Natural Law to each particular course.”34 The present Gonzaga catalogue, however, merely acknowledges the presence of an objective moral order, but does not indicate any attempt to infuse natural law concepts into the curriculum.

The transformation from sacred to secular is further illustrated by a 1960 article on the University of San Francisco School of Law:

The School of Law of the University of San Francisco is dedicated to the proposition that the law, with all its impact upon the lives of men and with its directive action is forwarding the common weal in every societal relation has a sacred purpose . . .

The School adheres to the Christian principle that the truth shall make men free and to the equally valued principle that not always is truth, immersed as it is in the material, knowable now.35

In contrast, a recent catalogue of the school makes no mention of a Christian mission.

There are, however, a few unusual Catholic law schools which still offer distinctively Catholic courses in their curricula. These schools are Notre Dame, the Catholic University of America, St. John’s University, and the Catholic University of Puerto Rico. In its 1979-1980 Bulletin, Notre Dame, the oldest Catholic law school, acknowledged its Christian tradition, but cautioned that “the exact significance of this religious orientation is difficult to state and, in many ways, is controversial.”36 Nevertheless, Notre Dame does attempt to offer some distinctively Catholic courses in its curriculum. The Jurisprudence course offerings appear to focus on Natural Law. A course in Religious Theories of Professional

34 Smith, Gonzaga University School of Law, 7 CATH. LAW. 121, 124 (1961).
35 Vachon, The University of San Francisco School of Law, 6 CATH. LAW. 220, 222-23 (1960).
Responsibilities "examines and discusses religious faith, scripture, and devotional and theological literature to determine whether a lawyer can lead a good life." Professor Gaffney teaches a course on Church and State in the United States.

The Columbus School of Law of the Catholic University of America states in its 1978-1979 bulletin that it "has a unique responsibility to be of service to Christian thought and education in the Catholic community as well as to serve the nation and the world." The catalogue describes a unique course entitled Law and the Christian:

A seminar in which the participants, through discussion of selected readings, examine the nature and foundation of law and justice from the perspective of Christian theology. The readings are selected to portray the more traditional Catholic and other Christian theological perspectives, including Divine Revelation in the life of the Christian lawyer. Typical of the selected readings are Saint Thomas Aquinas' *Treatise on Law* and Jaques Ellul's *The Theological Foundation of Law*.

In addition, the Columbus School of Law sponsors a Center for Law and Religious Studies and permits its students to take graduate courses in the Department of Canon Law of the School of Religious Studies.

The 1977-1978 Bulletin of the St. John's University School of Law stated:

As the School of Law of a Catholic university, St. John's strives to integrate a sound legal education with a love of God, a respect for His laws and a zeal for equitable administration of justice. With a few important exceptions such as Family Law, the content, materials, and methods of teaching of the various courses are similar to those in other leading law schools. The chief differences are the conscious creation of an environment for all students Catholic and non-Catholic alike which is favorable to the development of high ethical standards and of a sound and mature philosophy of law compatible with Catholic philosophy and with the principles upon which our American government is founded.

St. John's has made a great contribution to Catholic legal scholarship through its sponsorship of *The Catholic Lawyer*. Its curriculum includes one course with a distinctively Catholic perspective, Family Law, which is used as a vehicle for the study of comparative law through a review of Canon Law marriage provisions and procedures before diocesan courts. Jurisprudence, taught by Professor Edward Fagan, Jr., surveys the basic principles of various philosophies of law, but emphasizes a Natural Law

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87 Id. at 20.
89 Id. at 61.
philosophy. Additionally, St. John's sponsors the St. Thomas More Institute for Legal Research, which provides a medium through which qualified students engage in honor program activities, including production of the *St. John's Law Review* and *The Catholic Lawyer*. Moreover, students engage in special research projects for governmental, religious, and non-profit agencies. St. John's also recruits outstanding graduates of Catholic universities, to whom it makes available special scholarship assistance through the St. Thomas More Scholarship program.

Perhaps because of its civil law orientation, another distinctive Catholic law school is the Catholic University of Puerto Rico which was established in 1961 and accredited by the A.B.A. in 1972. This law school has both day and evening sessions. It seeks to probe the relationship of the civil and common law with that of the ethical and natural law. The school's curriculum also furthers its Catholic purposes by including studies in canon law, theology, natural law, and Roman law. Accordingly, theology is listed as a first-year required course in the day division and a second-year required course in the evening program. The Family Law course, also required, includes lectures on Matrimonial Canon Law. The legal bibliography course includes a review of sources of modern law, such as Roman and Canon Law. A course in Canon Law considers the legal aspects of the church, the code of Canon Law, and its principal institution.

V. *The Future*

Why have most of the Catholic law schools succumbed to secularism? Certainly, the pressures of American society have always been towards greater secularization. Financial pressures have accelerated this trend, since state and federal constitutional provisions have been construed to severely limit governmental aid to religious institutions which faithfully fulfill their missions. The desire for acceptability in an increasingly agnostic society has also fueled the drive towards secularization, as have the activities of accreditation agencies devoted to the secular-humanist ideal. Furthermore, following Vatican II, there has been a loss of nerve, and confusion in the Catholic academic world. This crisis in faith has lead to a decline in vocations and a demoralization of the entire Catholic academic world, including the law school. This provokes an unavoidable query: Why should a Catholic law school which is indistinguishable from a state law school continue to exist? I submit that a Catholic law school which has lost its sense of mission should either close its doors or seek state support, as well as state control.

Present faculties and administration suggest no reorientation toward a truly Christian mission. Indeed, most Catholic law schools today would probably be reluctant to hire any professor who proposed to bring a dis-
tinctively Catholic component into positive-law courses. The only hope of a renaissance, therefore, is either radical surgery on old institutions or the creation of new institutions.

What should a truly Catholic law school do today? First, it should offer a curriculum that is distinctively Catholic. It should seek not only to offer Jurisprudence courses emphasizing natural law, but also should bring a Catholic perspective to all positive-law courses. This could be effectuated by utilizing natural law concepts in positive-law courses. The historical influence of the Church should also be developed. A Catholic law school should work closely with a Catholic university so that courses in theology and philosophy can be offered in the law school. The law school should move away from the Langdellian approach and develop its own educational methods and material which presuppose the existence of a higher law.

Papal encyclicals and other writings on Roman Catholic Social Theology are much-neglected sources for a distinctively Catholic approach to legal education. While Catholics often disagree on the interpretation and application of the Church's social teachings, these statements provide a cohesive basis for a distinctively Catholic approach to social issues. It is the enduring dilemma of Christian social ethics to attempt to reconcile the demands of faithfulness to God in Christ with the simultaneous exercise of responsibility to social institutions. A thorough knowledge of Holy Scripture and a thorough familiarity with the writings of St. Thomas Aquinas are essential to an understanding of Christian social ethics. Familiarity with the social thought of the Protestant Reformation would also be valuable, since the thought of the Calvinists, and particularly the Puritans, has had a great impact on the development of American legal institutions. Law students should also have an understanding of the contract theories of society as formulated by Hobbes and Locke.

Finally, a vigorous spiritual life should be fostered in the truly Catholic law school. In order to develop a sense of community, students should live on or near campus. Both students and faculty should be involved in Bible studies. In order to preserve its Catholic tradition, students and faculty should be selected because of their commitment to the goals of the institution. This required commitment was summarized eloquently by Dean John Hervey in an address delivered at the 1961 Law Day banquet at St. Mary's University School of Law:

Thus I end, where I began, with a plea that every law teacher in every Church-related law school restudy the Christian precepts and that, insofar as possible, he teach course contents with emphasis on those concepts. I acknowledge that many of the old teachers are past praying for. If left to them, the free men of Western civilization will likely become the slaves of a totalitarian state. But for the younger law teachers in the Church-related law schools, there is time for repentance. The one last hope that Western
civilization will survive with emphasis on individual freedoms and human dignity rests with them.\textsuperscript{41}

Most importantly, a truly Catholic law school must have a commitment to justice. In traditional Catholic thought, the notion of justice was divided into commutative and distributive justice. Commutative justice pertains to private dealings between persons, such as contractual undertakings. Distributive justice, however, refers to the relationship between persons and the society as a whole. In recent years a third type of justice, social justice, has been emphasized. Social justice pertains to the relationship between the Christian community and society, including the duty of Christians to seek a more just society. The Catholic law school in the latter part of the twentieth century should be a forum where informed Christians confront the demands of social justice. The schools should exhibit a commitment to social justice by providing an arena where the implications of faith and justice are discussed. While these functions are not yet being undertaken, there is time for change. The commitment to justice, inspired by faith, should permeate the entire curriculum of a truly Catholic law school. The school should seek to graduate ministers of justice who will bring healing to a broken world. As made clear by the documents of Vatican II, this call is a part of the apostolate of the laity:

The laity must take on the renewal of the temporal order as their own special obligation. Led by the light of the gospel and the mind of the Church, and motivated by Christian love, let them act directly and definitively in the temporal sphere. As citizens they must cooperate with other citizens, using their own particular skills and acting on their own responsibility. Everywhere and in all things they must seek the justice characteristic of God's kingdom. The temporal order must be renewed in such a way that, without the slightest detriment to its own proper laws, it can be brought into conformity with the higher principles of the Christian life and adapted to the shifting circumstances of time, place, and person. Outstanding among the works of this type of apostolate is that of Christian social action. This sacred Synod desires to see it extended now to the whole temporal sphere, including culture.\textsuperscript{42}

\textsuperscript{42} \textit{Apostolicam Actuositatem}, reprinted in \textit{The Documents of Vatican II} 498 (Abbot ed. 1966).