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## The Thinness of Catholic Legal Education, A Review of Robert J. Kaczorowski, Fordham University Law School: A History

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## BOOK REVIEW

### THE THINNESS OF CATHOLIC LEGAL EDUCATION, A REVIEW OF ROBERT J. KACZOROWSKI, FORDHAM UNIVERSITY LAW SCHOOL: A HISTORY

JOHN M. BREEN\* & LEE J. STRANG\*\*

#### I. INTRODUCTION

In his book, *Fordham University Law School: A History*,<sup>1</sup> Robert J. Kaczorowski has authored an informative history of Fordham Law School. This highly readable and well-researched volume describes the ups and downs, the triumphs and failures, and the key people and events at Fordham Law School, where the author has served as a faculty member since 1986.

The overall story that Kaczorowski tells is one of an urban law school founded in 1905 to serve the professional aspirations of the children of New York's Catholic immigrants—a school that rose from modest beginnings to be among the nation's finest, but then languished in mediocrity for decades due to the syphoning off of revenues by University administrators. This period of unfulfilled potential came to an end in the 1990s, when Fordham Law School returned to elite status through a fairer allocation of resources, the creation of new programs and institutes, the admission of a highly qualified, national student body, and the hiring of a more scholarly and productive faculty.

Kaczorowski's history is also a welcome addition to the assortment of books that tell the particular histories of individual American law schools,<sup>2</sup> in part because Fordham Law School is part of a Jesuit university, and the

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1. ROBERT J. KACZOROWSKI, *FORDHAM UNIVERSITY SCHOOL OF LAW: A HISTORY* (2012).  
2. *See, e.g.*, T. BARNES, *HASTINGS COLLEGE OF THE LAW: THE FIRST CENTURY* (1978); S. Epstein, *Law at Berkeley: The History of Boalt Hall* (1979) (unpublished doctoral thesis); G. PEDERSEN, *BUFFALO LAW SCHOOL* (1962); C. CRAMER, *THE LAW SCHOOL AT CASE WESTERN RESERVE UNIVERSITY* (1977); ARTHUR SUTHERLAND, *THE LAW AT HARVARD* (1967); J. RAHL & K. SCHWERIN, *NORTHWESTERN UNIVERSITY SCHOOL OF LAW—A SHORT HISTORY* (1960); M. KIRKWOOD & W. OWN, *A BRIEF HISTORY OF STANFORD LAW SCHOOL, 1893–1946* (1961); F. ELLSWORTH, *LAW ON THE MIDWAY* (1977); E.G. BROWN, *LEGAL EDUCATION AT MICHIGAN 1859–1959* (1959); There have also been some excellent histories of American legal education in general. *See, e.g.*, ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983); JOEL SELIGMAN, *THE HIGH CITADEL: THE INFLUENCE OF HARVARD LAW SCHOOL* (1978).

book explores the meaning of this Jesuit and Catholic identity in different phases of the Law School's history.

The authors of this Review are in the process of writing the first comprehensive history<sup>3</sup> of Catholic legal education in the United States.<sup>4</sup> This study, which includes substantial archival research at a majority of the twenty-nine American law schools operating under Catholic auspices, has led us to conclude that the sense of Catholic identity at all but a handful of these schools is rather thin. Where this identity is not merely historical, it tends to be an identity that is cultural rather than intellectual, supplying a vocabulary that connects the school to the aspirations of the host university's founding religious order. Professor Kaczorowski's account of Fordham Law School both provides evidence of the attenuation of Catholic identity in legal education over time, and is itself proof of the thinness of this identity in the present day.

Thus, while Fordham Law School's Catholic and Jesuit identity features prominently in the early chapters of Kaczorowski's book,<sup>5</sup> by the end

3. There have been a number of histories, of varying quality, of individual Catholic law schools. *See, e.g.*, ERIC ABRAHAMSON, *THE UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW: A HISTORY 1912–1987* (1987); DANIEL R. ERNST, *THE FIRST 125 YEARS: AN ILLUSTRATED HISTORY OF THE GEORGETOWN UNIVERSITY LAW CENTER* (1995); PHILIP S. MOORE, C.S.C., *A CENTURY OF LAW AT NOTRE DAME* (1969); T. SIMON, *BOSTON COLLEGE LAW SCHOOL AFTER FIFTY YEARS* (1980); Thomas M. Haney, *The First 100 Years: The Centennial History of Loyola University Chicago School of Law*, 41 *LOY. U. CHI. L. J.* 651 (2010); C. Joseph Nuesse, *The Thrust of Legal Education at the Catholic University of America, 1895–1954*, 35 *CATH. U. L. REV.* 33 (1985). And there have been several books on the history of Catholic higher education in the United States. *See, e.g.*, ALICE GALLIN, O.S.U., *NEGOTIATING IDENTITY: CATHOLIC HIGHER EDUCATION SINCE 1960* (2000); EDWARD J. POWER, *CATHOLIC HIGHER EDUCATION IN AMERICA: A HISTORY* (1972); PHILIP GLEASON, *CONTENDING WITH MODERNITY: CATHOLIC HIGHER EDUCATION IN THE TWENTIETH CENTURY* (1995); EDWARD J. POWER, *A HISTORY OF CATHOLIC HIGHER EDUCATION IN THE UNITED STATES* (1958); JAMES TUNSTEAD BURTCHAELL, *THE DYING OF THE LIGHT: THE DISENGAGEMENT OF COLLEGES AND UNIVERSITIES FROM THEIR CHRISTIAN CHURCHES 597–602* (1998). But to date, no book has been written that tells the history of American Catholic law schools in general.

4. Although the manuscript of the book is still in progress, some of the results of our research have already been published in journal articles and in a book chapter. *See, e.g.*, John M. Breen & Lee J. Strang, *A Brief History of American Catholic Legal Education: The Arc of an Uncertain Identity*, in *AMERICAN LAW FROM A CATHOLIC PERSPECTIVE: THROUGH A CLEARER LENS* (Ronald J. Rychlak ed., 2014) [hereinafter *A Brief History*]; John M. Breen & Lee J. Strang, *The Golden Age That Never Was: Catholic Law Schools From 1930-1960 and the Question of Identity*, 7 *J. CATH. SOC. THOUGHT* 489 (2010); John M. Breen & Lee J. Strang, *The Forgotten Jurisprudential Debate: Catholic Legal Thought's Response to Legal Realism*, 98 *MARQ. L. REV.* 1203 (2015) [hereinafter *Forgotten Debate*]; John M. Breen & Lee J. Strang, *The Road Not Taken: Catholic Legal Education at the Middle of the Twentieth-Century*, 51 *AM. J. LEGAL HIST.* 553 (2011) [hereinafter *Road Not Taken*]. For a critical examination of Catholic legal education today by one of the reviewers, see John M. Breen, *Justice and Jesuit Legal Education: A Critique*, 36 *LOY. U. CHICAGO L. J.* 383 (2005); John M. Breen, *The Air in the Balloon: Further Notes on Catholic and Jesuit Identity in Legal Education*, 43 *GONZ. L. REV.* 41 (2007); John M. Breen, *Action as the Fruit of Contemplation: A Reply to Bryce, Donnelly, Kalscheur, and Nussbaum*, 43 *GONZ. L. REV.* 645 (2008).

5. In these early chapters, for instance, Kaczorowski describes that identity as reflected in the composition of Fordham's student body and faculty, and the content of its curriculum.

of the story this identity is an afterthought—a passing descriptive attached as a kind of certification of continuity with the past.<sup>6</sup> Although this loss of identity is undeniably part of the history of Fordham Law School, Kaczorowski's book does not address it directly, nor does it reflect upon the significance of this change. Instead, the reader is left to infer this transformation through omission in a “now you see it, now you don't” fashion, and ponder the meaning and significance of this change without benefit of the author's deep knowledge of the subject.

Below, we first briefly describe the contents of Professor Kaczorowski's informative narrative. The book will rightly be regarded as essential reading for anyone interested in the history of the study of law at Fordham University. In the sections that follow, we then explain how the history Kaczorowski sets forth exemplifies the gradual attenuation of Catholic identity in Catholic legal education over time, and the almost total absence of meaningful Catholic identity at most Catholic law schools today.

## II. THE STORY OF FORDHAM UNIVERSITY LAW SCHOOL

### A. *An Honest, Interesting History*

While most histories of particular law schools are insubstantial and frequently hagiographical, Professor Kaczorowski's largely avoids these pitfalls.<sup>7</sup> The book is over 450 pages long, including ninety-five pages of detailed notes and many pages of informative charts and graphs. From the cited sources, it is clear Professor Kaczorowski spent years interviewing individuals, and collecting and pouring over primary source materials from Fordham's archives and other sources. These sources include Law School faculty meeting minutes, Law School dean-University president correspondence, and the personal papers of many of the major actors in Kaczorowski's narrative.

Professor Kaczorowski frequently ties different periods of Fordham's history to the relevant historical trends in legal education as well as the broader currents of American history, demonstrating a serious engagement with the secondary literature. For example, he ties together changes at Fordham Law School with the rise of Legal Realism<sup>8</sup> and the initiation of

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6. KACZOROWSKI, *supra* note 1, at 335 (referring to Fordham Law School's mission statement in its 1994 self-study and stating that the Law School's commitment to excellence “reflected the Jesuit ‘educational ideals of rigorous thought, justice, and service to others’”); *see also* Richard Primus, *Why Enumeration Matters*, 114 MICH. L. REV. 1, 5 (2016) (defining a “continuity tender” as “an inherited statement that members of a community repeat in order to affirm their connection to the community's history, even though they may no longer hold the values or face the circumstances that made the statement sensible for some of their predecessors”).

7. The book lapses somewhat into a kind of hagiography in the concluding chapter describing the resurgence of Fordham Law School under Dean John Feerick. KACZOROWSKI, *supra* note 1, at 318–67.

8. *Id.* at 144–50.

clinical legal education.<sup>9</sup> He likewise describes the impact that major events in American history had on the development of Fordham Law School. Thus, he discusses how World War I<sup>10</sup> and World War II<sup>11</sup> each brought about a substantial drop in student enrollment only to be followed by a boom period, with the latter aided by the G.I. Bill.<sup>12</sup> The Red Scare,<sup>13</sup> the Stock Market Crash of 1929 and the ensuing Great Depression,<sup>14</sup> as well as protests over the Vietnam War,<sup>15</sup> each receive some mention in Kaczorowski's book.

Kaczorowski's book offers a relatively frank assessment of Fordham and the main actors in the Law School's history in that it shows these individuals at their best and not-so-best. For example, he portrays Dean John F.X. Finn as "symboliz[ing] the old order in legal education that mixed an active law practice with legal academia"<sup>16</sup> and describes Finn's summary dismissal as dean in 1956.<sup>17</sup> Kaczorowski also shows how multiple constituencies thought that the Law School was falling short of its perceived potential in the post-World War II era through the 1970s, including the Law School's faculty<sup>18</sup> and students.<sup>19</sup>

Professor Kaczorowski's story of Fordham Law School is primarily told through focusing on the Law School's deans and University presidents, with more modest attention paid to Fordham's law faculty. This makes what could otherwise have been a dull compilation of numbers and charts more engaging. Thus, he initially pulls the reader into his story by introducing the founding dean, Paul Fuller, whose own compelling immigrant—pull-yourself-up-by-your-bootstraps and autodidact—story shows the talent and vision of Fordham's founders.<sup>20</sup> That said, unlike the people-focused narrative that appears earlier, the concluding chapter of Kaczorowski's book<sup>21</sup> reads more like a collection of statistics showing the Law School's steady climb toward, and now legitimate claim to, elite status.

In 1982 Alfred Konefsky and John Henry Schlegel reviewed the histories of over a dozen individual American law schools then in print and concluded that each of them told a remarkably similar story:

Simply put, the school grows from humble, but auspicious beginnings through early triumphs and then through occasional hard

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9. *Id.* at 276–77, 285–86, 339–40.

10. *Id.* at 33–35, 80–81.

11. *Id.* at 178–212.

12. *Id.* at 191–92, 196.

13. KACZOROWSKI, *supra* note 1, at 50–55.

14. *Id.* at 92, 111–17.

15. *Id.* at 262.

16. *Id.* at 213.

17. *Id.* at 213–14.

18. *Id.* at 261–62.

19. KACZOROWSKI, *supra* note 1, at 271–75.

20. *Id.* at 1–7.

21. *Id.* at 318–67.

times, though with never more than a momentary temptation to backslide from fixed and noble goals, to a place—if only a small place—in the sun.<sup>22</sup>

Kaczorowski's narrative follows this basic outline, such that his book fits neatly within the genre that Konefsky and Schlegel describe. The bulk of Kaczorowski's book deals with the challenges and opportunities that most law schools have experienced at some point from the time of their founding to the present day. Many law schools have, for example, struggled with university administrators over the appropriate level of institutional autonomy, especially as that autonomy relates to control of the law school's revenue and budget.<sup>23</sup> In this, Fordham was no exception. Indeed, this struggle appears several times throughout Kaczorowski's narrative—the tale of Fordham Law School is a tale of stifled potential, of greatness postponed because of the misallocation of Law School revenue to University purposes.<sup>24</sup> Likewise, most law schools experience occasional tension with their accrediting bodies—the American Bar Association Section of Legal Education (ABA) and the Association of American Law Schools (AALS). Fordham experienced these tensions as well, although, given Kaczorowski's description of events, the conflict may have been more severe at Fordham than at other institutions.<sup>25</sup>

The thesis that runs throughout Kaczorowski's narrative is that Fordham Law School was destined to be an “elite” law school, and the book is an extended description of the Law School's struggles to achieve that status.<sup>26</sup> As detailed by Professor Kaczorowski, Fordham Law School achieved great success in the early-to-mid-twentieth century, but then lost its way, only to return to elite status in the 1990s.<sup>27</sup> For example, Dean William Mulligan, who served from 1956–1971, wanted Fordham to be “the best Catholic law school in the United States.”<sup>28</sup> Professor Kaczorowski details how Dean Mulligan worked tirelessly to secure a new building for the Law School while hiring excellent faculty and paying them a competitive salary. Mulligan also obtained scholarship money for well-qualified students and defended the Law School from the interference of University administration.<sup>29</sup> His successor, Dean Joseph McLaughlin (1971–1981), fought many of the same battles, though they were made more acute be-

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22. Alfred S. Konefsky & John Henry Schlegel, *Mirror, Mirror on the Wall: Histories of American Law Schools*, 95 HARV. L. REV. 833, 836 (1982).

23. See also Steven R. Smith, *The Dean and the Budget: Not “Just a Bunch of Damn Numbers,”* 33 U. TOL. L. REV. 203 (2001) (describing law school budgeting processes, including negotiations with universities and university-created budget pressures).

24. KACZOROWSKI, *supra* note 1, at 216, 237–62.

25. *Id.* at 216, 288–317.

26. See, e.g., *id.* at 248, 319.

27. The final chapter is titled “Resurgence of Fordham Law School.” *Id.* at 318–68.

28. *Id.* at 224.

29. *Id.* at 220–33.

cause of the ABA's involvement and the implicit threat to the Law School's accreditation.<sup>30</sup>

Thus, it was not until Dean John Feerick (1982–2002), whose goal was to “catapult the Law School into national prominence,”<sup>31</sup> that Fordham Law School was restored to its former and rightful place of excellence. In Kaczorowski's telling, Feerick established a new and constructive relationship with the ABA and Fordham's then-new president, Rev. Joseph O'Hare, S.J.<sup>32</sup> The University eventually acceded to the ABA's recommendation concerning the percentage of Law School revenue it could retain for overhead.<sup>33</sup> Feerick “devoted most of his time as dean to raising the funds required to enable the Law School to regain national recognition as a premier law school.”<sup>34</sup> He used the additional funds to hire more faculty dedicated to legal scholarship—colleagues whom he supported with summer research grants and merit raises.<sup>35</sup> Under his tenure, the full-time faculty grew from thirty-seven to sixty-four, reducing the student to faculty ratio from just below 30 to 1, to 20 to 1.<sup>36</sup> Some money was used to attract a diverse and well-qualified student body from around the country.<sup>37</sup> Other funds were used to enhance student instruction in professional skills,<sup>38</sup> make clinical opportunities available to students,<sup>39</sup> and establish academic chairs and institutes in international legal studies, human rights, ethics and professionalism, dispute resolution, and urban legal issues.<sup>40</sup> All of these changes were oriented toward the goal of having Fordham be “recognized as one of the ‘preeminent law schools in the country.’”<sup>41</sup>

### *B. Fordham's History Fits Neatly Within the Arc of Catholic Legal Education*

Professor Kaczorowski's detailed and informative history of Fordham Law School not only fits within the general structure of law school histories described by Konefsky and Schlegel, it also exemplifies the history of most Catholic law schools in the United States. This history is defined by five distinctive features.<sup>42</sup> First, Catholic universities and colleges founded new or acquired existing law schools primarily to provide socioeconomic mobil-

30. KACZOROWSKI, *supra* note 1, at 263–317.

31. *Id.* at 319.

32. *Id.* at 322.

33. *Id.* at 325.

34. *Id.* at 330.

35. *Id.* at 335–36.

36. KACZOROWSKI, *supra* note 1, at 331, 338–39.

37. *Id.* at 348–66.

38. *Id.* at 341–42.

39. *Id.* at 333, 339–40.

40. *Id.* at 339–45.

41. *Id.* at 327.

42. See *A Brief History*, *supra* note 4 (providing a general overview of the history of American Catholic legal education).

ity for Catholic immigrants and their progeny; enhance the prestige of the host institution; and lend financial support to the sponsoring university.<sup>43</sup> Second, Catholic law schools were culturally and demographically Catholic, but otherwise only moderately distinct from their secular peers.<sup>44</sup> Third, leading Catholic legal academics attempted to increase Catholic legal education's distinctiveness in the 1930s–1950s, with little lasting effect.<sup>45</sup> Fourth, beginning in the mid-1960s and accelerating through the 1970s, the Catholic identity of Catholic law schools became more attenuated and, in many schools, (nearly) ceased to exist, primarily because of faculty hiring practices.<sup>46</sup> Fifth, beginning in the early 1990s, a new conversation took place and a resurgence of interest in Catholic identity occurred in Catholic legal education, though its effects were and remain modest, provisional, and unevenly distributed.<sup>47</sup>

All but the last of these five features of the history of Catholic legal education make an appearance in Professor Kaczorowski's narrative of Fordham. First, Kaczorowski's history begins with Fordham Law School's founding. Like most Catholic law schools of the time, the Law School was started by the University to provide socioeconomic opportunity to "Catholic immigrants."<sup>48</sup> The Law School began as a night school with a part-time faculty of practicing lawyers. Although it began operations on the University's main campus, it soon relocated to Manhattan and was housed in a series of office buildings before the University ultimately built a facility for the Law School at Lincoln Center in 1961.<sup>49</sup> Many Catholic schools operated as night schools with part-time faculty located in the business districts of urban centers, near the courts and law firms where students often worked outside of class.<sup>50</sup> Like their counterparts at other Catholic law schools, most Fordham students worked at least part-time.<sup>51</sup>

Second, for the first half of the twentieth century, Fordham was generally distinctively Catholic in the demographic make-up of its administration,<sup>52</sup> faculty,<sup>53</sup> and student body.<sup>54</sup> Fordham was also culturally Catholic

43. See *Road Not Taken*, *supra* note 4, at 558–84 (describing these features). Only the Catholic University of America created a law school with the primary purpose of providing a distinctively Catholic legal education. *Id.* at 565–70.

44. *Id.* at 584–93.

45. *Id.* at 594–634; see also Breen & Strang, *Forgotten Debate*, *supra* note 4 (describing the debate between Catholic legal scholars and Legal Realists).

46. Breen & Strang, *A Brief History*, *supra* note 4, at 31–33.

47. *Id.* at 33–36.

48. *Id.* at 5, 21, 62.

49. KACZOROWSKI, *supra* note 1, at 21–23, 32, 189, 225.

50. Breen & Strang, *A Brief History*, *supra* note 4, at 28; Breen & Strang, *Road Not Taken*, *supra* note 4, at 588.

51. KACZOROWSKI, *supra* note 1, at 92, 125–28.

52. See *id.* at 57 (noting that, at Fordham, like other Jesuit law schools, there existed the position of "regent," who was a Jesuit intermediary between the university president and the layman dean); *id.* at 62 (noting that the Law School kept records of which students were Catholic until 1968).



in its calendar<sup>55</sup> and in hosting student groups such as the St. Thomas Aquinas Sodality, a kind of Catholic fraternity that organized meetings and communion breakfasts.<sup>56</sup> At least one of the Law School's locations housed a chapel where Mass was celebrated.<sup>57</sup> The Law School was also Catholic in modest but significant ways in its curriculum, requiring students to study jurisprudence "taught from the Jesuits' Thomistic natural rights philosophical perspective."<sup>58</sup>

Third, members of Fordham's faculty and administration played key roles in the Catholic critique of Legal Realism in the 1930s–1950s and the attempt to reform Catholic legal education that took place during the same period.<sup>59</sup> The most prolific and articulate Catholic legal scholar during this time period was Walter B. Kennedy, who spent most of his career at Fordham.<sup>60</sup> Kaczorowski briefly notes that Kennedy contributed to the Catholic natural law critique of Legal Realism and philosophical naturalism.<sup>61</sup> Kaczorowski also notes that Fordham's Dean Ignatius M. Wilkinson (1923–1953) participated in this reform movement and also advocated in the political arena, opposing facets of the New Deal,<sup>62</sup> while Rev. Francis

53. See *id.* at 59 ("The majority of the lay faculty were Catholic."); see also *id.* at 7–13 (describing the early faculty whose backgrounds suggest they are Catholic); *id.* at 13 (describing Professor Wormser as "the first Jewish professor"); *id.* at 31 (describing Fordham's second dean, John Whalen, as a "leading Roman Catholic layman"); *id.* at 47 (describing Fordham's third dean as a "staunch Roman Catholic like his predecessors").

54. See *id.* at 37 (stating that "[m]any" of Fordham's students went to Catholic colleges); *id.* at 62–75 (providing many statistics); see also *id.* at 59 (stating that sixty-five percent of students were Catholic in 1932–33). Kaczorowski downplays the Catholic character of Fordham Law School in its early years of operation claiming that "[t]here were only a few situations in which students were likely to encounter reminders that Fordham Law School was part of a Catholic or Jesuit university." *Id.* at 57. Contrary to this, the facts that Kaczorowski presents indicate that Fordham's Catholic character was manifestly present, but not in an obtrusive way. Indeed, Kaczorowski's downplaying of the Law School's Catholic character seems to be out of place with the surrounding narrative.

55. See KACZOROWSKI, *supra* note 1, at 61 (describing the Catholic religious holy days and feast days when classes were not held).

56. *Id.* at 58–59.

57. *Id.* at 189, 213. Kaczorowski does not indicate whether Fordham Law School featured Catholic religious symbols and iconography typical of many Catholic law schools, like crucifixes on the classroom walls and a portrait or statue of St. Thomas More or St. Ives. In his discussion of the Gelhorn Report, Kaczorowski cites to RAYMOND A. SCHROTH, S.J., *FORDHAM: A HISTORY AND MEMOIR* (rev. ed. 2008). *Id.* at 236–37. Schroth notes that some alumni disdainfully refer to the implementation of the Gelhorn Report as "the day the crucifixes came down." KACZOROWSKI, *supra* note 1, at 278. Whether this included the Law School is uncertain.

58. KACZOROWSKI, *supra* note 1, at 57; see *id.* at 15–19 (describing some curricular distinctiveness, such as a jurisprudence course focused on natural law); but see *id.* at 23 (describing Fordham's adoption of the case method in conformity with the elite legal academy's convention).

59. *Id.* at 144–50.

60. *Id.* at 146; Breen & Strang, *The Forgotten Jurisprudential Debate*, *supra* note 4, at 1230–32.

61. KACZOROWSKI, *supra* note 1, at 145–46.

62. *Id.* at 80, 146–51.

P. LeBuffe, S.J., who served as the Law School's regent,<sup>63</sup> taught jurisprudence at Fordham from a natural law perspective and published a jurisprudence casebook.<sup>64</sup>

Fourth, like other Catholic law schools, it appears that Fordham's modestly distinctive Catholic identity began to fade in the 1960s. By 1968, the Law School no longer took an interest in tracking the Catholic religious identity of its entering students.<sup>65</sup> In 1962, Rev. Charles M. Whalen, S.J., joined the faculty and modified the jurisprudence course, no longer emphasizing the Thomistic natural law perspective.<sup>66</sup> It was, Kaczorowski states, "important to him and his philosophy of legal education that students understand that he was not trying to sell any Catholic line in his teaching."<sup>67</sup> Similarly, while the book contains frequent and detailed discussion of curricular content and changes,<sup>68</sup> following his description of Father Whalen's class, Kaczorowski makes no mention of any courses that include a Catholic perspective on law.

The most powerful catalyst for the attenuation of Catholic identity at American Catholic law schools was faculty hiring. Law school enrollments exploded in the late-1960s and early 1970s, and Catholic law schools were no exception. To meet this increased demand, Catholic law schools hired large numbers of new professors, frequently doubling the size of their faculties in the span of only a few years.<sup>69</sup> Fordham followed this general trend.<sup>70</sup> As Kaczorowski shows, in one year alone, the 1971–1972 academic year, Fordham hired eight new faculty members, increasing the existing faculty size by fifty percent.<sup>71</sup> However, there is no indication that Catholic identity was a factor in any of those hires and there is some evidence that it was not a factor. Charles Whalen, S.J., was chair of faculty appointments during the 1960s and 1970s, and he identified teaching ability as the "most important consideration" of faculty hiring. Catholic identity

63. *Id.* at 77.

64. *Id.* at 144–46.

65. *Id.* at 62.

66. *Id.* at 150–51.

67. KACZOROWSKI, *supra* note 1, at 151–52.

68. *Id.* at 340–45.

69. In 1976, the ABA reported that the total number of students enrolled in ABA-approved law schools rose from 59,744 in 1965 to 116,991 in 1975. AMERICAN BAR ASSOCIATION, LAW SCHOOL & BAR ADMISSION REQUIREMENTS: A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES – FALL 50 (1976) [hereinafter ABA 1976 REVIEW]. The same report indicates that Fordham University School of Law had a total enrollment of 1094 in 1976. *Id.* at 25. Whereas the same report for 1965 indicates that Fordham had a total enrollment of 867. ABA, REVIEW OF LEGAL EDUCATION: LAW SCHOOLS AND BAR ADMISSION REQUIREMENTS IN THE UNITED STATES-FALL 1976 (1965) [hereinafter ABA 1965 REVIEW].

70. The ABA reports that in 1976 Fordham had twenty-six full-time teachers and thirty-seven part-time teachers, ABA 1976 REVIEW, *supra* note 69, at 25, whereas in 1965, Fordham had eighteen full-time teachers and thirteen part-time teachers, ABA 1965 REVIEW, *supra* note 69, at 11.

71. KACZOROWSKI, *supra* note 1, at 265–66.

was not identified as a relevant criterion.<sup>72</sup> This, coupled with the Law School's attempt to avoid "inbreeding" by "diversifying the faculty in terms of educational and religious backgrounds,"<sup>73</sup> was both a symptom and a cause of further attenuation.

Fifth, in 1990, Pope John Paul II issued the apostolic constitution *Ex Corde Ecclesiae*, setting forth the Church's understanding of what it means to be a Catholic university and the place of these institutions in "the heart of the Church."<sup>74</sup> The document gave rise to a new conversation on Catholic identity among Catholic university administrators, educators, and bishops.<sup>75</sup> A subject of robust debate,<sup>76</sup> the document contributed to the establishment of two new Catholic law schools<sup>77</sup> and a renewed interest in Catholic mission among some existing schools.<sup>78</sup> Although this conversation may have taken place at Fordham, there is little evidence in Professor Kaczorowski's history of a recent re-engagement with Catholic identity. The faculty's mission statement in the Law School's 1994 self-study, discussed by Professor Kaczorowski, identified the Law School's mission without any mention of Catholic identity.<sup>79</sup> Although Professor Kaczorowski touts the Law School's commitment to public service, quoting the 2001 faculty self-study declaring that the Law School has "a long history of dedication to public service that is deeply rooted in the Jesuit tradition of commitment to service and education,"<sup>80</sup> he does not explain the content of this Jesuit tradition and how it is a manifestation of Fordham's Catholic identity, or how it is at all present in the Law School today.

### III. THE THINNESS OF CATHOLIC LEGAL EDUCATION AT FORDHAM

In addition to being a history of Fordham Law School, Professor Kaczorowski's book also illustrates the thinness of Catholic identity in Catholic

72. *Id.* at 220.

73. *Id.* at 223.

74. JOHN PAUL II, APOSTOLIC CONSTITUTION *Ex Corde Ecclesiae* (Aug. 15, 1990).

75. See, e.g., CATHOLIC UNIVERSITIES IN CHURCH AND SOCIETY: A DIALOGUE ON *EX CORDE ECCLESIAE* (John P. Langan, S. J., ed., 1993); THE CHALLENGE AND PROMISE OF A CATHOLIC UNIVERSITY 246 (Theodore M. Hesburgh, C.S.C., ed., 1994).

76. See, e.g., Daniel Gordon, *Ex Corde Ecclesiae: The Conflict Created for American Catholic Law Schools*, 34 GONZ. L. REV. 125 (1999); see also Robert F. Drinan, *Pizza Bucks Back Hyper-Catholic Law School*, NAT'L CATH. REP., May 7, 1999 (criticizing the creation of Ave Maria School of Law); cf. Leonard Pertnoy & Daniel Gordon, *Would Alan Dershowitz Be Hired to Teach Law at a Catholic Law School? Catholicizing, Neo-Brandeisizing, and an American Constitutional Policy Response*, 23 SEATTLE U. L. REV. 355 (1999).

77. The University of St. Thomas School of Law in Minneapolis received its inaugural class in 2001, and Ave Maria School of Law's inaugural class matriculated in 2000.

78. See Nicholas P. Cafardi, *Catholic Law Schools and Ex Corde Ecclesiae, or What Makes a Law School Catholic?*, 33 U. TOL. REV. 7 (2001); Mark A. Sargent, *An Alternative to the Sectarian Vision: The Role of the Dean in an Inclusive Catholic Law School*, 33 U. TOL. L. REV. 171 (2001).

79. KACZOROWSKI, *supra* note 1, at 334.

80. *Id.* at 345.

legal education. It does so through its own too-thin account of Fordham Law School's Catholic identity in the past and its accurate portrayal of Fordham's ever-more attenuated Catholic identity up to the present day.

A. *The Thinness of Professor Kaczorowski's Account of Catholic Identity*

Catholic identity is not the focus of Kaczorowski's book. Rather, his account of Fordham is filled with enrollment numbers, faculty concerns, accreditation issues, and Law School-University relations. According to the index, of the book's 464 pages of text and notes, only ten pages are devoted to the topics "Catholic" or "Catholics" and only twelve pages address "Jesuit" or "Jesuits." Thus, it would be fair to say that Catholic identity makes only an occasional appearance in Kaczorowski's narrative.

Commenting on the Law School in the 1920s, Kaczorowski concludes that "[t]here were only a few situations in which students were likely to encounter reminders that Fordham Law School was part of a Catholic or Jesuit university."<sup>81</sup> Since Fordham's Catholic identity later became more attenuated, there would, it seems, be even fewer "reminders" of this identity in later years. Yet we believe that this conclusion understates the extent to which a genuine, though modest, Catholic identity was present through much of Fordham's history. Indeed, prior to the serious diminution of Catholic mission beginning in the 1960s, Fordham Law School enjoyed a meaningful Catholic identity—one that makes a series of episodic appearances in Kaczorowski's book.

Kaczorowski's understated presentation of Fordham's Catholic identity is manifested in several ways. Evidence of this can be seen by comparing Kaczorowski's coverage of Fordham's Catholic identity with his coverage of other subjects. For example, Professor Kaczorowski devotes over eight pages to the enrollment of women at Fordham early in the Law School's history.<sup>82</sup> This is, of course, a topic worthy of discussion and analysis.<sup>83</sup> However, Kaczorowski's failure to give similar, detailed, attention to Fordham's Catholic identity reflects a judgment that the subject is simply not as important.

Similarly, in the book's final chapter, Kaczorowski describes numerous institutes, programs, clinics, chairs, and centers established at Fordham during the Law School's resurgence under Dean John Feerick.<sup>84</sup> Noticeably

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81. *Id.* at 57. Among the "reminders" that Kaczorowski singles out are a jurisprudence course taught from "the Jesuits' Thomistic natural rights philosophical perspective," University convocation and graduation ceremonies including the presence of Church officials, a Red Mass, and a Catholic student group. *Id.* at 57–58.

82. *Id.* at 37–45.

83. Professor Kaczorowski's discussion of popular views on the role of women in American society is, however, a significant digression that is less relevant. *Id.* at 39–42.

84. *Id.* at 339–46.

missing from this impressive list is the Law School's Institute on Religion, Law & Lawyer's Work.<sup>85</sup> Although by no means focused exclusively on Catholicism, the Institute does include Catholic identity as one facet of its programs and activities.<sup>86</sup> The absence of any mention of the Institute in the book suggests that Professor Kaczorowski sees this new expression of Fordham's religious identity as relatively unimportant.

The thin sense of Catholic identity at Fordham that Professor Kaczorowski describes is, however, belied by many facts—involving students, administration, faculty, and curriculum—that surface from time to time throughout the book indicating the presence of something more significant. Moreover, the presence of these facts at Fordham earlier in the School's history and their absence later indicates both a mission and a change in mission that occurred over time, a change worthy of scholarly attention.

### 1. Students

It is a recurrent theme in Kaczorowski's book that Fordham began as a part-time program "to enable Catholic immigrants to attend law school" and so that students who worked could "support themselves" and their families.<sup>87</sup> Fordham therefore functioned as a vehicle for the advancement of Catholics, a religious minority in the United States who "were subjected to discrimination with varying degrees of virulence through the first half of the twentieth century."<sup>88</sup> Indeed, to serve a burgeoning Catholic population in the Bronx, "the Law School added a night division at Fordham University's Rose Hill Campus" in 1925.<sup>89</sup> At that point in the history of legal education in the United States, a bachelor's degree was not required to attend law school.<sup>90</sup> If Fordham law students were lucky enough to go to college

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85. See FORDHAM UNIV. SCH. LAW, THE INSTITUTE ON RELIGION, LAW & LAWYER'S WORK, *The Institute on Religion, Law and Lawyer's Work*, FORDHAM UNIV. SCH. LAW, [https://www.fordham.edu/info/20694/institute\\_on\\_religion\\_law\\_and\\_lawyers\\_work](https://www.fordham.edu/info/20694/institute_on_religion_law_and_lawyers_work) (last visited Dec. 4, 2018).

86. THE INSTITUTE ON RELIGION, LAW & LAWYER'S WORK, *Catholic Lawyer's Program*, <https://www.fordham.edu/info/23512/programs> (last visited Dec. 4, 2018) (listing the Catholic Lawyer's Program as one of many faith-specific program offerings).

87. KACZOROWSKI, *supra* note 1, at 21.

88. *Id.* at 47; *see id.* at 47 (also noting that Fordham's openness to admitting women and African-American students related to the fact that Fordham's student body was already ethnically diverse because it was composed of various Catholic ethnic groups including Irish, Italians, Germans, Slavs, and Poles); *id.* at 94 (describing Dean Wilkinson as "dean of a part-time Catholic law school serving the very groups professional elites sought to exclude from the legal profession"); *id.* at 112 (stating that Fordham students were in part handicapped from getting jobs because of "anti-Catholic bias"); *cf. id.* at 82 ("The legal profession's elites openly declared their intention to raise barriers to entry in order to exclude immigrants and their children who were Catholics and Jews from eastern and southern Europe.").

89. *Id.* at 101.

90. See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 96, 172–73, 177, 179–80 (1983) (describing the increasing pre-law school educational requirements).

before beginning their legal studies, chances are they “were educated at Catholic colleges.”<sup>91</sup> Kaczorowski reports that, between 1925–1947, the religious affiliation of Fordham Law School’s entering class was “overwhelmingly Catholic,” being in all but a few years, “between 68 percent and 75 percent.”<sup>92</sup> This mission of educating Catholic students continued into the 1960s as “Fordham was not trying to recruit students nationally” but rather recruiting students from the New York City area, most of whom “graduated from Catholic colleges and universities.”<sup>93</sup>

By 1965, however, the Law School administration recognized that, if it “was to continue to improve its academic status,” it “must emerge as a national rather than a local law school.”<sup>94</sup> This would require recruiting students “on a national basis,” and thereby broaden its “influence on bench, bar, and public service.”<sup>95</sup> Kaczorowski does not explore why the goal of improving Fordham’s academic status as a national law school began to supplant the original goal of “rais[ing] Catholic immigrants and their sons into positions of leadership in professional, economic, and political life.”<sup>96</sup> Plainly, however, a definite change in mission occurred.<sup>97</sup> By the time of its 2001 self-study, Fordham celebrated having “achiev[ed] a more geographically diversified student body,”<sup>98</sup> and “the increasing ethnic, racial, religious, gender, sexual-orientation, and political diversity of the student body” in the School’s student organizations.<sup>99</sup> By that time the School was also seeking “to raise additional funds for a national scholarship program to attract ‘high quality students to the law school’” and be recognized as “one of the ‘preeminent law schools in the country.’”<sup>100</sup>

The book would have provided a more fulsome description had it expressly acknowledged this change in mission and explored the reasons that

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91. See KACZOROWSKI, *supra* note 1, at 37 (noting that these schools included not only Fordham University “and other Catholic colleges in and around the city” but also Holy Cross, Boston College, Georgetown, and Notre Dame); *id.* at 210 (noting that, even as late as 1952, Dean Wilkinson “preferred Fordham graduates over other ‘equally qualified students’”); *id.* at 97–98 (listing statistics showing percentage of Fordham students with Catholic college degrees).

92. *Id.* at 66.

93. *Id.* at 227.

94. *Id.* at 225–26.

95. *Id.*

96. *Id.* at 5.

97. From 1925–1947, the Law School asked applicants about their religious affiliation. In 1948 it altered the question, seeking to know only if the applicant was Catholic. KACZOROWSKI, *supra* note 1, at 61–62. In 1968, the Law School ceased asking applicants for admission whether their religious affiliation was Catholic. *Id.* at 62. In a Five Year Plan report authored by Fordham law students in 1971, students complained of “the Law School’s failure to attract students ‘from far afield’” and that this “contributed to its reputation as a ‘regional’ law school.” *Id.* at 279.

98. KACZOROWSKI, *supra* note 1, at 362.

99. *Id.* at 349.

100. *Id.* at 327.

lay behind it.<sup>101</sup> Instead, the mission of catering to a Catholic constituency simply appears and then disappears from Kaczorowski's narrative.

## 2. *Law School Administration*

With respect to the Law School's administration, Kaczorowski notes in passing that Fordham adopted an organizational structure peculiar to Jesuit universities—the “regent.”<sup>102</sup> He explains that the regent was a member of the Jesuit order who, in effect, served as an overseer to one of the professional schools within a Jesuit university, ensuring the school's “connection to the university's central administration and to the Jesuit order, and . . . that nothing was taught that was contrary to Catholic faith and morals.”<sup>103</sup> In some cases, Kaczorowski notes, “the regent actually ran the law school.”<sup>104</sup> While nothing in Kaczorowski's history suggests anything like this took place at Fordham, the position did exist, first occupied by Rev. Terence J. Shealy, S.J.,<sup>105</sup> and later held by Rev. Francis P. LeBuffe, S.J.,<sup>106</sup> and Rev. John X. Pyne, S.J.<sup>107</sup> Pyne is the last Law School regent that Kaczorowski mentions, and it appears that the position no longer exists at Fordham. But the fact that it *did* exist points to a more robust sense of Catholic and Jesuit identity, which Kaczorowski's thin account of that identity does not explore. Nor does he explain the apparent extinction of the regent's position, or the causes and consequences of that change.

As noted above, Professor Kaczorowski's book is structured around the tenure of Fordham's successive deans. Here, Kaczorowski understates the Law School's Catholic and Jesuit mission by describing that mission at a high level of abstraction. For example, Fordham's first dean, Paul Fuller, was “a man whose deep religious faith reinforced his innate humility in

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101. Fordham may have chosen to alter its mission for a variety of reasons. It may have been because Catholics in the post-war era were no longer the poor victims of discrimination they had once been, but established members of the American middle class. See JAY P. DOLAN, IN SEARCH OF AN AMERICAN CATHOLICISM: A HISTORY OF RELIGION AND CULTURE IN TENSION 185 (2002); JAY P. DOLAN, THE AMERICAN CATHOLIC EXPERIENCE: A HISTORY FROM COLONIAL TIMES TO THE PRESENT 349–420 (1992); CHARLES R. MORRIS, AMERICAN CATHOLIC: THE SAINTS AND SINNERS WHO BUILT AMERICA'S MOST POWERFUL CHURCH 223 (1997). In the alternative, Fordham may have concluded that the ambition of attaining elite status required the pursuit of a different (and presumably more qualified) pool of applicants. While the pursuit of such a goal may have been incompatible with serving a strictly local Catholic population, it is uncertain whether it was incompatible with the goal of educating a predominantly Catholic student body drawn from a national pool of applicants. In any case, these issues are left unexplored in Kaczorowski's book.

102. The regent was an administrative position held by a Jesuit. When a law school's dean was a layman, the regent served as an intermediary between the dean and the university president. TODD F. SIMON, BOSTON COLLEGE LAW SCHOOL AFTER FIFTY YEARS: AN INFORMAL HISTORY, 1929–1979, at 5 (1980).

103. KACZOROWSKI, *supra* note 1, at 57.

104. *Id.*

105. *Id.*

106. *Id.* at 77.

107. *Id.* at 111.

shaping his character and professional bearing.”<sup>108</sup> According to Kaczorowski, in selecting Fuller to serve as dean, it was the Law School’s founders’ intention “to provide an elite law school education suffused with Fuller’s ethical values and scholarly perspective on law.”<sup>109</sup> Elsewhere, he says that Fuller’s “personal views reflected the Jesuit orientation toward professional education,” which included a belief in the “higher things” and a rejection of the view that the positive law sets forth “the highest norm of good and evil.”<sup>110</sup> But Fuller’s “religious faith” was not generic—it was specifically Catholic—and his “ethical values and scholarly perspective on law” and beliefs about the “higher things” were derived from the distinctive Catholic tradition. Fuller was indeed “religious,” and he wanted the Law School to inculcate “ethical values,” but these abstractions do not capture—from the historical actors’ own perspectives—the aims of Fordham Law School, or why Fordham University and the Jesuit order did or should sponsor a law school in the first instance.

Kaczorowski mentions the Catholic backgrounds of several of Fuller’s successors: John Whalen,<sup>111</sup> Francis P. Garvan,<sup>112</sup> Ignatius M. Wilkinson,<sup>113</sup> and William Hughes Mulligan.<sup>114</sup> Kaczorowski does not mention the religious affiliation of the three most recent Fordham deans discussed in the book: Joseph McLaughlin, John Feerick, and William Treanor. Nor does he discuss how they sought to contribute to Fordham’s identity as Catholic and Jesuit. This absence may be due to Kaczorowski’s thin view of Fordham’s Catholic mission or to the attenuation of that mission over time. He does mention that Professor George W. Bacon served as interim dean in 1953 but withdrew from consideration because he did not “believe that a

108. *Id.* at 4.

109. KACZOROWSKI, *supra* note 1, at 5.

110. *Id.* at 15.

111. Whalen was “[a] leading Roman Catholic layman . . . [and] benefactor to Fordham University and the New York Archdiocese.” *Id.* at 31.

112. Garvan “was a staunch Roman Catholic like his predecessors.” *Id.* at 47. He was also a friend of Archbishop John Farley and “a member of two prominent and devout Catholic families.” *Id.* at 49. He was also a vocal opponent of socialism—a then-recurrent theme in Catholic social teaching. *Id.* at 56–57. As Kaczorowski notes, Pope Leo XIII was a severe critic of socialism in his encyclical *Rerum Novarum*. Opposition to socialism—the abolition of private property, the ownership of the means of production and control of the economy by a central state bureaucracy, and the organization of politics based on class conflict—has been an ongoing theme in the social magisterium of successive popes. See John M. Breen, *Neutrality in Liberal Legal Theory and Catholic Social Thought*, 32 HARV. J.L. & PUB. POL’Y 513 (2009).

113. Wilkinson worked to ensure that Rev. John X. Pyne, S.J., who taught jurisprudence at Fordham, would be counted by the ABA as a full-time faculty member, even though he was not a lawyer. KACZOROWSKI, *supra* note 1, at 143–44, 156–57. Wilkinson also insisted that the Fordham law faculty “taught the law against our background of Catholic philosophy.” *Id.* at 150.

114. Mulligan was a relative of New York’s Archbishop John Hughes, *id.* at 214, who began his college education studying for the priesthood. *Id.* at 101. In 1957, Dean Mulligan told Fordham’s president of his ambition for the Law School to become “the best Catholic law school in the United States.” *Id.* at 224.



Protestant should become the Dean of a Catholic Law School.”<sup>115</sup> This suggests that, at least until the mid-twentieth century, the faith of the Law School’s dean was not a mere abstraction. It mattered sufficiently that a non-Catholic Christian faculty member declined to serve as dean because of what he perceived to be the concrete reality of the Law School’s Catholic mission.

### 3. Faculty

The faculty is the group of individuals primarily responsible for carrying out the academic mission of any given university or school. Although understated, Kaczorowski’s text suggests that the law faculty was once a strong source of Fordham Law School’s Catholic character. This strength did not derive from the presence of a large number of Jesuit professors.<sup>116</sup> During the tenure of Fordham’s first three deans, the School’s faculty “included only one Jesuit at any given time.”<sup>117</sup> Instead, during this period, “[t]he majority of the lay faculty were Catholic,” notwithstanding the absence of “an institutional policy restricting faculty recruitment to Catholics.”<sup>118</sup> This high percentage of Catholic faculty continued in later years. Thus, the book notes that Father Whalen recalled being told in the early 1960s that “the Catholic nature of Fordham Law School was mani-

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115. *Id.* at 213.

116. Kaczorowski claims that “[t]he Jesuit community may have wanted ‘to stamp the [law] school with a more Catholic character’ with the appointment of more faculty ‘from the ranks of Jesuit alumni,’ but this simply did not happen.” KACZOROWSKI, *supra* note 1, at 59. Here, Kaczorowski appears to misunderstand the meaning of the phrase “Jesuit alumni.” Although Fordham Law School had only one Jesuit serving on its faculty through the tenure of its first three deans, *id.*, the Law School hired quite a few graduates of Jesuit institutions as law faculty, especially Fordham itself. Thus, he notes that, in the 1920s and 1930s, “[t]he majority of faculty were law graduates of Fordham.” *Id.* at 118. Similarly, at mid-century, four of Fordham’s seven full-time faculty members were graduates of Fordham Law School, as were thirteen of the School’s fifteen part-time teachers. *Id.* at 208. Likewise, in 1958, six of the Law School’s twelve-member full-time faculty were Fordham Law School graduates, and “[o]f the seventeen part-time faculty, two were Jesuit priests who taught the course in Jurisprudence, and eleven were Fordham Law alumni.” *Id.* at 223. The source of Fordham’s purported desire to appoint “Jesuit alumni” that Kaczorowski identifies is an article in an American Jesuit publication, *Woodstock Letters*. It is unclear from the quoted passage that “Jesuit alumni” refers to members of the Society of Jesus as Kaczorowski suggests. The passage reads: “Next year probably four associate-professors will be appointed from the ranks of the Jesuit alumni. This is intended as an encouragement to them, and will enable us to stamp the school with a more Catholic character.” 36 *Woodstock Letters*, 387 (1907). It is just as plausible and in many ways more likely that this refers to an effort to hire the graduates of Jesuit institutions, not Jesuit priests. If this interpretation is correct, then Kaczorowski’s claim that “this simply did not happen,” KACZOROWSKI, *supra* note 1, at 59, is plainly not true, as Kaczorowski’s text itself makes clear. That is, Fordham hired quite a few graduates of Jesuit institutions as members of its law school faculty.

117. KACZOROWSKI, *supra* note 1, at 59.

118. *Id.* To underscore this point, elsewhere Kaczorowski notes that, in 1913, Fordham hired I. Maurice Wormser, the Law School’s first Jewish law professor, who served for many years. *Id.* at 13.

fested in its faculty, most of whom were Roman Catholic.”<sup>119</sup> Similarly, Dean McLaughlin recalled that, in 1971, the Law School had fifteen or sixteen full-time faculty and that “90 % of them were Fordham graduates.”<sup>120</sup>

Later, the prevalence of Catholics on the faculty who were themselves graduates of Fordham was viewed not as a strength, but as a weakness—the problem of “inbreeding.”<sup>121</sup> Although the Law School had made some effort to hire “faculty from diverse backgrounds,”<sup>122</sup> during a site inspection in 1958, the ABA observed that there was still “a considerable remnant of inbreeding” on the Law School Faculty.<sup>123</sup> In response, Dean Mulligan “sought to get away from the inbreeding by diversifying the faculty in terms of educational and religious backgrounds.”<sup>124</sup> This process of transforming the faculty continued under Mulligan’s successors Joseph McLaughlin<sup>125</sup> and John Feerick,<sup>126</sup> such that the ABA could conclude in 1994 that, although the faculty in 1986 had “a definite home-grown flavor,” in 1994

119. *Id.* at 151.

120. *Id.* at 266.

121. It is striking that this same criticism—indeed, this same word—appears in the internal correspondence of other Catholic law schools during the time concerning the makeup of their faculties. Our research at Georgetown and Marquette provides representative examples. *See, e.g., Executive Faculty Minutes 1958* (May 16, 1957), in Georgetown University Law Center, Special Collection and Archives Department, Executive Faculty Minutes, Boxes 1 of 5, (“It was agreed by all present that an effort should be made to obtain qualified persons who are not graduates of this school in order to avoid inbreeding.”); Executive Committee Minutes 1914–1959, F.1.38; *Memo-randum from David McCarthy to Ad Hoc Committee on Goals and Priorities* (February 26, 1970), in Georgetown University Law Center, Special Collection and Archives Department, Committee (Planning), Box 11, F.3 (noting that faculty publication “reflects an impressive change from that available in 1960”; “In 1960, seventeen of twenty-five members of the full-time faculty received their initial legal education at Georgetown. At the present time, seventeen of thirty-six members received their initial law degree at Georgetown.”; “It is not intended to deprecate the Georgetown education to conclude that Georgetown itself will benefit from more diversity. Thus, diversity was a conscious policy of the 1960s.”); *Letter, Dean Robert F. Boden to John H. Schlosser* (Chairman, Board of Visitors, Woolsack Society) (Nov. 6, 1973), in Marquette University Archives, UNIV A-1.2, Series 3, Box 459, Law School, General Correspondence (1973) (acknowledging student complaints and noting that of thirteen full-time faculty seven are Marquette graduates and six from other schools, and of part-time faculty three are Marquette graduates and four from other schools; defending Marquette’s hiring practices: “If we would slavishly pursue a policy against ‘in-breeding’ we would be forced to hire second string older teachers or youngsters right from graduate law school *without prior loyalties to this law school*”; and complaining “The ‘in-breeding’ problem is not as simple as the critics imply. There is nothing necessarily incestuous about hiring one’s own graduates. The Harvard Law School is the most in-bred in the country. Places like Yale, Georgetown and Texas are heavily in-bred. Because Harvard produces about twenty-five percent of the nation’s law teachers, some schools are in-bred with Harvard people, like little satellites of Harvard.”).

122. KACZOROWSKI, *supra* note 1, at 214–15.

123. *Id.* at 223.

124. *Id.*

125. *Id.* at 266.

126. *Id.* at 338.

Fordham's law teachers were "'increasingly diverse' in terms of their educational backgrounds."<sup>127</sup>

It is, of course, a truism that "personnel is policy," but Professor Kaczorowski does not draw out how Fordham's Catholic faculty impacted the Law School's identity.<sup>128</sup> If one begins with the premise that Fordham's Catholic identity was thin and inconsequential,<sup>129</sup> then the transformation of the faculty from one that was predominantly Catholic to one with little Catholic presence will also be regarded as unworthy of note. To Fordham's credit, Kaczorowski notes that the Law School's Catholic culture was evidently "inclusive and enabled non-Catholics to feel welcome."<sup>130</sup> But this is to compliment Fordham's Catholic identity only for the negative consequences it avoided, not for the positive contributions it may have made.<sup>131</sup>

#### 4. Curriculum

Professor Kaczorowski's conclusion that there were few "reminders" of Fordham's Catholic and Jesuit identity<sup>132</sup> is challenged by a careful reading of his own presentation of facts concerning the Law School's curriculum. He notes that "Fordham Law students were required to take two courses that were not required at most other law schools," namely, Jurisprudence and Legal Ethics.<sup>133</sup> According to Kaczorowski, "[t]hese two courses most likely represented the greatest presence of the Law School's affiliation

127. *Id.* at 335.

128. Representative of the thinness of Professor Kaczorowski's account of Fordham's Catholic identity as reflected in the School's faculty is his treatment of Professor Walter B. Kennedy. See Breen & Strang, *The Forgotten Jurisprudential Debate*, *supra* note 4, at 1230–32 (providing a brief biography of Kennedy). Kennedy receives about five pages of treatment in the book, with approximately one page devoted to his contribution to the Catholic critique of Legal Realism. KACZOROWSKI, *supra* note 1, at 146. Indeed, although Professor Kaczorowski acknowledges that Kennedy was "the most widely respected Catholic legal scholar in the country," *id.* at 146 (quoting EDWARD A. PURCELL, JR., *THE CRISIS OF DEMOCRATIC THEORY: SCIENTIFIC NATURALISM AND THE PROBLEM OF VALUE* 165 (1973)), Kaczorowski apparently concluded that Kennedy did not merit a picture in the list of prominent personages in Fordham's history. KACZOROWSKI, *supra* note 1, at 212–13 (sixteen pages of photographs and portraits of various faculty members appear in the book beginning after page 212).

129. KACZOROWSKI, *supra* note 1, at 57.

130. *Id.* at 60.

131. Kaczorowski quotes Dean Mulligan in correspondence with University administrators over a proposal put forth by some members of the Jesuit Educational Association that Catholic philosophy and theology be included "in all courses taught in Catholic law schools." *Id.* at 150. Kaczorowski reports that Mulligan rejected the proposal arguing that "Catholic thought and Catholic principles naturally permeate all courses." *Id.* At Fordham, as at other Catholic law schools, "the law is taught against a Catholic background," a background supplied by faculty "who are Catholic both in faith and in culture." *Id.* Kaczorowski nowhere comments on whether teaching law in this manner constituted a positive contribution to American legal education. Moreover, after the composition of the faculty changed, Kaczorowski does not comment on how Mulligan's statement could still be true in the absence of faculty members who shared in the Catholic faith and culture that Mulligan described.

132. *Id.* at 57.

133. KACZOROWSKI, *supra* note 1, at 15.

with a Jesuit University.”<sup>134</sup> Over the years, the Jurisprudence course was taught by a succession of Jesuit priests: Shealy,<sup>135</sup> LeBuffe,<sup>136</sup> Pyne,<sup>137</sup> Rev. S. Oley Cutler, S.J.,<sup>138</sup> and Rev. Charles M. Whalen, S.J.<sup>139</sup> Father Shealy, who initiated the course, “taught his course from the perspective of the natural law philosophy of Thomistic Scholasticism.”<sup>140</sup> Both Fathers LeBuffe and Pyne taught the course in a similar fashion, using materials compiled by LeBuffe. They taught that a proper understanding of the positive law was “rooted in the doctrine of Natural Law and natural rights and consequently in an objective, real standard of justice.”<sup>141</sup>

Another component of the Law School’s historic curriculum that challenges Kaczorowski’s thin account of Catholic identity concerns the character of the students that Fordham hoped to graduate. Father Shealy believed that education was not mere “mental training” but included “the inculcation of sound ethical, moral and political doctrine.”<sup>142</sup> Fordham, it seems, wanted to produce not only good lawyers, but good men. This was a theme repeated decades later as the University administration insisted that it did not want Fordham law students trained “only along legal lines,” as mere technicians. Rather, the University hoped that the Law School would direct its efforts “not merely to training competent lawyers but wherever possible to developing graduates who would be leaders in legal thought” with a sense of social responsibility.<sup>143</sup> At the time, this “legal thought” included the natural law perspective to which students were introduced in the mandatory Jurisprudence class.

Kaczorowski acknowledges that “[t]he Jurisprudence course was probably the most important expression of the school’s Jesuit and Catholic affiliation, because it was undoubtedly taught from the Jesuits’ Thomistic natural rights philosophical perspective.”<sup>144</sup> At the same time, the book does not explore the significance of the class in terms of Fordham’s pedagogical goals, nor does it explore what the absence of this perspective means for Fordham’s Catholic identity today. Plainly, those who founded Fordham Law School sought to provide the children of Catholic immigrants with the chance to advance into the ranks of society’s professional clas-

134. *Id.*

135. *Id.* at 16–18.

136. *Id.* at 144.

137. *Id.* at 143.

138. *Id.* at 150.

139. KACZOROWSKI, *supra* note 1, at 150.

140. *Id.* at 17.

141. *Id.* at 144 (quoting FRANCIS D. LEBUFFE, S.J., *OUTLINES OF PURE JURISPRUDENCE* (1924)). Similarly, a former student described Pyne’s course as teaching that “the civil law was based on natural law—moral law.” *Id.* at 19.

142. *Id.* at 18.

143. *Id.* at 202–03.

144. *Id.* at 57.

ses.<sup>145</sup> More than career advancement and economic opportunity, however, Fordham sought to provide its graduates with a substantive view of the law that would inform their work as attorneys in private practice and in public life. This goal made Fordham distinctive from its secular peers. Absent such a goal, it is difficult to understand why Fordham required its students to study this particular philosophical perspective concerning the nature and foundations of law.

### B. Fordham's "Distinctive" Mission Today

Today, Fordham is, by all accounts, an excellent law school. For example, the U.S. News & World Report 2018 rankings of the nation's 203 ABA accredited law schools listed Fordham as thirty-seventh.<sup>146</sup> Similarly, in a recent article by Professor Alfred Brophy ranking law schools based on three metrics (median LSAT score of the most recent entering class, job placement at graduation, and citations to the school's main law review), Fordham ranked twenty-ninth overall.<sup>147</sup> Likewise, in a study by a group of scholars led by Professor Gregory Sisk, measuring law schools based on the scholarly impact of their faculties, Fordham ranked twenty-ninth.<sup>148</sup> In sum, it would be fair to say that there is a general consensus among legal educators and others that Fordham ranks among the nation's best law schools.

It also seems plain that Fordham's distinctive mission is no longer that of educating the children of Catholic immigrants who would otherwise be denied the opportunity for professional advancement due to poverty or anti-Catholic discrimination, as these obstacles no longer define the reality of American Catholic life.<sup>149</sup> Even in the 1960s, student enrollments at Fordham University "were declining as many of the best and brightest Catholic high school students were now welcomed at the nation's most prestigious colleges and universities."<sup>150</sup> Likewise, whereas in earlier decades Fordham law students had difficulty getting hired by certain firms because of "anti-Catholic bias,"<sup>151</sup> during the 1970s and 1980s, Wall Street "discovered Fordham Law School."<sup>152</sup> But, if providing educational opportunities to the

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145. KACZOROWSKI, *supra* note 1, at 5, 78.

146. U.S. NEWS & WORLD REPORT, BEST LAW SCHOOLS RANKED IN 2018, <https://www.usnews.com/best-graduate-schools/top-law-schools/fordham-university-03107> (last visited Nov. 11, 2018).

147. Alfred L. Brophy, *Ranking Law School with LSATs, Employment Outcomes, and Law Review Citations*, 91 IND. L.J. SUPP. 55 (2015).

148. Gregory Sisk et al., *Scholarly Impact of Law School Faculties in 2015: Updating the Leiter Score Ranking for the Top Third*, 12 U. ST. THOMAS L.J. 100 (2015).

149. See *supra* note 4, and accompanying text. Anti-Catholic discrimination is still a reality in American society, but it is a kind of intellectual bias largely confined to elite circles. See Breen & Strang, *Forgotten Debate*, *supra* note 4, at 1295–1309.

150. KACZOROWSKI, *supra* note 1, at 235.

151. *Id.* at 112.

152. *Id.* at 280.

children of Catholic immigrants is no longer the goal, then what is Fordham's distinctive mission?

As Professor Kaczorowski sees it, the mission of Fordham Law School today is "excellence."<sup>153</sup> Fashions in the academic world come and go, but the reigning "haute couture" of the American legal academy—the way in which "excellence" has been defined at least since the 1960s—has been faculty scholarship.<sup>154</sup> Fordham made the transition from a law school where faculty scholarship was marginalized<sup>155</sup> to a school where "[t]he faculty's legal scholarship was central to the Law School's mission."<sup>156</sup> Whereas in 1986 the ABA site inspectors "evaluated the nature and quality of the faculty's scholarship as poor,"<sup>157</sup> by 1994 the ABA noted "an impressive growth in overall scholarly productivity"<sup>158</sup> and a "conscious and collective commitment to developing a culture of scholarship."<sup>159</sup>

Fordham accomplished this change largely through new faculty appointments. Nearly forty percent of the faculty serving in 1994 had been appointed between that year and 1986.<sup>160</sup> In the 1960s and 1970s, "the most important consideration in hiring new faculty members and in promotions and tenure was the candidate's teaching skills."<sup>161</sup> By contrast, under Dean Feerick's tenure, Fordham "worked to acquire new faculty members committed to the highest quality of legal scholarship and to develop the scholarship of these young, entry-level professors."<sup>162</sup> Kaczorowski notes that Fordham looked to hire graduates from law schools other than Fordham itself<sup>163</sup> and "to increase the diversity of the faculty."<sup>164</sup> By contrast, nowhere does he indicate that any effort was made to further Fordham's Catholic mission through hiring—a mission that, aside from a few oblique

153. *Id.* at 335.

154. SELIGMAN, *supra* note 2, at 126 (noting that Derek Bok, dean of the Harvard Law School from 1968–71, hired faculty committed to legal scholarship and bureaucratized the tenure process "to underline the significance of the new scholarship requirement"); STEVENS, *supra* note 2, at 271 (noting that "[t]he emphasis of law professors on article writing flourished in the 1950s as the number of law reviews grew.").

155. Kaczorowski notes that "[t]hrough the 1950s and into the 1960s, the Fordham Law faculty did not engage in significant academic scholarly research, and the Law School deans did not encourage it." KACZOROWSKI, *supra* note 1, at 211. Dean Mulligan "made greater efforts to engage faculty in scholarly research and publication . . . by requiring publication for tenure and promotion and supporting faculty scholarship with financial support." *Id.* at 215. Under Dean McLaughlin the faculty declared that the Law school was "necessarily committed to the advancement of research of scholarship." *Id.* at 275. Still, the desired effects seem not to have come until the numerous faculty appointments that occurred beginning in the mid-1980s.

156. KACZOROWSKI, *supra* note 1, at 334.

157. *Id.* at 331.

158. *Id.* at 336.

159. *Id.* at 337.

160. *Id.* at 335.

161. *Id.* at 220.

162. KACZOROWSKI, *supra* note 1, at 336–37.

163. *Id.* at 335.

164. *Id.* at 338.

references to “the Jesuit tradition of commitment to service and education,” seems to have been supplanted by the mission to pursue “excellence.”

Professor Kaczorowski further claims that Fordham’s fulfillment of this newfound mission, together with a sense of “community,” makes the Law School “distinctive.”<sup>165</sup> This claim is, at best, a stretch.<sup>166</sup> This is not to deny that Fordham, as Kaczorowski describes it, is truly “excellent” as measured by the standards in the legal academy, or that the Law School’s faculty and students enjoy some sense of camaraderie. Still, it is hard to see how Fordham’s recognition as an excellent law school truly sets it apart, or renders it “distinctive,” if that word means anything other than having attained elite status.

A recurring theme throughout Kaczorowski’s book is that Fordham has aspired to be as well-regarded academically as its fellow New York City law schools, Columbia and NYU. Now that Fordham has scaled the heights and attained a comparable stature, putting to one side the details that inevitably differentiate one institution to the next, it seems that Fordham’s true distinction lies in not being located Uptown, or Downtown, but Midtown.<sup>167</sup>

#### IV. THE THINNESS OF CATHOLIC IDENTITY IN CATHOLIC LEGAL EDUCATION GENERALLY

Although we believe that Professor Kaczorowski understates Fordham’s Catholic and Jesuit identity for a portion of the Law School’s history, and that he does not engage with the attenuation of that Catholic identity, he does accurately portray the lack of that identity today. The real, though modest, Catholic identity that Fordham once enjoyed became ever more attenuated over the years. Moreover, this thin sense of Catholic mission is something that Fordham shares with most other Catholic law schools, both in terms of its current expression and in terms of its origins.

One reason that explains why the Catholic identity of most Catholic law schools is modest, at best, is that these schools were not founded with a specific pedagogical or philosophical aim in mind. Instead, as noted above, Fordham Law School was established chiefly “to raise Catholic immigrants and their sons into positions of leadership in professional, economic, and political life.”<sup>168</sup> Like Fordham, most other Catholic law schools were

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165. *Id.* at 335.

166. And this exaggeration in part accounts for why the last chapter of Kaczorowski’s book, unlike the preceding chapters, reads more like a lengthy brochure for Fordham Law School than a history. *Id.* at 318–68.

167. Over thirty years ago, Konefsky and Schlegel remarked that law schools had become “homogenous in program and differentiated largely by the social origins and employment destinations of their students.” Konefsky & Schlegel, *supra* note 22, at 834. In the case of Fordham, one might say that it is differentiated from its two Manhattan rivals by its zip code.

168. KACZOROWSKI, *supra* note 1, at 5; *see also id.* at 21 (identifying the part-time program as a mechanism to help working-class immigrants obtain legal training).

founded at Catholic colleges located in urban areas with large immigrant populations with the same purpose in mind.<sup>169</sup>

Moreover, once established, these schools quickly learned to mimic their secular and non-Catholic peers in pedagogy and curricula.<sup>170</sup> Thus, Professor Kaczorowski recounts how, in the Law School's early years, those Fordham faculty members who were educated or who had taught at Harvard Law School made use of Langdell's case method of classroom instruction.<sup>171</sup> Similarly, Fordham's faculty made use of the same casebooks "used in many of the elite law schools."<sup>172</sup> One key exception to this curricular imitation of secular law schools was the jurisprudence courses at Catholic law schools, taught from the natural law perspective.<sup>173</sup> As Kaczorowski observes, from early on until sometime in the 1960s, Fordham required its students to take one or two courses in jurisprudence—courses taught by a Jesuit faculty member from the Thomistic, natural law perspective.<sup>174</sup>

Aside from the presence of a priest faculty member and the mandatory course in jurisprudence, the Catholic character of most Catholic law schools was largely confined to cultural elements and a religious atmosphere.<sup>175</sup> The majority of teachers, students, and administrators at these schools were Catholic, as was true at Fordham.<sup>176</sup> A Catholic student group, such as the St. Thomas More Society, often provided a forum for the discussion of issues at the intersection of law and religion, and most Catholic law schools celebrated a Red Mass to begin the academic or judicial year, and hosted communion breakfasts and retreats. Fordham students had the benefit of the St. Thomas Aquinas Law School Sodality, which organized retreats and communion breakfasts.<sup>177</sup> The physical space at these schools often included crucifixes in the classrooms and other Christian iconography, and sometimes featured a chapel where Mass was celebrated. Kaczorowski's history indicates that Fordham had a chapel in at least one of the office buildings where the Law School was once located,<sup>178</sup> and that students were encouraged to attend the annual Red Mass at St. Patrick's Cathedral.<sup>179</sup>

This real, though thin, sense of Catholic identity became more diffuse beginning in the 1960s due to a variety of reasons including both developments within legal education and secularizing trends at Catholic universi-

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169. See *Road Not Taken*, *supra* note 4, at 578–80.

170. *Id.* at 585–87.

171. KACZOROWSKI, *supra* note 1, at 9–10, 23.

172. *Id.* at 24.

173. See *Road Not Taken*, *supra* note 4, at 578–80.

174. KACZOROWSKI, *supra* note 1, at 15–17, 149–50.

175. See *Road Not Taken*, *supra* note 4, at 592–94.

176. KACZOROWSKI, *supra* note 1, at 59–73.

177. *Id.* at 58–59.

178. *Id.* at 189, 213.

179. *Id.* at 58.



ties. The changes in legal education, already discussed above,<sup>180</sup> included an enormous growth in the number of students enrolled in law school accompanied by a dramatic increase in the number of new faculty. These new law teachers were hired with an eye toward increasing faculty scholarship and diversifying a given school's faculty with respect to race, gender, religion, and educational background. Beyond the desire to meet the immediate practical needs in the classroom, these new faculty were selected to bolster the school's academic reputation, while little, if any, attention was devoted toward preserving or invigorating the school's Catholic mission.<sup>181</sup> As noted above,<sup>182</sup> Fordham took steps to solve the problem of "inbreeding" and to increase the scholarly output of its faculty. Although these changes in faculty personnel took place slightly later in time at Fordham than at other Catholic law schools, the effects were no less significant.

The pressures that led American Catholic universities down a path of secularization, some of which were internal to these institutions while others were external, were several-fold. These pressures included: a loss of manpower due to departures from the religious orders that sponsored Catholic universities, combined with a precipitous drop in new vocations;<sup>183</sup> a desire for genuine academic excellence and the reputation that typically accompanies that achievement, combined with a kind of self-loathing among American Catholics for their place in the purported cultural and intellectual Catholic ghetto;<sup>184</sup> a new openness to the world and appreciation for the expertise of Catholic lay people, inspired by the Second Vatican Council;<sup>185</sup> financial deficits, depleted endowments, and the denial of new government subsidies based on the religious identity of Catholic universities;<sup>186</sup> and a new breed of university presidents that sought to function like the chief executives of major organizations, enjoying some autonomy from the university's sponsoring religious orders.<sup>187</sup>

These pressures make some appearance in Kaczorowski's narrative. Albeit implicitly, Professor Kaczorowski touches upon the longing that Catholic university professors and administrators had to exit the Catholic ghetto—the desire they had to enjoy the recognition and respect of their nominal peers in the secular academy. This desire is reflected in the goal of being considered an "elite" law school—the pursuit of "excellence" that Kaczorowski now defines as Fordham Law School's distinctive feature.<sup>188</sup>

180. See *supra* Part II.B.

181. See *A Brief History*, *supra* note 4, at 32–33.

182. See *supra* notes 121–27, 153–64, and accompanying text.

183. BURTCHAELL, *supra* note 3, at 590, 705–06.

184. GLEASON, *supra* note 3, at 287–96; BURTCHAELL, *supra* note 3, at 707–08; ANNE HENDERSHOTT, *STATUS ENVY: THE POLITICS OF CATHOLIC HIGHER EDUCATION* (2009).

185. GLEASON, *supra* note 3, at 315.

186. *Id.* at 315–17.

187. BURTCHAELL, *supra* note 3, at 583–87, 606, 709.

188. See *supra* notes 153–64, and accompanying text.

Also implicit in the book is Fordham University's struggle to achieve financial stability in an increasingly competitive market for undergraduate students. This, in part, explains the oft-repeated theme in Kaczorowski's narrative of an ongoing struggle between the University administration and the Law School dean over the Law School's budget.<sup>189</sup>

Professor Kaczorowski does directly touch on one source of secularization at Fordham University, although somewhat briefly. As the book notes, the Gelhorn Report was a document drafted by two Fordham consultants, Columbia law professors Walter Gelhorn and Kent Greenawalt.<sup>190</sup> Fordham University commissioned the report in order to explore the possibility of gaining access to so-called "Bundy money": public funds newly made available to non-public, "nonsectarian" colleges and universities by the State of New York.<sup>191</sup> Even prior to the report, Fordham had already moved in the direction of secularization when Fordham president Rev. Leo McLaughlin, S.J., withdrew the University's certification with the state affirming that Fordham was "a denominational institution with specifically religious aims"—a document that had exempted Fordham from the state's non-discrimination laws with respect to employment.<sup>192</sup> The Gelhorn Report recommended a number of dramatic changes, including the legal separation of the University from the Jesuit community and the sale of the University church to that community, the alteration of its philosophy and theology classes to ensure that they were not "indoctrinational," the removal of religious symbols from University buildings, and the withdrawal of Fordham from Catholic educational associations.<sup>193</sup> At the Fordham board of trustees meeting at which the Report was accepted, the board also voted to reconstitute itself. What had, since Fordham's founding, been a body made up exclusively of Jesuits became a body composed of a majority of lay people.<sup>194</sup>

Kaczorowski discusses some of these details, but only in passing, affirming Raymond A. Schroth, S.J.'s conclusory gloss that most of the Gelhorn Report "was not implemented," though remarking that a cadre of the self-righteous still contend that Fordham "sold its soul."<sup>195</sup> By contrast, Rev. James Burtchaell, C.S.C., after describing the recommendations of the Gelhorn Report in detail, concludes that "Fordham adopted most of the recommendations."<sup>196</sup> Indeed, Burtchaell quotes Gelhorn and Greenawalt's

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189. See *supra* notes 23–24, and accompanying text.

190. KACZOROWSKI, *supra* note 1, at 235–37.

191. BURTCHAELL, *supra* note 3, at 597–602; JAMES JEROME CONN, S.J., CATHOLIC UNIVERSITIES IN THE UNITED STATES AND ECCLESIASTICAL AUTHORITY 176–78 (1991).

192. CONN, *supra* note 191, at 175.

193. BURTCHAELL, *supra* note 3, at 600.

194. CONN, *supra* note 191, at 175–78.

195. KACZOROWSKI, *supra* note 1, at 236.

196. BURTCHAELL, *supra* note 3, at 600.

own conclusion that it is “very hard to see how an institution that accepts these rules can long remain Catholic in any important sense.”<sup>197</sup>

More importantly, while Kaczorowski acknowledges that Fordham “changed enough” to qualify for state and federal aid,<sup>198</sup> he does not explain how these changes—from an overtly and self-consciously Jesuit University to a “nonsectarian” institution able to avail itself of state funds—influenced the Law School and its self-understanding.<sup>199</sup> Although Fordham president Rev. Michael Walsh, S.J., and Law School professor Charles Whalen, S.J., feature prominently in Kaczorowski’s narrative, he makes no mention of their less than sanguine view of the changes then taking place.<sup>200</sup>

One example of the myriad causes of secularization that Kaczorowski’s narrative might have explored is the 1967 *Land O’Lakes Statement*,<sup>201</sup> a document signed by twenty-six prominent Catholic educators from the United States and Canada, including Fordham president Rev. Leo McLaughlin, S.J. The *Land O’Lakes Statement* constitutes a kind of Declaration of Independence from the Church,<sup>202</sup> proclaiming it imperative for Catholic universities to enjoy “a true autonomy and academic freedom in the face of authority of whatever kind, lay or clerical, external to the academic community itself.”<sup>203</sup> Although the document promised that Catholicism would be “perceptively present and effectively operative” in these universities,<sup>204</sup> it largely confined this identity to the presence of a theology

197. *Id.* at 601.

198. KACZOROWSKI, *supra* note 1, at 236.

199. Elsewhere, Kaczorowski seems to believe that Fordham was free to develop a robust, Catholic intellectual culture at the Law School without fear of negative repercussions. He explains how in the 1930s Dean Wilkinson negotiated with the ABA to ensure that the Law School’s regent, Father Pyne, would be counted among Fordham’s full-time faculty. Father Pyne “taught Jurisprudence in all four sessions of the Law School” in a thoroughly Catholic way, “rooted in the doctrine of Natural Law and natural rights and consequently in an objective, real standard of justice.” KACZOROWSKI, *supra* note 1, at 143–44. Although the ABA was reluctant to count Pyne because he was not a lawyer, it acceded to Fordham’s position helping the School to satisfy the ABA’s desired student-faculty ratio. Kaczorowski interprets this decision in sweeping terms, as “tantamount to the ABA’s legitimization of the Jurisprudence course and everything Catholic in the Law School.” *Id.* at 144.

200. See BURTCHAEEL, *supra* note 3, at 601 (quoting Whalen: “I do not see how any university that honestly executed the Gelhorn recommendations could seriously call itself Catholic”); *id.* at 604 (quoting Walsh commenting on similar changes taking place at Boston College: “Should we acknowledge that there is no distinctiveness; that Boston College is no different from Harvard or the University of Massachusetts? I hope that we can focus upon something at least in the word Catholic. Is there anything distinctive? I myself cannot see it?”).

201. *Land O’Lakes Statement: The Nature of the Contemporary Catholic University* (1967), reprinted in AMERICAN CATHOLIC HIGHER EDUCATION ESSENTIAL DOCUMENTS, 1967–90, at 7 (Alice Gallin, O.S.U. ed., 1992) [hereinafter *Land O’Lakes Statement*].

202. GALLIN, NEGOTIATING IDENTITY, *supra* note 3 at 129 (describing how the leaders of American Catholic higher education “met at Land O’Lakes and drew up a document which became their chief declaration of independence from authorities outside the university”).

203. *Land O’Lakes Statement* § 1, *supra* note 201.

204. *Id.* § 1.

faculty.<sup>205</sup> The *Land O'Lakes Statement* envisions a role for the Catholic university within the ecclesial community—serving as the “critical reflective intelligence” of the Church, engaging in “a continual examination of all aspects and all activities of the Church” and “objectively evaluat[ing] them”<sup>206</sup>—but it envisions no role for the Church within the university. Indeed, the *Land O'Lakes Statement* envisions that the university will be the sole judge and guarantor of its own Catholic identity.<sup>207</sup>

The *Land O'Lakes Statement* laid the intellectual ground work for the transfer of the ownership of Catholic colleges and universities from their sponsoring religious orders to newly constituted lay boards of trustees. This process of transfer of control began in 1967 with St. Louis University and the University of Notre Dame.<sup>208</sup> By the end of the 1970s, virtually every major Catholic university had altered its governing structure.<sup>209</sup> With this transfer of control, the new breed of university president obtained the autonomy they sought, freeing them from the encumbrances of their respective institutions' founding religious orders. At the same time, the change lifted the shadow of religious orthodoxy and sectarian control from Catholic universities (at least partially) enhancing their reputation as places of true academic freedom while also making them eligible for the newly available government funds. The *Land O'Lakes Statement* was pivotal in the history of Catholic higher education in the United States.<sup>210</sup> Kaczorowski's book would have benefitted from a discussion of the document and the other sources of secularization that help explain the attenuation of Catholic identity that took place at Fordham and other Catholic law schools.

## V. CONCLUSION

Robert Kaczorowski has produced a well-written and highly informative history of Fordham Law School—one that is both serious and scholarly. It will, no doubt, be considered required reading for anyone who wants to know the broad outlines and the fine details of one of New York City's important institutions of higher learning. While the book does not focus on Fordham Law School's Catholic and Jesuit mission, it provides evidence for and exemplifies the gradual but undeniable attenuation of Catholic identity in Catholic legal education today.

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205. *Id.* § 2.

206. *Id.* § 5.

207. BURTCHHELL, *supra* note 3, at 595 (noting that in *Land O'Lakes* “[t]he relationship . . . is asymmetrical: *to* the church the university offers the “benefit of continual counsel; *from* the church the university asks only to be left alone.”).

208. GLEASON, *supra* note 3, at 314.

209. GALLIN, *supra* note 201, at 44 (stating that in the decade following the Second Vatican Council which ended in 1965, approximately seventy-five percent of Catholic colleges and universities moved to independent boards of trustees).

210. GLEASON, *supra* note 3, at 317.

That identity makes a sporadic and intermittent appearance in Kaczorowski's book, like a ghost seen from time to time in a story that is not really a story about ghosts. Its presence is real, but vague and indistinct—a shadow from the netherworld of uncertain import. It appears and then vanishes, leaving the reader to wonder: “What did I just see? And where did it go?”

By the final chapter, the ghost—the Catholic spirit of Fordham Law School—seems to have vanished for good, exorcised from the halls of Fordham's Lincoln Center campus. The ghost is gone and all that remains are stories about it: how Fordham's current “commitment to excellence” reflects “the Jesuit ‘educational ideals of rigorous thought, justice, and service to others’”;<sup>211</sup> how the Law School has “a long history of dedication to public service that is deeply rooted in the Jesuit tradition of commitment to service and education.”<sup>212</sup> But the “now you see it, now you don't” episodic appearances of Fordham's Catholic identity in the book's earlier chapters and its near-total absence in the closing pages suggest both a continuity and a change that the book does not explore.

When Jesuit universities in the late 1960s proposed changing the governing structures of their institutions from boards of trustees made up of Jesuits to boards composed of a majority of lay people, Jesuit curial officials in Rome expressed some misgivings by delaying approval. In response, Rev. Leo McLaughlin, S.J., “president of Fordham, pointed out that for 127 years Fordham had been considered a Jesuit university without the Society of Jesus ever being mentioned in its charter.”<sup>213</sup> And this is true. Nowhere does the Fordham charter mention Jesuits or the Catholic Church.<sup>214</sup> And yet, Fordham's Jesuit and Catholic identity was real, and concrete. It was no mirage. It was no ghost. And this real quality was present, notwithstanding the absence of a formal declaration in its charter, precisely because of the people who were present and involved in the life of the Law School—faculty, students, and administrators.

On the last page of his book, Professor Kaczorowski quotes Dean William Treanor praising his predecessor, John Feerick, as the individual who did the most for Fordham Law School's “educational mission, to secure our future as a center of academic learning, and to create a place that is special for scholarship, its ethical values, and its commitment to public interest.”<sup>215</sup> All of these are laudable qualities that are worth pursuing and of which Fordham and its alumni should be justifiably proud. Surely Treanor and Feerick's predecessors would find much to praise in Fordham's success.

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211. KACZOROWSKI, *supra* note 1, at 335 (quoting Fordham Law School's 1994 self-study).

212. *Id.* at 345 (quoting Fordham Law School's 2001 self-study).

213. BURTCHAELL, *supra* note 3, at 598.

214. Fordham University, Article One: The University Charter, [http://www.fordham.edu/info/20981/university\\_statutes/2143/article\\_1\\_the\\_university\\_charter](http://www.fordham.edu/info/20981/university_statutes/2143/article_1_the_university_charter).

215. KACZOROWSKI, *supra* note 1, at 367.

What is, however, missing from this list is the quality of being a Catholic law school—something Treanor and Feerick’s predecessors plainly endorsed and tried to make real. Dean Mulligan stated that it was his ambition for Fordham to be “the best Catholic law school in the United States”<sup>216</sup> and Dean Wilkinson believed that the law should be taught against a background of “Catholic philosophy,” taught by faculty who “are Catholic both in faith and in culture.”<sup>217</sup> Fordham’s more recent deans seem not to share the same goal or the same vision. Today, the Fordham University School of Law website makes no mention of the Law School being Catholic or Jesuit.<sup>218</sup> Professor Kaczorowski’s strong history would have been even stronger had it paused to ask why.

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216. *Id.* at 224.

217. *Id.* at 150.

218. *E.g., About, FORDHAM UNIVERSITY SCHOOL OF LAW* (last visited Dec. 3, 2018), <https://www.fordham.edu/info/20630/about> (“Fordham Law School has provided a complete education in the law for more than a century. While the legal profession has changed during that time, the core mission of a Fordham Law education has not. We value academic excellence, the pursuit of justice, and the ethical practice of the lawyer’s craft. We impart the warmth of community within the School and wherever Fordham Law alumni are found around the globe. Fordham lawyers are dedicated to the highest standards of the legal profession and using the law ‘in the service of others.’”).