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THE FIRST CONFERENCE OF RELIGIOUSLY AFFILIATED LAW SCHOOLS: AN OVERVIEW

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There are approximately thirty-five accredited law schools in the United States that claim some type of religious affiliation. The strength of the religious identity of each of these law schools, and the extent to which the religious identity affects the life of each law school, vary greatly. Religiously affiliated law schools frequently conflict with each other on theological, moral, political, and social issues. Even within each religiously affiliated law school there is often significant diversity of opinion on these issues.

Nevertheless, religiously-affiliated law schools often are perceived as a monolithic block by nonreligiously affiliated law schools. Regardless of the strength of their religious identities, religiously affiliated law schools perceive the religious dimensions of their programs to be neither understood nor valued by the mainstream of legal education.

For the purpose of initiating dialogue among religiously-affiliated law schools on subjects of common interest and concern, the Marquette University Law School hosted the First Conference of Religiously Affiliated Law Schools in Milwaukee, March 17-19, 1994. The idea for the conference originated with Dr. Francis M. Lazarus, Marquette's Vice President for Academic Affairs, who provided both the institutional and financial support that was necessary to ensure the success of the conference. The conference attracted almost one hundred participants from a wide variety of religiously affiliated law schools.

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The conference program, which was planned by a committee of Marquette faculty,¹ focused on three broad themes:

1. The relationship between religiously affiliated law schools and accrediting agencies.
2. The missions of religiously affiliated law schools.
3. Other tensions, such as preferential hiring, controversial student organizations, academic freedom, and relations with the university, confronted by religiously affiliated law schools.

Most of the papers presented at the conference are included in this issue of the *Marquette Law Review*. This essay is intended to serve as an overview of the conference, and to provide an "executive summary" of the major issues that were discussed.

The conference keynote address was delivered by Rex Lee, current president and founding dean of the law school at Brigham Young University. Lee argued that religiously affiliated law schools that take their religious mission seriously and incorporate core religious values into their teaching program can contribute to a more responsible legal profession. For Lee, the question is not whether we should have strong, religiously-affiliated law schools, but rather how we keep them strong and viable.

To remain strong and viable, Lee stated that religiously affiliated law schools need to recognize the importance of what they have to offer, and that the values they represent are lacking in American legal education. Furthermore, if religiously affiliated law schools are to make a difference, they must be "good," judged by the most rigorous secular standards; yet they must be different from secular schools in terms of curricular offerings, teachers, and students.

Lee also argued that religiously affiliated law schools, regardless of their position on specific doctrinal or political issues, must acknowledge their common interest in preserving the range of prerogatives that these law schools may choose for themselves. "We are both our brother's and sister's keepers," he stated, "[w]henver the bell tolls for any religious law school, it tolls for all."

1. Members of the committee were Professors Michael K. McChrystal and Judith G. McMullen, Deans Steven M. Barkan and Frank C. DeGuire, and Dr. David R. Buckholdt, Associate Vice President for Academic Affairs.

I. RELIGIOUSLY-AFFILIATED LAW SCHOOLS AND ACCREDITING AGENCIES

In discussing the tensions between religiously affiliated law schools and their accrediting agencies, Professor Robert A. Destro of the Catholic University of America clearly laid down the proverbial gauntlet for the American Bar Association (ABA) and the Association of American Law Schools (AALS)². Arguing that the accreditation process is fraught with inherent tensions, Destro questioned whether, and under what circumstances, the religious commitment of a law school should become an issue in accreditation. He maintained that in areas such as academic freedom, preferential admissions and hiring, and policies of nondiscrimination on the basis of sexual orientation, the ABA and AALS improperly single out religiously affiliated law schools for special scrutiny and curtail the ability of these law schools to provide legal education in a manner that is faithful to their mission.

James P. White, Consultant on Legal Education to the American Bar Association, cited the important role that religiously affiliated law schools have played in providing opportunities for upward mobility for immigrants and others who would not have had access to other private or public law schools.

Focusing on the role that an accrediting agency such as the American Bar Association should play with regard to religiously affiliated law schools, White stated that each law school should be left to define for itself the role that its religious affiliation should play. The primary concern of the accrediting agency should be to ensure that law schools provide a sound legal education that will enable graduates to successfully enter the practice of law, and only when the religious activities of a law school impede that mission should the accrediting agency interfere.

Carl Monk, Executive Director of the Association of American Law Schools, an organization that is not an accrediting agency, focused on the wisdom of AALS membership requirements and the values that they support. He stated that the important question for the AALS membership is which values are so important that the Association believes all of its member schools should adhere to them, and which values should be left to individual schools to define for themselves?

2. Strictly speaking, the AALS is not an accrediting agency. Rather, it is a voluntary membership association of law schools committed to maintaining and enhancing the quality of legal education. The AALS oversees law schools through its membership requirements. Each law school's compliance with AALS membership requirements is reviewed at the same time that the law school is reviewed by the ABA for compliance with accreditation standards.

Dean Steven R. Smith of the Cleveland-Marshall College of Law pointed out the important difference between the ABA, which acts as an accrediting agency, and the AALS, which is a membership organization dedicated to maintaining and enhancing the quality of legal education and promoting certain values. With respect to accreditation, Smith noted the importance of diversity both *within* and *among* law schools, and agreed with Destro that there is a need to clarify the kinds of diversity that are sought in order to reduce misunderstanding. Smith maintained that the interests of religiously affiliated law schools do, in fact, play an important role in the formulation of accreditation standards, and that a consensus has emerged that religious diversity occupies a special place within the accreditation standards. Rather than characterizing the treatment of religiously affiliated law schools as "special scrutiny," Smith believes that the treatment should be more accurately characterized as a "special exception."

Furthermore, in the real world, as opposed to the hypothetical world, Smith stated that accreditation standards do not present serious obstacles to religiously affiliated law schools in carrying out their missions. For Smith, the question is: what specifically would a law school actually do which would be necessary in fulfilling its religious mission that it is not doing now because accreditation rules prevent it from doing so? Smith suggested that the real reasons that law schools fail to meet their religious missions include the inability of religiously affiliated law schools to encourage faculty and students to develop a substantial body of course materials, courses, and scholarly research that reflect their religious perspectives, and that contribute to the intellectual life of the law.

II. THE MISSIONS OF RELIGIOUSLY AFFILIATED LAW SCHOOLS

Dr. Timothy O'Meara, Provost of the University of Notre Dame, offered a personal perspective on the mission of a Catholic university. For O'Meara, the essence of a Catholic university is the integration of the intellectual life and the spiritual life. As faith seeks understanding in the Catholic university, the university must be inclusive rather than exclusive, and the underlying rhetoric must be inspirational, and neither strident nor polemical.

O'Meara identified several challenges for Catholic universities, including the importance of these universities taking their place among the great and influential universities of our country; the responsibility to encourage increased participation of Catholics in the intellectual life of the university; and the need for shared responsibility in the university between religious and laity. He described several "creative polarities" that

must be mediated if the Catholic university is to succeed: the perceived inconsistency between science and religion; the door between the life of the mind and the life of the spirit; and the problem of remaining ecumenical in spirit while maintaining a predominant presence on the faculty of individuals committed to furthering the growth of the institution as a Catholic university.

Following O'Meara, Notre Dame's Professor Thomas L. Shaffer explored the question of why churches have law schools. He posited that the church has law schools because it wants to do something for God that it can only do by having law schools, such as providing upward mobility to members of the church, providing a spiritually cordial atmosphere for believers who study law, serving the community, or fulfilling the priestly and prophetic mission of the church.

Focusing on the priestly and prophetic mission, Shaffer pointed out that the law school is not the church; rather it supports the church, encourages the church, and frustrates the church. The law school is there to listen to the church. The relationship between the law school and the church, Shaffer concludes, cannot be worked out at faculty meetings or by university-wide commissions. The work must be that of believers, and of those who believe in what believers are doing.

Professor Michael J. Perry, the holder of the Howard J. Trienens Chair in Law at Northwestern University, described his idea of a Catholic university, an idea he applied to a law school that is a part of a Catholic university. Perry described two models of Catholic universities: one, the "bureaucratic," the other the "authentic." The bureaucratic Catholic university is one that is based on hierarchy, authority, and adherence to norms set by the hierarchy. In contrast, Perry's authentic Catholic university is one that commits itself to a number of core convictions (which he suggests are the essential convictions of Christianity), and that takes religious questions seriously by encouraging the pursuit of intellectual projects from religious perspectives or for religious reasons.

For Perry, the question of what it means, or should mean, for a university to be Catholic, depends on the deeper ecclesiological question of what it means, or should mean, for *us* to be Catholic. Perry rejects the bureaucratic and authoritarian understanding of what it means to be a "church," and as a consequence, believes that the bureaucratic Catholic university, based on bad ecclesiology, has outlived its time. Perry concluded that it is absolutely essential for Catholics to find their way back to an authentic understanding of what it means to be a people of God, and to conduct the Catholic university, and the Catholic law school, in ways that are consistent with that understanding.

Commenting on Perry, Professor Lynn Buzzard of Campbell University discussed several issues relating to the character of religiously affiliated universities and law schools. Agreeing that the primary issues for religiously affiliated law schools are not about accreditation, he suggested that focusing on accreditation issues creates the risk of missing the larger dimensions of what is really going on.

According to Buzzard, the larger dimensions consist of several broad cultural patterns. Among them are a self-inflicted internal crisis of confidence in religiously affiliated schools, sometimes caused by a desire to be accepted by the larger society or by the loss of confidence in the truth of moral or theological convictions; a loss of the sense of the moral and religious roots of law; concern over abusive regulation of private institutions; and, a pattern of diminished interest in vigorous religious freedom.

Buzzard argued that religiously affiliated law schools should not simply be left alone to do their own thing. Religiously affiliated schools want to compete in the marketplace of ideas; they have legitimate moral and political perspectives that can contribute to the betterment of the social order, and therefore, have vital contributions to make.

Although the sponsorship of Touro Law School is Jewish, and even though one of the school's essential missions is to perpetuate the Jewish heritage, Dean Howard Glickstein believes that the spirit of the Touro Law School is much like the spirit of the Catholic university described by Michael Perry. Even though a minority of Touro students are Jewish, the religious character of the school is expressed in the totality of its actions. Glickstein believes that Touro is an academic community where religious questions are taken seriously, and where both the curriculum and administrative policies attempt to reflect the ethical and moral teachings of Judaism. Yet, according to Glickstein, issues with religious implications are not well settled at Touro; they must be frequently revisited.

Dean Barbara Bader Aldave of St. Mary's University also agreed with Michael Perry's idea of a Catholic university, and focused her remarks on how the idea of a Catholic university can be translated into the reality of a Catholic law school. She used St. Mary's as an example and explained how that law school diversified its administration, faculty, staff, student body, and curriculum, and developed a heightened sense of its unifying mission and its connectedness to its university, the larger society, and other areas of the world. The law school reinforced the centrality of its commitment to justice under law, as well as justice and fairness in society. It has emphasized the obligations and rewards of helping others. Aldave concluded by stating that the real test of the suc-

cess of Catholic law schools "should not be by how much money their graduates earn, but rather how well those graduates integrate their Christian faith into their professional and personal lives."

III. OTHER TENSIONS CONFRONTING RELIGIOUSLY AFFILIATED LAW SCHOOLS

Dean Bernard Dobranski of the University of Detroit-Mercy noted that it is common for a religiously affiliated university to express a stronger religious identity than that of its law school, and that tensions typically exist between law schools and parent universities with regard to religious identity. Among the reasons for these tensions are the autonomy and independence of the law school from the rest of the university; the fact that most faculty members were hired during times when little attention was paid to the religious identity of the law school; and, the dominant and pervasive attitude that religion is a private affair, and that public moral issues, including issues of jurisprudence and professional ethics, are secular issues to be talked about in secular language pursuant to secular principles. Dobranski drew upon his experience at Detroit-Mercy to suggest that devoting time and energy to the development of a mission statement can diffuse the tension and resistance relating to these issues.

Professor Douglas Laycock of the University of Texas discussed the question of how religiously affiliated law schools can maintain both their academic and religious commitments over the long term. Laycock agreed with earlier speakers that the principal obstacles to law schools' perpetuating their religious commitment are internal and informal. Nevertheless, Laycock pointed out that perceived external obstacles, such as accreditation rules, can make it more difficult for religiously-affiliated law schools. These obstacles reinforce a cultural trend toward secularism, constrain options, and, most importantly, provide arguments and leverage for secularizers.

Laycock suggested that the distinction between the internal and external obstacles is often overlooked. Accrediting agencies should not be involved in what should be an internal debate about how a law school attempts to maintain its religious commitment. Consistent with the special legal protection that we have provided historically for religious choice, the ABA and the AALS should not attempt to impose values on

religious institutions; they should "simply back off and give the religious schools space to pursue their own missions."³

Dean Edward M. Gaffney of Valparaiso University addressed the subject of "preferential hiring," meaning giving preference either to co-religionists or, at least, to individuals committed to advancing the religious mission of the school. Speaking in favor of preferences, Gaffney argued that no community, whether religious or secular, can depend on outsiders to understand, much less to be responsible for transmitting, its distinctive traditions. Furthermore, he explained how federal laws provide religiously affiliated law schools with a great deal of leeway with regard to preferences in faculty hiring and student admissions. Gaffney also made the important point that the goal of religiously affiliated law schools should be to train competent, caring, and compassionate lawyers.

The final speaker, Associate Dean James J. Faught of Loyola University of Chicago, discussed the problems relating to the recognition of controversial student organizations. Although his remarks focused on Jesuit universities, the problems and issues he described are relevant to other religiously affiliated institutions. Jesuit universities have become much more diverse, and it is not realistic to expect law schools to have one clear norm that will govern the recognition of student organizations. Acknowledging that law schools are attempting to educate students to live in an increasingly multicultural and pluralistic society, Faught outlined the guidelines and processes followed by Loyola in determining whether to recognize a student organization. Clearly, these issues extend beyond student services; they challenge the very mission of the university.

If a consensus was formed at the conference, it was that the dialogue between religiously affiliated and nonreligiously affiliated law schools, and the dialogue among religiously-affiliated law schools, needs to continue. Some participants suggested forming an organization of religiously-affiliated law schools, and scheduling a second conference.

The First Conference of Religiously Affiliated Law Schools was noteworthy because it was the first time that these schools have come together to discuss issues of mutual concern; it was memorable for the richness of the discussion that took place. Straightforward and honest discussions of this kind can only work to strengthen the law schools involved and to improve the quality and diversity of legal education.

3. Douglas Laycock, *Academic Freedom, Religious Commitment, and Religious Integrity*, 78 MARQ. L. REV. 297, 310 (1995).